



Lynne Egan
Chair, Senior Issues/Diminished Capacity Committee

Patricia Struck
Vice-Chair, Senior Issues/Diminished Capacity Committee

Christopher Staley
Counsel, NASAA

October 29, 2015

Re: Notice of Request for Comments Regarding NASAA's Proposed Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation

Dear Ms. Egan, Ms. Struck and Mr. Staley,

The Alzheimer's Association appreciates the opportunity to comment on the North American Securities Administrators Association, Inc. (NASAA) proposed model legislation (Model Act) to protect vulnerable adults from financial exploitation.

The Alzheimer's Association is the world's leading voluntary health organization in Alzheimer's care, support, and research. Today, there are more than 5 million Americans living with Alzheimer's disease, including an estimated 200,000 people under the age of 65. Individuals affected by Alzheimer's experience impaired judgment and progressive cognitive decline, making them susceptible to financial exploitation. As more baby boomers reach the age of greater risk of developing Alzheimer's, it can be expected that millions of them will spend their retirement years either living with the disease or caring for someone who has it. Protecting their financial future must be a priority.

The Alzheimer's Association supports legislative and regulatory efforts to protect people with Alzheimer's disease from financial exploitation. Through our chapters across the country, we will be working to see such protections enacted in all states. The Model Act proposed by NASAA is an important contribution to this cause. Thus, we offer the following comments, which primarily focus on the terms and reporting mechanisms described in the Model Act.

Specific Comments

Section 2: Definitions

The Alzheimer's Association appreciates many of the definitions listed in the Model Act, but believes certain terms should be further clarified and added.

The term "eligible adult" appears to include individuals age 60 years or older or adults as defined by a state's adult protective services (APS) statute. Because it is presumed, but not clear if, §2(3)(b) supersedes §2(3)(a), NASAA should broaden its definition to include any adult age 18 years or older. While most investors are older adults, there are investors and beneficiaries of investors who are under the age of 60. There are also individuals who are affected by younger-onset Alzheimer's disease and develop the disease before the age of 65.

Individuals living with younger-onset Alzheimer's experience the same challenges and vulnerabilities as older individuals living with Alzheimer's. Expanding the definition of "eligible adult" will ensure these individuals are also protected under this Model Act.

The term "financial exploitation" should be further clarified to include the conversion of money, assets or property under §2(4)(a) and the term "conservatorship" in §2(4)(b), which is used by some states. It should also expand acts or omissions to obtain control under §2(4)(b)(i) to include violence, threat or theft.

The term "qualified employee" should be expanded to include all roles in this section; not just those that serve a "broker-dealer" [§2(2)] or an "investment adviser" [§2(5)]. The term should also include titles the public is more likely to identify such as "financial adviser." While we recognize the different roles have varying levels of fiduciary responsibility, it would be prudent to require all employees who have access to a client's financial information to be subject to the provisions of the Model Act. For example, a "qualified employee" is responsible for reporting suspected financial exploitation to APS or the state securities agency under §3, but a "broker-dealer" and "investment adviser" are only required to make such reports when they are requesting a delay in disbursement [§7(1)(a)(iii)]. The term "qualified employee" should be revised to be all-inclusive and used throughout the Model Act.

Lastly, the Model Act introduces terms that should have been first introduced and defined in this section: "the Agencies" (§3), "third party" (§5) and "financial impairment" (§9). Although the term "the Agencies" is defined as referring to "Adult Protective Services and the commissioner of securities," the term "third party" is only mentioned in the background information and the term "financial impairment" is not defined at all. We encourage NASAA to formally define "third party" here as a person authorized to discuss the eligible adult's information or the eligible adult's power of attorney, guardian or conservator. We also encourage NASAA to formally define "financial impairment" and consider including self-neglect. Alzheimer's disease is characterized by a progressive decline in memory, problem-solving, and other cognitive skills that affect a person's judgment and executive function. As their cognition declines, affected individuals may engage in poor decisions and fail to recognize the consequences of their actions. Financial advisors may encounter these types of situations and be asked to take action on clients' preferences, even if these preferences are based on impaired judgment. Self-neglect is a recognized form of abuse in several state statutes on APS and including it in a definition of "financial impairment" would expand application of the Model Act to adults who independently make poor financial decisions due to the presence of cognitive impairment.

Section 5: Third-Party Disclosures

It is not clear how third-parties would be notified. NASAA should specify the mechanism(s) that would be used and the urgency in which disclosure should be made to a third party if exploitation is suspected.

Section 7: Delaying disbursement

The Alzheimer's Association appreciates the guidance provided on delaying disbursement, but believes this guidance should be strengthened and further clarified.

The window of time allowed to take action under §7(1)(b)(i) and (ii) should be reduced to 24 hours. This is in line with most guidance for mandatory reporters of abuse. NASAA should also clarify how "the Agencies" will be notified and reported to under §7(1)(b)(ii) and (iii), and define core components an internal review should include.

The provisions for a delay of disbursement expiration or extension under §7(2) should be clarified. Because employees subject to the provisions of the Model Act may not recognize cognitive change or be trained in detection of cognitive impairment or self-neglect, it is not clear under what expertise or authority a delay of disbursement would expire under §7(2)(a). It is also not clear under what mechanism a case involving delayed disbursement would reach a court, even though §7(2)(b) indicates a court may terminate such a delay.

Thank you for the opportunity to comment. The Alzheimer's Association would welcome a chance to serve as a resource to NASAA as it refines its Model Act and considers other issues facing individuals living with Alzheimer's and other dementias. Please contact Hye Kim, Sr. Associate Director, Policy Development, at 312-335-5809 or hkim@alz.org if you have questions or if we can be of additional assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Egge', with a long horizontal flourish extending to the right.

Robert Egge
Executive Vice President, Government Affairs