

Comments Regarding NASAA's Proposed Model Legislation or Regulation To Protect Vulnerable Adults From Financial Exploitation

Submitted on October 10, 2015

I thank the Board of Directors of the North American Securities Administrators Association (NASAA) for its September 29, 2015 notice inviting comments such as these.

I submit these comments as a person who has spent much of the past 25 years encouraging policy makers and others to establish safeguards which are needed in situations like the one which I discuss in the 2-page PDF file that makes up the webpage at <http://tvfields.com>. I hope those who read these comments will visit this webpage, where I share an eye-opening 3-minute video, which was recorded in the emergency room of a hospital, and the ABC News report which first brought this video to my attention. Such material makes clear the need for legislation of the kind which NASAA proposes.

I first recognized the need for such legislation as a result of what I learned as a result of what took place in a hospital, just hours before my father died of cancer , while on a morphine drip and under a Do Not Resuscitate order. What took place then is recalled under oath by the doctor who was called to my father's bedside that day when the cancer ruptured my father's stomach. I share this doctor's 46-page testimony online beginning at <http://tvfields.com/SteinmetzDepo/Frameset001.htm>; I also summarize this testimony at <http://tvfields.com/SteinmetzDepo/Frameset000.htm>

Beginning on the next page, I will apply what I have learned these past 25 years to recommend a few amendments to NASAA's Model Act.

Sincerely,

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Recommended Amendments

Section 2

Add to the definition of “Exploitation” provisions like one which is included in two Florida statutes, 825.103 and 415.102(8), both of which define “Exploitation”.

The text of these two Florida statutes is appended to the end of these comments.

These statutes not only include language similar to NASAA’s definition but also language which makes clear that persons who involve themselves with the funds, assets, or property of an elderly or disabled adult need to look for and respect indicators of that adult’s lack of capacity to consent.

Because an individual can possess the “capacity to consent” but nevertheless lack the capacity to resist undue influence or fraud, I recommend including language which makes clear that persons who involve themselves with the funds, assets, or property of an elderly or disabled adult need to look for and respect indicators of not only that adult’s lack the capacity to consent but also that adult’s inability to resist being unduly influenced, defrauded or otherwise exploited.

Section 3

Identify specific indicators that qualified employees must look for and report to the Agencies, unless previously instructed otherwise in writing by the eligible adult.

Without this amendment, this Model Act cannot be relied upon to ensure that qualified employees recognize situations that need to be reported to the Agencies.

This amendment is needed to provide objective criteria that qualified employees need in order to recognize when financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted.

This amendment is needed to ensure that this Model Act is applied uniformly.

This Act can and should still require qualified employees to report suspicions which are based upon indicators other than those identified by this Act. With this in mind, this Act need identify only those indicators which any reasonable person would realize need to be reported.

Consider, for example, the situation recorded by the 3-minute video at <http://tvfields.com/OtherLinks/maryellenwill.wmv> and reported by ABC News at <http://abcnews.go.com/2020/mary-ellens-mansion-elder-abuse/story?id=8976473>. Ten seconds into the video, the attorney who recorded the video makes clear that he is making the video because he understands that the circumstances are suspicious. This recommendation would require the financial services industry to expressly identify those circumstances in a checklist that any qualified employee can follow.

Section 5

Identify specific indicators that qualified employees must look for and report to third parties previously designated by the eligible adult.

This amendment is based upon the same considerations as is the amendment recommended for Section 3.

Section 7

Require (not just allow) broker-dealers and investment advisers to delay disbursements whenever they find indicators that they are required to report by Section 3 or Section 5.

This amendment is needed to provide the Agencies and other to whom the indicators were reported the opportunity they need to address the situation.

Section 9

Require (not just allow) a broker-dealer or investment adviser to provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to agencies charged with administering state adult protective services laws and to law enforcement ...

These agencies obviously need these records to correctly assess the reported situation.

Also require a broker-dealer or investment adviser to provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to third parties previously designated by the eligible adult.

These parties need these records not only to correctly assess the reported situation but also to correctly assess the response of adult protective services and law enforcement.

Another Recommended Amendment

Require the financial services industry to establish and maintain a fund or other means to compensate accounts for losses that cannot be otherwise recovered whenever a broker-dealer, investment adviser or other qualified employee fails to (1) make a good-faith effort to identify or report indicators as required by Sections 3 and 5, (2) delay a disbursement as required by Section 7, or (3) provide access to or copies of records as required by Section 9.

Establishing such a fund would demonstrate the industry's commitment to its customers when the rules established by this Model Act are not followed.

Florida Statute 825.103

825.103 Exploitation of an elderly person or disabled adult; penalties.—

(1) “Exploitation of an elderly person or disabled adult” means:

(a) Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, **by a person who:**

1. Stands in a position of trust and confidence with the elderly person or disabled adult; or
2. Has a business relationship with the elderly person or disabled adult;

(b) Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, **by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent;** or

(c) Breach of a fiduciary duty to an elderly person or disabled adult by the person’s guardian or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of property.

Florida Statute 415.102(8)

(8)(a) “Exploitation” means a person who:

1. Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or
2. **Knows or should know that the vulnerable adult lacks the capacity to consent**, and obtains or uses, or endeavors to obtain or use, the vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.

(b) “Exploitation” may include, but is not limited to:

1. Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;
2. Unauthorized taking of personal assets;
3. Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or
4. Intentional or negligent failure to effectively use a vulnerable adult’s income and assets for the necessities required for that person’s support and maintenance.