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Long-Term Care
Ombudsman

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Filed Electronically

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**RE: Comment to Proposed Model Legislation or Regulation to
Protect Vulnerable Adults from Financial Exploitation**

Ladies and Gentlemen:

The District of Columbia Long-Term Care Ombudsman Program (the "DCLTCOP") submits these comments regarding the model legislation proposed by North American Securities Administrators Association, Inc. ("NASAA") on September 29, 2015 entitled, "An Act to Protect Vulnerable Adults from Financial Exploitation" (the "Model Act"). The DCLTCOP advocates for approximately 6,000 residents receiving long-term care services in nursing homes, assisted living residences, community residence facilities and in their homes through the Elderly and Persons with Physical Disability Waiver (the "EPD Waiver"). As a part of the District of Columbia Office on Aging Senior Service Network, the DCLTCOP is charged by federal and D.C. law to represent the interests of this vulnerable population—some with physical and mental disabilities that make it difficult, if not impossible, to advocate effectively for themselves.



DCLTCOP strongly supports the objective of the Model Act. We note that the Model Act is substantially similar to existing statutes and regulations in numerous states across the United States requiring reporting by certain financial institutions, typically in the banking sector, of suspected financial exploitation of elderly adults.¹ For example, with respect to jurisdictions local to the DCLTCOP, we note that Maryland has a substantially similar statute requiring fiduciary institutions and employees thereof to report suspected financial abuse of an elder adult.² The Model Act takes the natural and necessary next step by applying a similar mandatory reporting regime to qualified employees of broker-dealers and investment advisors. Accordingly, NASAA's proposal of the Model Act to protect elder adults from financial exploitation is of great importance to us and we applaud NASAA's efforts. Our comments below are intended to be supportive of NASAA's efforts and are intended to improve and strengthen the Model Act in furtherance of protecting elder adults from financial exploitation.

Definitions

We propose that the definition of "financial exploitation" be expanded to include "assisting" with the outlined acts that comprise the defined term. For example, under the Maryland Code, Section 1-306³, "financial abuse" means "to take, appropriate, obtain, or retain *or assist in taking, appropriating, obtaining, or retaining*, real or personal property of an elder adult by any means, including undue influence, for a wrongful purpose or with intent to defraud the elder adult." We request that Section 2(4) of the Model Act be revised to read as follows:

¹ See Ariz Rev. Stat. Ann. §46-454(A)(B); Ark. Code Ann. §12-12-1708(a)(1); Cal. Welf & Inst. Code §15630(a); Colo. Rev. Stat. §18-6.5-108(1)(a)-(1)(b); Del. Code. Ann. tit.31, §3910(a); D.C. Code §7-1903(a)(1); Fla. Stat. §415.1034(1)(A); G.A. Code. Ann. §30-5-4(a)(1)(A); Ind. Code Ann. §12-10-3-9(a); Kan. Stat. Ann. §39-14319(a); Ky. Rev. Stat. Ann. §209.030(2); La. Rev. Stat. Ann. §403.2(A); Miss. Code Ann. §43-47-7(1)(a); N.H. Rev. Stat. Ann. §161-F:46; N.M. Stat. Ann. §27-7-30(A); N.C. Gen. Stat. §108A-102(a); Okla. Stat. Ann. tit. 43A §10-104(A); R.I. Gen. Laws Ann. §42-66-8; S.C. Code Ann. §43-35-25(A); Tenn. Code Ann. §71-6-103(b)(1); Tex. Hum. Res. Code Ann. §48.051(b); Utah Code Ann. §62A-3-305(1); Rev. Code Wash. §74.34.035; Wyo. Stat. Ann. §35-20-103(a).

² See Md. Code Ann. Fin. Inst. §1-306.

³ Section 1-306 of the Maryland Code pertains to employees of a "fiduciary institution" which is defined as the following: (i) a national banking association, (ii) a state banking institution, (iii) an other-state bank that maintains a branch in the state of Maryland, (iv) a credit union that is organized under the laws of the state of Maryland or the United States, (v) any other organization that is organized under the banking laws of the state of Maryland and subject to the supervision of the commissioner or (vi) a savings and loan association that is organized under the laws of the state of Maryland or the United States. We believe legislation pertaining to such institutions is a good example for purposes of drafting model legislation applicable to broker-deals and investment advisors.

(4) "Financial exploitation" means:

(a) the wrongful or unauthorized taking, withholding, appropriation, or use, or the assistance in taking, withholding, appropriating or using, of money, assets or property of an eligible adult; or

(b) any act or omission or the assistance in any act or omission taken by a person, including through the use of a power of attorney or guardianship of an eligible adult, to:

i. Obtain control, through deception, intimidation or undue influence, over the eligible adult's money, assets or property to deprive the eligible adult of the ownership, use, benefit or possession of his or her money, assets or property;

or

ii. Convert money, assets or property of the eligible adult to deprive such eligible adult of the ownership, use, benefit or possession of his or her money, assets or property.

Timing of Reporting

We believe it is critical to specify the required timing for reporting suspected financial exploitation. For example, under the Maryland Code, Section 1-306, the financial abuse report must be made: (i) by telephone notification within 24 hours after the employee knows or has reasonable cause to suspect that the elder adult is the victim of financial abuse; and (ii) in writing sent within 3 business days after the employee knows or has reasonable cause to suspect that the elder adult is the victim of financial abuse. We request that Section 3 of the Model Act be revised as follows:

If a qualified employee reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified employee shall notify Adult Protective Services and the commissioner of securities (collectively "the Agencies"): (i) by telephone notification within 24 hours after the employee knows or has reasonable cause to suspect that the elder adult is the victim of financial exploitation; and (ii) in writing (e.g., by e-mail, facsimile or first-class mail) sent within 3 business days after the employee knows or has reasonable cause to suspect that the elder adult is the victim of financial exploitation.

Immunity

To further incentivize qualified employees of broker-dealers and investment advisors to report suspected financial exploitation, we believe it is important to broaden the scope of immunity afforded to such qualified employees. For example, under the Maryland Code, Section 1-306,

employees of financial institutions are afforded immunity from criminal liability in addition to civil liability. Accordingly, we request that Section 4 be expanded to include immunity from criminal liability in addition to administrative or civil liability.

In addition, we request that “administrative or civil liability” be clarified to include any civil suits brought by an elder adult, a representative of an elder adult, a government agency or representative thereof or any other party. Such clarity will help incentivize qualified employees of broker-dealers and investment advisors to report suspected financial exploitation.

Training Program

Certain states require financial institutions to establish and implement a training program to assist employees in recognizing financial exploitation.⁴ To help facilitate reporting of suspected financial exploitation of an eligible adult, we believe it is beneficial to include recommended training standards for broker-dealers and investment advisors to assist their qualified employees in recognizing signs of potential financial exploitation of eligible adults. Such signs may include, in addition to questionable disbursements already contemplated by the Model Act, a variety of unusual account activities, which should be addressed through a comprehensive training program. The DCLTCOP (Legal Counsel for the Elderly) would welcome the opportunity to assist broker-dealers and investment advisors in developing an appropriate training program for qualified employees.

Delaying Disbursements

The Model Act allows broker-dealers and investment advisors to delay disbursements if financial exploitation of an eligible adult is reasonably suspected. However, disbursements are just one way in which financial exploitation may occur. Financial exploitation may also occur, for example, through investment allocations, changes in beneficiary, account transfers, execution of other brokerage instructions and other account activities. Therefore, we believe the Model Act should be expanded to permit broker-dealers and investment advisors to delay any financial transaction for which they have responsibility in executing to the extent it reasonably believes the transaction will result in financial exploitation of an eligible adult.

The DCLTCOP thanks you for receiving our comments. We recognize that regulatory changes are needed to combat financial exploitation of elderly adults. We welcome the opportunity to work with NASAA to further our

⁴ See Md. Code Ann. Fin. Inst. §1-306(d)(7), Mo. Ann. Stat. §409.630, Rev. Code Wash. §74.34.220.

goal of supporting this vulnerable population in seeking to live independently, safely and with the highest quality of life, while remaining free from financial exploitation.

Sincerely,

A handwritten signature in blue ink that reads "Lynne Person". The signature is written in a cursive style with a large initial "L".

Lynne Person
DC Long-Term Care Ombudsman
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Legal Counsel for the Elderly
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