

To: Lynne Egan, Chair, Senior Issues/Diminished Capacity Committee, North American Securities Administrators Association (NASAA)  
Patricia Struck, Vice-Chair, Senior Issues/Diminished Capacity Committee, North American Securities Administrators Association (NASAA)  
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From: Michelle Tang and Eleanor Lanier, University of Georgia School of Law

RE: Comments Regarding NASAA's Proposed Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation

Date: October 26, 2015

Thank you for the opportunity to review and comment upon NASAA's proposed model legislation/regulation regarding protection of vulnerable adults from financial exploitation by third parties. We applaud the committee's efforts to encourage states to enact legislation or regulations that will clarify procedures for reporting suspected exploitation, provide a process for delaying disbursements pending investigation, and afford immunity to broker/dealers and investment advisers.

As advocates, we know that it is often difficult to recover funds lost as a result of financial exploitation, so we appreciate the committee's efforts to provide a mechanism for slowing down disbursements to allow for investigation and to prevent a disbursement that constitutes financial exploitation.

#### A. Potential for Conflict with State Definitions

A primary concern raised by the current structure and language proposed is the potential for conflict between the definitions contained in the model language and its linkage with definitions in state law or regulation with respect to both the definition of "eligible adult" and the definition of "financial exploitation." For example, if a state defines financial exploitation less expansively than the model, there is potential that an APS office might not understand that the act provides them jurisdiction to handle these complaints. Likewise, if state law conflicts with the age provided in the model (for example, if the state defines those subject to APS intervention as anyone being over 65 years old and vulnerable rather than age 60 in the model), there is a chance that the APS office might not believe they have authority to accept and investigate the referral/report. It seems cleaner, in our view, to simply tie all definitions to current state law or regulation as done with the other definitions, and therefore avoid potential confusion or conflict in implementation. While we see the substantive reason for the definition of financial exploitation in the model, we do not see the reason for including age 60 in the model's definitions.

#### B. Delay of Disbursement

We support the committee's effort to set forth a definitive period of time for delaying disbursement that is long enough to enable an investigation to commence, but not so long as to pose a hardship, and we believe the time periods provided achieve this balance.

### C. Immunity Language

While we understand the need to grant a broad immunity to qualified employees for disclosing to the proper authorities, we feel that the language in Section 4, granting qualified employees immunity for “any failure to notify the customer of the disclosure” is inconsistent with the notification scheme in Section 7. Eligible adults should be notified alongside APS and the Agencies so that they are prepared if APS or the Agencies contact them in the course of their investigation.

### D. Notification to Eligible Adult of Report:

The language in Section 7(b)(i) also indicates that eligible adults will be notified if their disbursements are delayed, but does not clearly state whether they will be notified of the subsequent report generated after the internal review (Section 7(b)(iii)). It is our belief that eligible adults should also be notified of the report so that they can follow-up with the financial institutions or Agencies.