

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Policy Memorandum Number 66

December 20, 2014

Subject: Procedure for Reporting Suspected Financial Exploitation of an Elderly Person to DHSS

**I. Background/Summary**

In 2014, HB 417 was enacted which amended Chapter 39 of Title 31 of the Delaware Code. This revision provides a mechanism for financial institutions to freeze transactions that they suspect are financial exploitation of an elderly person (someone age 62 or older). It sets forth the conditions when a financial institution may (and is required to) hold transactions suspected to involve financial exploitation; and is required to provide account records, without the need of a subpoena, to authorities which are relevant to the suspected financial exploitation. If financial exploitation of an elderly person is reported to a financial institution, financial institutions have clear authority to hold subsequent transactions and provide records to authorities investigating the alleged exploitation. It also updates the definition of exploitation and creates a definition of financial exploitation for any adult who is impaired. It amends the existing immunity provision to provide immunity for holding transactions and eliminates very open ended immunity language that could be claimed as a safe harbor by the person who engaged in any abuse because they cooperate with the investigation.

A report is made to the Department by faxing the attached form to the Aging and Disability Resource Center at (302) 391-3501 and by emailing it to the Director of Adult Protective Services at [Pamela.williams@state.de.us](mailto:Pamela.williams@state.de.us).

## II. Definitions

“Department” means the Delaware Department of Health & Social Services (DHSS).

“Elderly person” means any person who is 62 years of age or older (as defined by Section 222 of Title 11).

“Financial exploitation” means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the elderly person or the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the elder person or the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

- a. The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with an elderly person or a vulnerable adult to obtain or use the property, income, resources, or trust funds of the elderly person or the vulnerable adult for the benefit of a person or entity other than the elderly person or the vulnerable adult;
- b. The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the elderly person or the vulnerable adult for the benefit of a person or entity other than the elderly person or the vulnerable adult; and
- c. Obtaining or using an elderly person or a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the elderly person or the vulnerable adult

lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

“Financial institution” means any of the following:

- a. A depository institution, as defined in Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c));
- b. An institution-affiliated party, as defined in Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u));
- c. A federal credit union or state credit union, as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752), including, but not limited to, an institution-affiliated party of a credit union, as defined in Section 206(r) of the Federal Credit Union Act (12 U.S.C. Sec. 1786(r)).

### **III. Procedure**

If an employee of a financial institution who has direct contact with an elderly person has reasonable cause to believe that such elderly person who is an account holder may be subject to past, current or attempted financial exploitation, that employee shall follow any internal written policy, program, plan or procedure adopted by the financial institution for the purpose of establishing protocols for the reporting of past, current or attempted financial exploitation.

The financial institution shall report the suspected financial exploitation to the Department by the earlier of the date on which the financial institution completes its investigation or five (5)

business days after the bank identifies a suspicious transaction pursuant to the policies, programs, plans or procedures adopted by the financial institution.

A report is made to the Department by faxing the attached form to the Aging and Disability Resource Center at (302) 391-3501 and by emailing it to the Director of Adult Protective Services at [Pamela.williams@state.de.us](mailto:Pamela.williams@state.de.us).

Unless a hold is requested by the Department or the Delaware Department of Justice, a financial institution has discretion and may, but is not required to hold a transaction when provided with information alleging that financial exploitation may have occurred, may have been attempted, or is being attempted. A hold requested by the Department or Delaware Department of Justice must be honored.

A financial institution has the authority to place a hold on a proposed transaction for a period of 10 business days following the filing of the report. The hold can be continued for another 30 business days at the request of an investigating federal or state agency. The hold can be continued for another 30 business days if the financial institution has not heard from either the Department of Health and Social Services or the Delaware Department of Justice. The financial institution may seek injunctive relief from a court of competent jurisdiction.

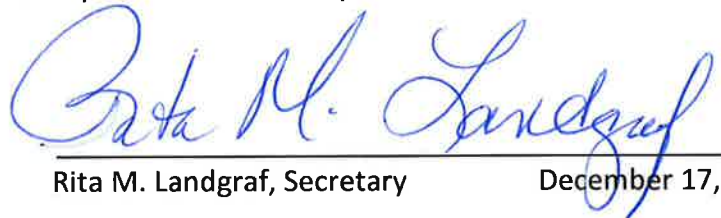
A financial institution may provide access to or copies of records that are relevant to suspected financial exploitation or attempted financial exploitation of an elderly person or vulnerable adult to the Department, law enforcement, or the prosecuting attorney's office, either as part

of a referral to the Department, law enforcement, or the prosecuting attorney's office, or upon request of the Department, law enforcement, or the prosecuting attorney's office pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation, not to exceed 30 calendar days prior to the first transaction that was reported or 30 calendar days after the last transaction that was reported.

The Department will provide instruction to the contact person listed on the report form within 9 business days of the report advising the financial institution of the status of the investigation and whether or not any hold on the transaction should be released or if further action is being taken.

**IV. Implementation**

- A. This policy is effective upon issuance.
- B. Any part of this policy which is in violation of State or Federal laws shall be null and void; all other parts shall remain operative.



Rita M. Landgraf, Secretary

December 17, 2014





# DELAWARE HEALTH AND SOCIAL SERVICES

Office of the Secretary

## Report of Suspected Financial Exploitation

Financial Institution:		
Contact Person:	Phone:	E-mail Address:
Alternate Contact:	Phone:	E-mail Address:

### Contact Information for Individual being exploited:

Name:	
Address: City, State, Zip	
E-mail Address:	
Relationship of Individual to Suspected Exploited person: Mother    Father    Son    Daughter    Other (explain): <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	

### Individual(s) who the exploited individual suspects:

Person 1

Name:	
Address	
City, State, Zip	
Phone:	

Person 2

Name:	
Address	
City, State, Zip	
Phone:	

Person 3

Name:	
Address	
City, State, Zip	
Phone:	

Is there a Power of Attorney, Guardianship, Representative Payee?	
Yes / No (circle)	Explain
Are there any other open accounts that are not being exploited? (i.e., Certificates of Deposits (CD), Money market Accounts (MMA), Savings Account(s), Safety Deposit Box)	
Yes / No (circle)	Explain
Financial Institution Information	
Account 1	





# DELAWARE HEALTH AND SOCIAL SERVICES

*Office of the Secretary*

Financial Institution Information	
Account 2	

(If more space is needed use additional sheets of paper)

Describe the alleged Financial Exploitation, give dates, times, type of accounts, persons involved etc. Use additional sheets of paper if needed.