

# Puget Sound BUSINESS JOURNAL

September 16-22, 2011

## *New law helps bankers fight exploitation of vulnerable adults*

**T**he Washington Department of Social and Health Services received 17,586 reports of vulnerable adult abuse in 2010. Twenty-six percent of those reports were about financial exploitation.

Because it is likely that many cases are unreported, many experts believe that the number of vulnerable adults suffering financial exploitation could actually be much higher.

In 2010, the Washington State Legislature amended the Vulnerable Adult Protection Act to give financial institutions new and better tools for preventing and reporting financial exploitation of “vulnerable adults.”

Under that law, a vulnerable adult is anyone over the age of 60 who is unable to care for himself either because of a physical condition or mental decline, or anyone over the age of 18 who has a developmental disability, lives in a residential care facility, or receives services from a caregiver or caregiving agency.

Financial exploitation is defined as the “illegal or improper use of the property, income, resources or trust funds of the vulnerable adult by any person for any person’s profit or advantage other than the vulnerable adult’s profit or advantage.” Such exploitation can include theft of income or assets, or making a vulnerable adult the victim of financial scams.

Because of regular customer contact and familiarity with their customers’ accounts, financial institutions are often well situated to detect behavior changes and assist in protecting their vulnerable adult customers.

The new amendments give financial institutions the right to refuse transactions requiring disbursement of funds if the financial institution “reasonably believes that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted ...”

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### LEGAL PERSPECTIVES



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report or take action upon suspicion of financial exploitation of vulnerable adults, it certainly encourages them to do so by providing a discretionary good-faith standard for the institution’s decision.

To protect financial institutions from claims that they wrongfully withheld disbursement of funds or wrongfully froze transactions, the Vulnerable Adult Protection Act, known as VAPA, provides that banks and their employees are immune from criminal, civil and administrative liability if the determination of whether or not to disburse funds was made in good faith.

VAPA also requires the financial institution to make a reasonable effort to give oral or written notice to all parties authorized to transact business on the account when it refuses a transaction, as well as to report the incident to the Adult Protective Services Division of DSHS and local law enforcement.

Any refusal by the financial institution to disburse funds is also limited in time — 10 days if the transaction involves the sale of a security and five days if it does not. The

Financial institutions may also refuse to disburse funds if they receive information from the DSHS or from law enforcement that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted. In all cases, the decision whether or not to disburse funds is discretionary with the financial institution.

While the statute does not require that financial institutions

time limit, however, may be extended by a court order.

The new amendments also now require financial institutions to provide training to their employees to recognize financial exploitation of vulnerable adults.

The institution can develop its own training materials or use two presentations developed by the Washington State Attorney General’s Office.

One presentation is designed to be used for supervising employees and the other is for non-supervisory staffers. The training materials for supervisory employees include the following topics: Who are Vulnerable Adults, What Factors Make VAs Vulnerable, How the Law Determines Financial Exploitation, Indicators of Financial Exploitation, Reporting Suspected Financial Exploitation, and Legal Remedies that Financial Institutions Can Pursue.

There are also video clips available on the Attorney General’s website illustrating common scenarios of financial exploitation.

There are no cases to date that apply the new VAPA amendments, but financial institutions should be prepared to make discretionary decisions, utilizing their new authority to refuse disbursements when they “reasonably believe that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted ...”

Developing policy guidelines for staff to follow and making sure that all required staff receive the training required by VAPA will certainly assist financial institutions in making those determinations and demonstrating their “good faith” in doing so.

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