



**State of South Carolina**  
**Department on Aging**

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Governor

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Director

**Program Instruction (PI) to Long-Term Care Ombudsman Program**  
**Act No. 84 –Financial Transactions**

Effective June 1, 2021: As a result of recently enacted legislation, the Long-Term Care Ombudsman Program (“Office”) is issuing a Program Instruction to representatives of the Office as it relates to their duties under the Older Americans Act and South Carolina state law. This Program will remain in effect until such time as Act No. 84 is repealed and the corresponding provisions removed from the S.C. Code of Laws.

This legislation adds a section to the Omnibus Adult Protection Act (“OAPA”) (S.C. Code Ann. § 43-35-5 et. seq.) and affects financial institutions. As defined in the recently enacted code section, “financial institution” is defined as any bank, credit union, wealth management institution or financial services company. This legislation is not applicable to “broker-dealers” (a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account) and/or an “investment advisor” (a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities (e.g., a financial planner)).

Under the newly enacted legislation, if a financial institution has a reasonable belief that financial exploitation of a vulnerable adult has occurred or may occur, the financial institution may decline or place the transaction on hold. As a reminder, a resident of a facility is a vulnerable adult by statute. Financial exploitation may include the improper, unlawful, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person, as well as causing a vulnerable adult to purchase goods or services for the profit or advantage of the seller or another person through: undue influence, harassment, duress, force, coercion, or swindling by overreaching, cheating, or defrauding the vulnerable adult.

It is important to note that this law is not compulsory; in other words, the financial institution may, but is not required to, decline or place the transaction on hold. However, the financial institution is granted fairly broad power in that they can decline or place on hold transactions involving the following:

- Account of the vulnerable adult;
- Account where the vulnerable adult is a beneficiary, including a trust/guardianship account; or
- The account of the person who is suspected of engaging in the financial exploitation of the vulnerable adult.

As the Office is a defined investigative entity under OAPA, representatives of the Office are hereby advised that, per the recently enacted statutory provision, they are permitted to provide information to the financial institution demonstrating that it is reasonable to believe that the financial exploitation of a vulnerable adult has occurred or may occur. Again, the financial institution has the discretion to decide whether to decline or place a transaction on hold based on information provided by the Office or its representatives.

**The following guidance should be used when encountering issues of financial exploitation in consultations or investigations:**

- Representatives of the Office should ensure that the entity to whom they are reporting the suspected financial exploitation is an entity covered by the newly enacted provision.
- While not defined, a “reasonable belief” is a belief that would be held by an ordinary and prudent man in the same circumstances (Black’s Law Dictionary, 2021).
  - While representatives of the Office need not prove to the financial institution that the financial exploitation has occurred or may occur, they must provide information sufficient for the financial institution to form a reasonable belief as to the same.