

How to Respond to Suspected Financial Exploitation



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About this Presentation

This presentation was created to assist broker-dealer agents and investment adviser representatives in identifying financial exploitation of the elderly and how to utilize the state's reporting process.

Unless otherwise specifically noted, the term “financial exploitation” should be read in the broad sense to include all adults, regardless if they are dependent or incapacitated.

This presentation does not constitute legal advice and may not necessarily fully disclose any legal rights or duties held by any party. While the information pertains in part to legal issues, it is not intended as a substitute for the particularized advice of your own counsel. Anyone seeking specific legal advice or assistance should retain an attorney.

Overview

- The Missouri Senior Savings Protection Act (SSPA) became effective on August 28, 2015, and was amended effective August 28, 2020.
- The goal of this Act is to protect vulnerable adults, such as seniors and the disabled, from financial exploitation.
- The SSPA allows broker-dealers and investment advisers to take action to detect, prevent, and halt financial exploitation.
- The SSPA does not currently affect banks, insurance companies, or any other financial institutions.
- This presentation provides pertinent information to broker-dealers and investment advisers on how to respond to suspected financial exploitation of the elderly and disabled.

Definitions

Terms used in this presentation are defined as such:

- **Qualified Adult** – a person 60 years or older, or a person between 18 and 59 years old with a disability as defined in Section 192.2005, RSMo.
- **Qualified Individual** – a broker-dealer, investment adviser, or a person associated with a broker-dealer or investment adviser who serves in a supervisory, compliance or legal capacity as part of his or her job.
- **Immediate Family Member** – a spouse, child, parent, or sibling of the qualified adult.
- **Financial Exploitation** – the wrongful or unauthorized taking, withholding, appropriation, or use of money, real property, or personal property of a qualified adult.

Courses of Action

The SSPA authorizes a qualified individual to take two types of action:

- **Disclosure** – Qualified personnel disclose their suspicion that a client is being exploited to the immediate family member of the client.
- **Delay of Disbursement or Transaction** – A qualified individual delays a disbursement or transaction for up to 10 business days. This time may be extended by the Commission of Securities or Director of Health and Senior Services.

A qualified individual is not mandated to take action under the SSPA.

Notice of Concern

- If a qualified individual believes financial exploitation has occurred, has been attempted, or is being attempted, they may notify the Missouri Securities Division and/or the Department of Health and Senior Services (DHSS).
- A qualified individual may also notify an immediate family member, a person holding legal guardianship, conservatorship, power-of-attorney, and/or a co-trustee or successor trustee of the qualified adult/client.
- The Securities Division, DHSS and the vulnerable adult must be notified prior to the notification of any third party listed above.
- The form to contact the Securities Division and DHSS is available as a PDF to send by mail or fax, and is also available as an online submission form.
- [Notice of Concern](#)

Refusal of Disbursement or Transaction

- A qualified individual may refuse, for up to ten business days, a request for a disbursement or a proposed transaction from an account of a qualified adult only if they reasonably believe financial exploitation may occur as a result of that disbursement or transaction.
- An agent or investment adviser representative cannot refuse the disbursement or transaction him/herself and receive protection under the SSPA unless the agent or investment adviser representative also serves in legal, compliance, or supervisory capacity.
- The agent or investment adviser representative should inform a qualified individual about suspicion of financial exploitation, who can then refuse the disbursement or transaction.

Notification of Refusal

When a disbursement or transaction is refused, two separate notifications are required:

- Within two business days, the qualified individual must notify all parties authorized to transact business on the account, including the vulnerable adult.
- Within two business days, the qualified individual must contact DHSS and the Securities Division.
- The form to contact the DHSS and the Securities Division is available to send by mail or fax, and is also available as an online submission form.
- [Notice of Concern](#)

Withholding Period

Following a refusal, the qualified individual is authorized to refuse the disbursement or transaction until one of the following occurs:

- The firm reasonably believes the disbursement or transaction will not result in financial exploitation.
 - Ten business days after the initial refusal date pass and the period is not extended.
 - A court may enter an order extending this time frame or order other protective relief.
- The Commissioner of Securities may enter an order extending the refusal of a disbursement or transaction for the time necessary to protect the qualified adult; or the Director of the Department of Health and Senior Services, after notifying the Commissioner of Securities, may enter an order to extend the refusal of a disbursement or transaction for the time necessary to protect the qualified adult.

The qualified individual is immune from civil liability for its refusal to follow a client's request during this period.

Investigation

- Once a Notice of Concern is received by the Securities Division, an investigator and attorney will conduct and complete the investigation and the Division will give a copy of the Notice of Concern to the Department of Health and Senior Services.
- The Securities Division will work with DHSS to conduct parallel investigations.