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Policy Title:	Adult Protective Services - Investigating Financial Exploitation and Abuse and Access to Records
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Related Federal Law	15 U.S.C. § 6802(e)
Related State Laws	Md. Code Ann, Corporations & Associations Art. § 11-307; Family Law Art. §§ 14-303, 14-309; Financial Institutions Art. §§ 1-302, 1-306
COMAR	COMAR 07.02.16
Title IV-E State Plan Referenced?	N/A



PURPOSE

The purpose of this policy is to assist Adult Protective Services (APS) workers in carrying out their mandate to protect vulnerable adults from financial exploitation. The policy implements a 2022 statute, 2022 Laws of Md. ch 227, that permits APS investigators to obtain financial records concerning an alleged victim of financial exploitation from the alleged victim's financial institution. This is an additional tool that APS can use to prevent relatives, caregivers, and others from preying on vulnerable adults and misusing their financial resources.

RELATED LAWS AND REGULATIONS

Maryland law requires health practitioners, law enforcement officers, and human services workers to report, *inter alia*, the suspected exploitation of vulnerable adults, including by the misuse of funds, to APS. Md. Code Ann., Family Law Article (Fam. Law) § 14-303. Maryland law also requires financial institutions to report suspected financial exploitation of customers who are 65¹ or older to the local APS office, law enforcement, or State's Attorney, orally and in writing, unless the adult resides in a long-term care facility, e.g., a nursing home or assisted living facility.² Md. Code Ann., Financial Institutions Article (Fin. Inst.) § 1-306(d). Maryland law mandates that APS investigate reports of alleged financial exploitation of vulnerable adults, including many instances of what financial institutions report as "financial abuse." Fam. Law §§ 14-102, 14-303. *See also* COMAR 07.02.16.05. Recent changes in Maryland law require that financial institutions provide otherwise confidential financial information to APS when APS requests such information as part of an investigation into suspected financial exploitation. Fin. Inst. § 1-302(1)(vi).

To assist in completing these investigations, APS may request relevant records from the alleged victim's fiduciary institution. Both federal and state laws authorize a fiduciary institution to release relevant records to APS in response to a written request from APS. Fin. Inst. §§ 1-302(3), 306(e). Federal law, 15 U.S.C. § 6802, permits this disclosure without the victim's permission or a subpoena if release is necessary to protect against fraud, unauthorized transactions, claims, or other liability.

DEFINITIONS

Financial Abuse: (As defined for purposes of a fiduciary institution's mandated report to APS) - Doing or assisting in doing the following: taking, appropriating, obtaining, or retaining real or personal property of an individual 65 years of age or older, by any means, including undue influence, for a wrongful purpose or with intent to defraud the elder adult. Fin. Inst. Art. § 1-306(a)(4).

Financial Exploitation: Any action that involves the misuse of a vulnerable adult's funds or property. Fam. Law § 14-101(f).³

¹ Financial institutions differentiate between financial exploitation in general and financial exploitation of adults aged 65 and older, calling such exploitation "financial abuse" and requiring that such exploitation be reported to the local APS office, law enforcement, or State's Attorney. If the adult suspected of being exploited is under the age of 65, however, financial institutions are not required to make a report but are permitted to reveal otherwise confidential information to make such a report.

² In these cases, a financial institution would make a report to the local Long-Term Care Ombudsman, local law enforcement, or State's Attorney. Fin. Inst. § 1-306(d)(2)(i)(2.).

³ The Maryland Code contains other definitions of financial exploitation that will dictate what behavior fiduciary institutions report. *See* Fin. Inst. § 1-306(a)(5) (defining financial exploitation for purposes of reports by financial institutions such as banks and credit unions as the misuse of a customer's funds without reference to the customer's age or capacity; Md. Code Ann., Corporations & Associations Article (Corp. & Assoc.) § 11-307 (defining financial exploitation in more detail for purposes of reports by brokers and financial advisors). The important issue for the purposes of this policy is whether the reported conduct suggests financial exploitation of a vulnerable adult within APS's purview. Throughout this policy, "financial exploitation" has the meaning listed in Fam. Law § 14-101(f).

Fiduciary Institutions: Any financial institution supervised under the Financial Institutions Article, which includes banks, savings institutions, credit unions, trust companies, and, although subject to some exceptions, broker-dealers and investment advisors, as defined in Corporations and Associations Article §§ 11-101(c), (i).⁴ Fin. Inst. § 1-201(j).

Vulnerable Adult: An individual 18 years or older who lacks the physical or mental capacity to provide for the adult's daily needs. Fam. Law § 14-101(q); COMAR 07.02.16.02B(21).

SCOPE

This policy applies to all reports from any source, including financial institutions, that a vulnerable adult has been financially exploited and to the subsequent APS investigation required by law, including a request for the vulnerable adult's financial records.

POLICY

When APS receives a report to indicate that a vulnerable adult has been financially exploited, APS investigators will conduct a thorough investigation. This investigation may include making a written request to the adult's financial institution that it provides financial records for a specified period of time. If another agency or entity is better equipped to conduct the investigation of financial exploitation, APS may refer the reporter to that agency or entity but may still provide services to the vulnerable adult.

PROCEDURES AND TIMEFRAMES

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1. Examples of Financial Exploitation

The following are examples of common financial exploitation schemes:

- a. Forging signatures on checks, withdrawal slips, or other financial documents to steal checks and take money from a bank or investment accounts;
- b. Taking cash;
- c. Undue influence over or coercing, by threat or otherwise, a vulnerable adult to give away money or convey real property;
- d. Tricking a vulnerable adult with a condition affecting comprehension or memory to turn over money or other financial assets;
- e. Charging excessive fees for rent or caregiver services;

⁴ For a more complete list of financial institutions in Maryland, see the [Maryland Department of Labor](#) website.

- f. Taking an individual's belongings, including a car or household items, away from the residence;
- g. Convincing a vulnerable adult to take out a loan for the perpetrator's benefit; and
- h. Convincing a vulnerable adult to turn over control of the adult's finances when this is not in the adult's best interest.

2. Possible Signs of Financial Exploitation

The presence of one or more of the following may be signs of exploitation of a vulnerable adult, although none may be sufficient by itself to prove exploitation as there may be other explanations for the behavior:

- a. The person's mail and email have been forwarded to another address;
- b. The person is confused or distressed about income or resources;
- c. The vulnerable adult has felt threatened or coerced to give control of their money or property;
- d. The person's possessions and quality of life are below what one would expect in light of the person's resources;
- e. The person makes frequent or large gifts to a caregiver or charity;
- f. Many checks from the person's account are written to a caregiver or relative;
- g. Activity in the person's bank accounts is unusual or has changed;
- h. The person is missing personal belongings or has lost ownership of such items as a car or title to a home;
- i. The person signs as surety or co-signer on loans;
- j. An individual is living with a vulnerable adult and refuses a request to leave despite having no legal standing to inhabit the residence;
- k. The person has not paid numerous or large bills despite adequate income;
- l. Other individuals have been added to the person's bank or other accounts;
- m. The person seeks to give power of attorney to another individual or to add a beneficiary to the person's will;
- n. Fraudulent creation of online accounts for the purpose of exploitation, and
- o. Changing or obtaining the victim's password to said accounts to financially exploit.

3. Screening Reports

- a. All reports of financial exploitation should be directed to an intake worker at a local department of social services (LDSS).⁵

⁵ Note: Because of the structure of § 1-306 of the Financial Institutions Article, reports to APS by financial institutions, their officers, agents, and employees will be framed as either "financial exploitation" or "financial abuse." A screener should review any such reports to determine if the reported conduct constitutes financial exploitation—specifically the misuse of a vulnerable adult's funds.

- b. Because financial institutions are required to make oral reports within 24 hours of learning of the financial exploitation of adults aged 65 years and older but have 3 days to submit a written report, an intake worker should make a screening decision based on the verbal report rather than wait for the written report.
- c. Using the APS Risk Screening Tool, the intake worker must determine whether the alleged victim is a vulnerable adult.
- d. If the alleged victim is a vulnerable adult, the intake worker should use the APS Risk Screening Tool to determine whether the facts suggest the misuse of the funds or property of a vulnerable adult, regardless of how the financial institution classifies the behavior being reported—whether it is called “financial abuse” or “financial exploitation” by the reporting source.
- e. If the intake worker screens out a referral that contains allegations of criminal behavior where the alleged victim is not a vulnerable adult, or when another agency or entity is better equipped to respond to reported financial exploitation, APS should refer the reporter to that agency or entity, such as local law enforcement or the local State’s Attorney’s Office.
- f. If the intake worker determines that the alleged facts constitute financial exploitation, the screener will complete the appropriate sections of the Maryland APS Risk Screening Tool and send the referral to a supervisor for approval and assignment to an APS investigator.

4. Investigating Reports

- a. The intake worker is responsible for completing the APS Risk Screening Tool. The APS worker is responsible for completing the APS Assessment Tool and asking questions to assess any possible exploitation. See subsection e. below.
- b. The APS investigator will conduct an investigation according to COMAR 07.02.16.04 - 11, and the APS Program Manual.
- c. The APS investigator should make the appropriate report to law enforcement.
- d. Prior to asking any questions, the APS investigator should tell the vulnerable adult that the investigator has some questions relating to money and ask permission to proceed.
- e. The APS investigator should ask questions in a neutral tone and encourage the adult to elaborate on answers pertaining to the misuse of assets.
- f. Financial exploitation cases involve perpetrators who manipulate or deceive in various ways. See section 1 above. The following questions are designed to assist the investigator in determining whether the facts indicate exploitation or are otherwise explained.
 - i. If the report is related to particular decisions or transactions, what were they, and what were the circumstances?
 - ii. Who assisted the vulnerable adult in making any decisions or transactions?
 - 1. Clarify the identity of this individual and whether the individual is in the role of a family member, friend, or caregiver or is acting in another capacity.
 - 2. Is that individual seen as trustworthy and capable of making financial decisions?
 - iii. Who benefited from the decision or transaction?
 - iv. Have there been recent changes in the ownership or control of physical property (home,

- car) or household belongings that the vulnerable adult owns?
- v. Have there been changes in the vulnerable adult's monetary assets, including money in bank and brokerage accounts, cash balance, or investments?
 - vi. Are there transactions that the vulnerable adult did not make or does not recognize?
 - vii. Has the list of people who have access to the relevant accounts changed?
 - viii. Who is paying the vulnerable adult's bills and making purchases?
 - ix. Is the vulnerable adult current on bills?
 - x. Have there been changes in the vulnerable adult's health or cognitive abilities such that the individual needs additional assistance? If so, who is providing that assistance?
 - xi. Has the vulnerable adult reviewed a credit report recently and verified the accounts listed and their status?
 - xii. Does the vulnerable adult have a durable power of attorney, a will, or other financial documents? Has the vulnerable adult initiated any changes in these documents?
 - xiii. Has the vulnerable adult had any conflicts about spending or making gifts of assets?

5. Obtaining Financial Records

Historically, confidentiality and privacy provisions governing records of fiduciary institutions prevented APS from securing relevant financial records necessary to investigate financial exploitation. Changes in federal and state law have addressed this problem.

- a. If the APS investigator determines that records or documents from a financial institution would help assess possible exploitation, the APS investigator must request those records.
- b. After identifying the correct financial institution and the vulnerable adult's account number, the APS investigator must prepare a cover letter and a request for records for a specific period using these forms: [Cover Letter](#); [Official Request for Customer Records](#).
- c. As appropriate to the circumstances, the APS investigator will either deliver the letter and form to a specified individual in the financial institution or send the letter and form by *encrypted* email.⁶
 - i. The APS Investigator may need to call the institution to obtain the name of the individual to whom the request should be directed and a location or email address.
- d. If the financial institution denies the request, the APS investigator should send a follow-up letter using this form: [Follow-up Letter](#).
 - i. If a financial institution appears hesitant to provide the requested records because it did not make the APS report, the APS investigator should direct the institution to the letter accompanying the request and to the relevant federal and state law.
- e. If the financial institution does not respond within 10 days of the request or the follow-up request, the APS investigator should telephone the appropriate individual.
- f. The APS investigator must upload any correspondence with the financial institution, including the

⁶ APS investigators have access to Virtu, the encrypted email software offered by OTHS.

cover letter, the Official Request for Records, and any follow-up letter to the case file.

- g. If the financial institution refuses to cooperate, the APS investigator should notify the appropriate LDSS lawyer to follow up on the request.
- h. The APS investigator must ensure that any information, including records relevant to the investigation are provided by encrypted email or hand-delivered and not by fax.
- i. The APS investigator should mark any financial institution's records as "Confidential" and upload them to the case file.

6. Completing the Investigation

- a. If the APS investigator concludes that the vulnerable adult has been the victim of exploitation, the APS investigator and supervisor should discuss whether the vulnerable adult is able to take the actions to avoid a recurrence of the exploitation or whether other actions are required.
- b. All cases must be considered carefully on a case-by-case basis.
- c. The APS investigator shall conclude the investigation and provide services as required by COMAR 07.02.16.06 -17 and the APS Program Manual.
- d. If the APS investigator determines that a crime has likely occurred, the LDSS should notify local law enforcement.
- e. Notwithstanding any other provision of law, at the request of the fiduciary institution, an adult protective services agency or a law enforcement agency may, and is encouraged to, disclose the status or final disposition of an investigation of suspected financial abuse or financial exploitation to any fiduciary institution that made the report as a verbal report.

7. Case Examples

Situation	Investigation Results
<p>Tina was addicted to heroin and lived with her three children, boyfriend, and Mrs. D., her 94-year-old great-grandmother. Mrs. D. was becoming very confused and had memory issues. Tina began to help Mrs. D. with her bills. Mrs. D.'s bank, in a small rural town, saw a sudden increase in checks written to Tina, some with signatures that tellers noticed did not look "right." Security contacted APS. During the investigation, investigators found bank statements and 300 canceled checks in Mrs. D.'s home, 75 of which appeared to have been forged by Tina and 4 friends. APS made a referral to law enforcement. Mrs. D. refused to testify against her great-granddaughter or her friends, and they were not prosecuted.</p>	<p>APS helped Mrs. D. question Tina about the transactions and worked with the bank to set up a system to protect her from further exploitation. The bank agreed to assist Ms. D. in paying the home's utility bills from her account and put a flag on the account to alert them to suspicious transactions. When Tina went to the bank on one occasion to cash one of Mrs. D.'s checks made out to Tina, the manager called Mrs. D. to see if the check was legitimate.</p> <p>Tina still lives with her great-grandmother and helps with her care.</p>
<p>Mr. P is 67, has moderate dementia, and lives alone. He notices a loan on his bank statement for \$5,000, for which he does not recall applying.</p>	<p>With minimal help from APS, Mr. P. paid off the loan and credit card, closed them, and committed to refusing the family member from obtaining</p>

<p>When he calls his bank to dispute the loan, he learns that he has a credit card, of which he was unaware, with a \$3,500 balance.</p> <p>Upon investigation, APS and the bank learn that Mr. P. has been a victim of identity theft by a family member. Mr. P. does not want to file a police report.</p>	<p>other loans in his name. Mr. P. also puts a freeze on credit reports to deter any other unauthorized credit. Mr. P. worked with APS and the bank to find an appropriate person to manage his funds.</p>
<p>Mr. S. is a 24 -year-old with cognitive disabilities who lives with his cousin. The cousin takes Mr. S's SSDI check, does not ensure that Mr. S. has enough food, and leaves Mr. S. unattended and without the care he needs for hours.</p>	<p>APS worked with Mr. S. to move to a group home where he could get proper medical care and support.</p>
<p>Ms. C.'s credit union notified her that she had overdrawn her account because of frequent withdrawals using her ATM card. Ms. C. did not appear to know what an ATM card was or how to use it. Because of her increasingly frail health, she rarely left her house and had not visited the credit union for several years. A visiting nurse reported Ms. C.'s concerns to APS. APS contacted the credit union which, upon referring the matter to its security department, discovered that a neighbor's son, Alan, was exploiting Ms. C. Upon further investigation, APS and law enforcement learned that Alan had asked Ms. C. to sign an ATM card application when she was intoxicated. He took the application to the credit union and claimed to be acting on her behalf. The credit union did not question this assertion or call Mrs. C. to verify her wishes. Alan intercepted the ATM card from the mail, created a PIN number, and made almost daily withdrawals of \$100 to \$300. In 3 months, he had depleted Ms. C.'s life savings, and she could no longer pay her medical bills.</p>	<p>APS first determined that Ms. C. was a vulnerable adult because of her frail health and frequent intoxication, which made her physically and mentally unable to meet her daily needs or comprehend her finances. APS worked with Ms. C. to arrange a manageable payment schedule for her medical bills pending the resolution of the criminal charges and any restitution. Note: APS did not need to determine whether Alan had any actual caregiving responsibility to allow APS to assist Ms. C.</p> <p>APS assisted Ms. C. in reporting the theft and in supplying documentation. The credit union canceled the ATM card. Law enforcement issued a warrant for Alan's arrest.</p>

8. Forms

- a. [FORM A: Cover Letter to Institutions, Request for Financial Records](#)
- b. [FORM B: Official Request for Customer Records Form](#)
- c. [FORM C: Cover Letter to Institutions, Request for Financial Records](#)

9. Related Information

Gramm-Leach-Bliley Act: 15 U.S.C.6802(e)(3)(b), (e)(8); 2022 Laws of Maryland ch 227

Joint bank account holder: Maryland law generally provides that any person named on a signature card as an owner

or a joint owner of an account will have full access to the account. A joint account owner may act alone to make withdrawals or deposits or take other actions on the account. For many purposes, the joint owner has the same rights to the funds as the other account owner.

<https://www.dllr.state.md.us/finance/consumers/finregacctforyou.pdf>

Power of Attorney: A legal document that gives another person the authority to manage a property on someone's behalf while they are still alive. The agent can do anything with the property explicitly stated in a power of attorney, including withdrawing money from the bank account and selling the property.

<https://mdcourts.gov/legalhelp/lifeplanningandpowerofattorney>

Resources/Tools

- [Lichtenberg scales](#)
- [California Undue Influence Screening Tool \(CUIST\)](#)
- [NAPSA website](#)
- [Maryland's Project Safe "What To Do If You Suspect Financial Exploitation"](#)
- [Maryland's Project Safe "Model Reference Manual for Financial Institution Employees"](#)
- [Webinar -- Forensic Accounting: Tools for Financial Exploitation Investigations \(Part 1\) and \(Part 2\)](#)

Legal Information

Parts of the Gramm-Leach-Bliley Act (15 U.S.C. §6802(e)(8) and (e)(3)(b)) permit financial institutions to disclose a client's personal information to protect against actual and potential fraud, unauthorized transactions, etc. or to comply with a properly authorized civil investigation.

Banks and Other Financial Institutions

Under the Gramm-Leach-Bliley Act, the Consumer Financial Protection Bureau issued [voluntary recommendations](#) to financial institutions to permit account holders to designate a trusted contact person for staff from a financial institution to contact with specific concerns. This enables an account holder to identify a family member or close friend to contact if staff suspects that the account holder may be at risk of financial exploitation. A trusted contact is an emergency financial contact who can step in to help protect the account holder.