

## What is Being Proposed?

- The North American Securities Administrators Association (NASAA) issued model legislation to state legislatures in 2016 entitled *Protecting Vulnerable Adults from Financial Exploitation*<sup>1</sup>.
- NASAA's model legislation proposes the following:
  - If the adviser reasonably believes exploitation of an eligible adult (65 years or older or a person subject to adult protective services) may be occurring, may have been attempted, or is being attempted, then:
    - It allows advisers to delay (not stop) questionable withdrawals from a client's account.
    - It *requires* ("shall report") advisers to report the activity to the State Securities Commissioner's Office, Adult Protective Services, or other named authority.
- 33 states have enacted statutes or regulations regarding reporting requirements.<sup>2</sup>
  - 20 states mandate reporting (AL, AK, CA, CO, DE, FL, HI, IN, ME, MD, MS, NJ, NM, ND, OK, OR, RI, TX, VT, WV).<sup>3</sup>
  - 13 states have permissive reporting (AZ, AR, IA, KY, LA, MN, MT, NE, NH, SC, TN, UT, VA).<sup>4</sup>

## What Does the Financial Planning Association® (FPA®) Support?

- A **change** to the NASAA model bill that allows our members to exercise discretion by changing advisers "shall" report to "may" report when reporting suspected financial exploitation to the State Securities Commissioner's Office, adult protective services, or other named authority.
- In a bill that includes "may" report language, an inclusion to the immunity clause that also provides for immunity from civil and administrative liability.
- The "may" report language agrees with the Financial Industry Regulatory Authority (FINRA) Rule 2165 finalized on February 5, 2018.<sup>5</sup>
- There may be over-reporting when states require the reporting versus allowing a permissive report.
  - In 2018, Alabama, a mandated reporting state, had reports increase by 225% over fiscal year 2017.<sup>6</sup>
  - From 2015-2019, Tennessee, a permissive reporting state, had reports increase by 87%.<sup>7</sup>

## How Does this Impact Financial Planners?

- Every day there are over 10,000 Americans turning retirement age.<sup>8</sup>
- Financial planners help seniors and others by engaging in the process of taking stock of tax, estate, investment, risk and retirement planning resources, developing a plan to utilize them and systematically implementing the plan in order to achieve your short- and long-term goals.
- Financial planners may be in a position to see the signs of financial exploitation.
- Financial exploitation often involves a person of trust who a financial planner may recognize.

<sup>1</sup> <http://serveourseniors.org/wp-content/uploads/2015/11/NASAA-Model-Seniors-Act-adopted-Jan-22-2016.pdf>

<sup>2</sup> <http://serveourseniors.org/about/policy-makers/nasaa-model-act/update/>

<sup>3</sup> <https://www.eversafe.com/mandatory-reporting/>

<sup>4</sup> <https://www.eversafe.com/mandatory-reporting/>

<sup>5</sup> <https://www.finra.org/rules-guidance/rulebooks/finra-rules/2165>

<sup>6</sup> <https://www.nasaa.org/53844/state-report-and-hold-laws-show-positive-impact-in-fight-against-senior-financial-exploitation/>

<sup>7</sup> <https://comptroller.tn.gov/news/2020/9/30/reports-of-elder-financial-exploitation-are-increasing-in-tennessee-.html>

<sup>8</sup> <https://www.pewresearch.org/fact-tank/2010/12/29/baby-boomers-retire/>