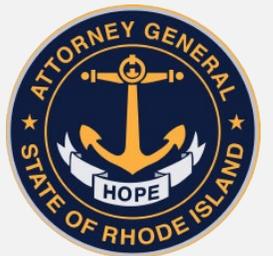


# FINANCIAL EXPLOITATION OF OLDER ADULTS

*For Employees of Financial Institutions*

Presented by: Rhode Island Office of the Attorney General, Elder Abuse Unit



# Training Topics

This training will cover:

- Background information- definitions applicable to the statute
- Indicators of financial exploitation of older adults
- How to report suspected financial exploitation
- Tools available to financial institutions to combat financial exploitation



# Introduction

- In 2020, a total of 4,354 reports of abuse, self-neglect and early intervention were made to the RI Office of Healthy Aging (OHA).
- Of those reports, 1,148 were abuse cases, 36% of which were reported as financial exploitation.



# Introduction

- This means in 2020, at least 418 Rhode Island older adults may have had their income or assets improperly taken from them. However, experts believe the actual number of these incidents is much greater than actually reported, many more older adults have likely been financially exploited each year and the problem is only growing.
- Poly-victimization: Unlike other crimes, when one form of elder abuse is occurring, often times other forms of abuse are occurring as well.



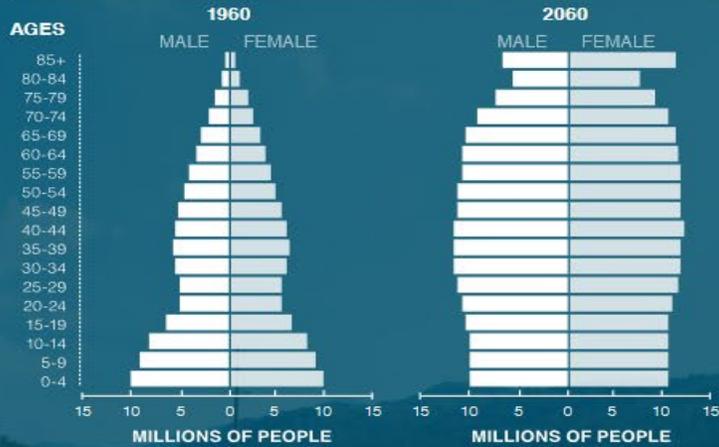
# Elder Abuse Statistics

## Population of Older Adults

Older adults age 65 or older comprise 14.9% of the total population in the USA.

Projections anticipate the percentage of the population age 65 and older to continue to grow in the coming decades.

## From Pyramid to Pillar: A Century of Change Population of the United States



## Prevalence of Elder Abuse

At least 10% of adults age 65 and older will experience some form of elder abuse in a given year, with some older adults simultaneously experiencing more than one type of abuse.



## The Majority of Older Adults Live in the Community

As over 90% of older adults reside in the community (as opposed to various forms of congregate living situations), most elder abuse is occurring among older adults living in the community.



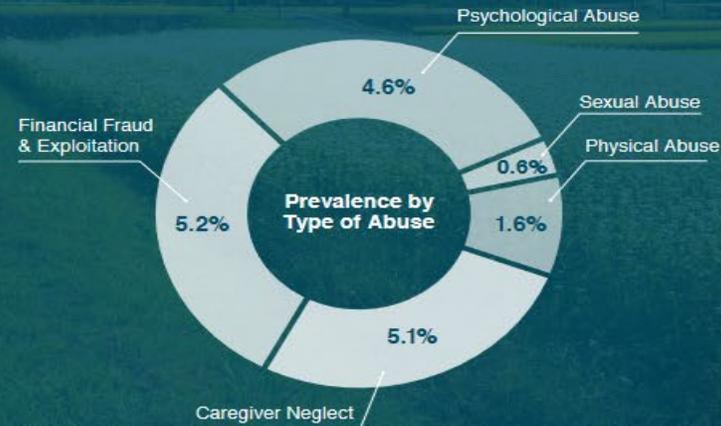
## Rate of Underreported by Type of Elder Abuse

Caregiver Neglect	1:57
Financial Exploitation	1:44
Physical Abuse	1:20
Psychological Abuse	1:12

## Definition and Prevalence of Elder Abuse

Elder abuse is "An intentional act or failure to act by a caregiver or another person in a relationship involving an expectation of trust that causes or creates a risk of harm to an older adult"[i]. It is a term under which five types of abuse are reflected[ii]:

- Caregiver Neglect
- Financial Fraud & Exploitation
- Psychological Abuse
- Sexual Abuse
- Physical Abuse



## The Consequences of Elder Abuse

The trauma of elder abuse may result in health issues such as a deterioration in health, hospitalization and increased mortality; clinical issues such as depression and suicide; social issues such as disrupted relationships, and financial loss, all leading to diminished independence and quality of life.



# Why Should You Care?

Older adults typically have fixed incomes. They may have accumulated a nest egg, but many have little or no ability to rebuild that nest egg.

Many may be physically frail or disabled, have memory or cognitive disabilities, making it difficult for them to pay for food, housing, health care and other living expenses if their income or assets are taken from them.



# Why Should You Care?

Most importantly, older adults who are financially exploited suffer as a result. They may have to leave their home, drastically change the plans they made for their retirement years, or even cause them to lose certain benefits.

They may feel betrayed, sad, embarrassed or scared. Their quality of life and their physical and mental health suffer, both in the short and long term.



# 2021 Legislation Allows You to Help

Because of concern of the ever-increasing problem of financial exploitation, the General Assembly passed legislation, signed by the Governor, that provides financial institutions and law enforcement an important tool- the ability to place holds on transactions and freeze accounts- to help combat financial exploitation.

As an employee of a financial institution, the law also requires you to partake in this training.



# Background Information



# Definitions

- Who are “older adults” and why are they vulnerable?
- How does the law define “financial exploitation?”
- Who are the perpetrators of financial exploitation?



# Who are Older Adults?

According to Rhode Island General Law, § 42-66-4:

"Elderly person" or "elder" means any person sixty (60) years of age or older.



# Why Are Older Adults Vulnerable?

- Physical disability or weakness
- Depend on others for day-to-day tasks and care including paying bills, transportation, shopping, among other personal needs
- May live alone or are isolated- having few family or friends
- Experiencing grief over the loss of a family member, friend or pet
- Suffering from depression or mental illness



# Why Are Older Adults Vulnerable?

- Being overly trusting or even overly polite
- Limited knowledge of technology and the internet
- Having to assume responsibility for finances after the death of a spouse and lacking the knowledge or experience to manage aspects for the first time after such a loss. The combination of lack of knowledge and grief may prompt them to quickly turn to others for help.



# Financial Exploitation of Older Adults



# Definition of “Financial Exploitation”

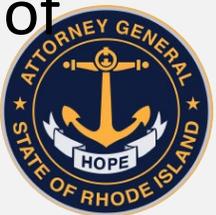
“Financial Exploitation” means:

(i) The wrongful or unauthorized taking, withholding, appropriation, or use of the money, assets or other property or the identifying information of a person; or

(ii) Any act or omission taken by a person, including through the use of a power or attorney, guardianship or any other legal authority regarding an elder adult to:

(A) Obtain, control through deception, intimidation, fraud or undue influence, over the other person’s money, assets, or property to deprive the other person of the ownership, use, benefit or possession of the property; or

(B) Convert the money, assets, or other property of the other person to deprive the other person of the ownership, use, benefit or possession of the property.



# Financial Exploitation

- Financial Exploitation includes:
  - Use of deception, intimidation or undue influence
  - Done by a person in a position of trust with the elder, including powers of attorney or court appointed guardians
  - Obtaining or using an elder's property, income or assets



# Who Are the Perpetrators

Sadly, perpetrators can be anyone from a family member, caretaker, contractor, professionals, new friends to perfect strangers. Most common perpetrators are the following:

- Family members
- Caregivers and friends
- Professionals
- Opportunists



# Family Members

- Including a spouse, a new spouse or new “sweetheart”, adult children, or relatives that have come back into the elder's life
- Family members could be those who have trouble with finances, substance abuse, mental health and past criminal behavior.



# Caregivers and Friends

- Other perpetrators may be caregivers, whether they work in the elder's home or facility they reside
- Friends, both new and old
- Neighbors, or someone who assists the elder with various tasks



# Professionals

- Lawyers
- Guardians
- Accountants or other financial advisors
- Contractors or salespersons



# Opportunists

- Online and telephone scams
- New romance
- Distant relative



# Scams and Fraud

- Most Common Scams- Although Changing on a daily basis
  - Lottery, Sweepstakes Scams
  - Grandparent Scam
  - Work from Home Schemes
  - Tax Scams
  - Phishing Scams
  - Romance Scams
  - Utility Scams
  - Financial Institutions
  - Medical Device/Insurance
  - COVID-19 Scams



# Indicators of Financial Exploitation

- Sudden changes in bank account or banking practice, including an unexplained withdrawal of large sums of money by the elder account holder or a person accompanying them. Elder may appear to be confused or frightened
- The inclusion of additional names on an elder's bank signature card
- Unauthorized withdrawal of the elder's funds using the elder's ATM card
- Abrupt changes in a will or other financial documents



# Indicators of Financial Exploitation

- Unexplained disappearance of funds or valuable possessions
- Substandard care being provided or bills unpaid despite the availability of adequate financial resources
- Discovery of an elder's signature being forged
- Sudden appearance of previously uninvolved relatives
- Unexplained sudden transfer of assets to a family member or someone outside the family



# Indicators of Financial Exploitation

- Unusual behavior exhibited by the elder or suspected perpetrator
- Withdrawal of or loan for a very large sum for questionable or risky purpose
- Withdrawal to benefit someone with a “too good to be true” or “sob story”
- ATM withdrawals or transactions at unusual places and/or times not previously frequented by the elder and/or sudden use of ATM when never previously used



# Indicators of Financial Exploitation

- Increase in the amounts of withdrawals, typically in round numbers
- Withdrawals or transactions that result in a financial penalty
- Increase in checks, unusual checks such as more frequent checks to caregiver
- A sudden switch to or increase in the use of online banking when elder has not used it in the past



# Concerning Behavior of Elder

- The elder is suddenly reluctant to discuss matters that they once routinely discussed with you
- Sudden changes in behavior
- The elder has become depressed, has lost a loved one, or has developed memory problems, or both physical and mental decline
- Has become dependent on others
- Seems fearful, confused or cannot understand the transaction
- Any other change in the demeanor- either good or bad- of the elder that you have worked with in the past

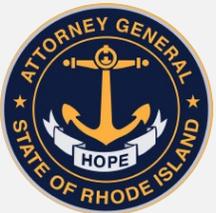


# Suspicious Behavior of Perpetrator

- Accompanies and directs elder in the transaction
- Speaks for or over the elder and appears to intimidate or frighten them
- Isolates the elder in their home and cuts off contact from relatives and friends
- Recently has taken over as caregiver or managing their finances
- The perpetrator becomes angry or aggressive if questioned about the transaction
- The perpetrator is reluctant or unwilling to allow you to speak to the elder alone
- The perpetrator presents a new “legal document,” such as a power of attorney that gives the perpetrator access to and control of the elder's finances and assets



# Reporting Suspected Financial Exploitation



# Duty to Report

- Rhode Island is a mandatory reporting State.
- RIGL-§42-66-8: Any person who has reasonable cause to believe that any person sixty (60) years of age or older has been abused, neglected, or exploited, or is self-neglecting, shall make an immediate report to the director of the department of elderly affairs, or his or her designee, or appropriate law enforcement personnel. In cases of abuse, neglect, or exploitation, any person who fails to make the report shall be punished by a fine of not more than one thousand dollars (\$1,000).



# How to Report

- Reports are made to the Office of Healthy Aging
  - (401) 462-0555
  - <https://oha.ri.gov/report-elder-abuse>
- RIAG Elder Abuse Unit
  - (401) 274-4400, prompt 6
- Local law enforcement- Senior Police Advocate



# Resources

## Adult Protective Services Reporting Chart (Laws current as of December 2019)

Rhode Island			
Statutes & Case Law	Who Has to Report? (Mandated Reporters)	When to Report	How to Report (& Other Resources)
R.I. Gen. Laws § 42-66-8	Any person, including any physician, physician assistant, medical intern, registered nurse, licensed practical nurse, nurse's aide, orderly, certified nursing assistant, medical examiner, dentist, optometrist, optician, chiropractor, podiatrist, coroner, police officer, probation officer, emergency medical technician, firefighter, speech pathologist, audiologist, social worker, pharmacist, physical or occupational therapist, or health officer.	When any of the listed persons has reasonable cause to believe that any person 60 years of age or older has been abused, neglected, or exploited, or is self-neglecting.	<p>Reports shall be made immediately to the director of the Division of Elderly Affairs, or his/her designee.</p> <p>Rhode Island Department of Elderly Affairs Protective Services: 401-462-0555</p> <p><a href="http://oha.ri.gov/ers-reporting/">http://oha.ri.gov/ers-reporting/</a></p>

[https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/2020-elder-abuse-reporting-chart.pdf?eType=EmailBlastContent&eld=ed64ab8e-28fa-405b-930d-f4d812fb840d](https://www.americanbar.org/content/dam/aba/administrative/law_aging/2020-elder-abuse-reporting-chart.pdf?eType=EmailBlastContent&eld=ed64ab8e-28fa-405b-930d-f4d812fb840d)



# Resources

- Office of the Attorney General
- Office of Healthy Aging (Mandated Reporting)
- Alliance for Better Long-Term Care
- Saint Elizabeth Safe Haven for Elder Justice
- Community Action Agencies
- United Way 211
- Coalition Against Domestic Violence
- Victim of Crime Helpline
- DOJ Elder Justice Initiative



# **OBLIGATIONS AND OPTIONS FOR FINANCIAL INSTITUTIONS AND ITS EMPLOYEES UNDER THE ELDER ADULT FINANCIAL EXPLOITATION PREVENTION ACT OF 2021**

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Raymond M. Lynch, Managing Counsel  
Wells Fargo Bank  
October 6, 2021



# The Elder Adult Financial Exploitation Prevent Act

- The Elder Adult Financial Exploitation Prevention Act adds Chapter 34 to Title 19 (Financial Institutions) of the Rhode Island General Laws. Chapter 34 sets forth obligations and options for financial institutions (including credit unions) and their employees when they suspect financial exploitation of an elder adult who is an account holder has occurred, is occurring or has been attempted.
- The employee's obligation: If an employee of a financial institution "has reasonable cause to believe that financial exploitation of an elder adult who is an account holder . . . has occurred, is occurring, or has been attempted, the employee shall notify [their] . . . institution of the suspected financial exploitation" (19-34-2(a)).

# Financial Institution's Obligations

- Under 19-34-2(b)(i), the financial institution's obligations after an employee informs it of actual or suspected financial exploitation of an elder adult are:
  - Assess the suspected financial exploitation and submit a report to the Office of Healthy Aging (OHA) identifying the name, address and age (if known) of the elder adult;
  - Include in the report to OHA the name, address of any person responsible for the care of the elder adult;
  - Include in the report to OHA the nature and extent of the facts of the suspected financial exploitation;
  - Include in the report to OHA the basis of the reporter's knowledge and any other relevant information or any other reporting requirements consistent with 42-66-8.

# Financial Institution's Report to OHA

- The financial institution's report to OHA must be submitted *no later than the earlier of*:
  - The second business day following the date the financial institution completes its assessment of the suspected financial exploitation (19-34-2(b)(2)(i)), or
  - The seventh business day after the date the financial institution is notified of the suspected financial exploitation by its employee or otherwise has reasonable cause to believe that the suspected financial exploitation has occurred, is occurring or has been attempted (19-34-2(b)(2)(ii)).
- A financial institution is not required to file a supplemental report to OHA for the same conduct identified in the original report (19-34-2(c)).
- The Act gives financial institutions time to investigate what has occurred so it can submit a more meaningful report to OHA rather than file a quick skeleton report that lacks sufficient details to inform OHA of the nature of the suspected financial exploitation.

# Policies and Procedures to be Adopted by Financial Institutions

- Financial institutions are required to “adopt internal policies, programs, plans, or procedures for”:
  - Its employees to make the notification of their belief that financial exploitation has occurred, is occurring or has been attempted (19-34-2(d)(1)), and;
  - The financial institution to conduct the required assessment and submit its report to OHA (19-34-2(d)(2)).
- The policies, programs, plans, or procedures adopted may authorize the financial institution to report the suspected financial exploitation to other appropriate agencies and entities in addition to OHA, including the attorney general, the Federal Trade Commission, and the appropriate law enforcement agency (19-34-2(e)).

# Notifying Third Parties Of Suspected Financial Exploitation

- After a financial institution submits its report to OHA, it may at that time “also notify a third party reasonably associated with the elder adult of the suspected financial exploitation or abuse, unless [it] suspects the third party of financial exploitation or abuse of the elder adult” (19-34-3).
- The “third party reasonably associated with the elder adult” can be any of the following persons:
  - A member of the elder adult’s immediate family;
  - A member of the elder adult’s extended (non-immediate) family;
  - A beneficiary listed on the elder adult’s account;
  - A professional (e.g., an attorney or accountant) who provides professional services to the elder adult;
  - A person with legal authority to transact on the elder’s account (e.g., an attorney-in-fact) or over the elder’s assets (e.g., a trustee or Rep Payee).

# Temporary Holds on Transactions Identified in the Report to OHA

- After a financial institution submits a report to OHA, it “may place a temporary hold on any transaction that (i) involves an account of the elder adult; and (ii) . . . has reasonable cause to believe that financial exploitation of an elder adult has occurred, is occurring, has been attempted, or will be attempted” (19-34-4(a)(1)).
- If requested by the Attorney General’s office or a law enforcement agency, the financial institution “shall place a hold on any transaction involving the account of the elder adult” (19-34-4(a)(2)).

# Length of Hold on Transaction and Seeking Court Review

- A hold placed on any transaction as permitted by 19-34-4(a) “shall expire on the fifteenth business day after the date the [financial] institution submits its report [to OHA]” (19-34-4(b)).
- The financial institution may extend the 15 business day hold “for a period not to exceed thirty (30) business days after the expiration of the fifteen (15) business day period . . . if requested by a state or federal agency or a law enforcement agency investigating the suspected financial exploitation” (19-34-4(c)).
- The financial institution “may also petition a court to extend a hold placed on any transaction . . . beyond the fifteenth business day period . . . A court may enter an order extending or shortening a hold or providing other relief” (19-34-4(c)).
- Financial institutions are required to “adopt internal policies, program, plans, or procedures for placing a hold on a transaction involving an account of an elder adult pursuant to the new law” (19-34-4(d)).

# Immunity For Financial Institutions and Their Employees

- The new law provides immunity from civil or criminal liability to financial institutions and their employees who comply with the new law as follows:
  - For employees: An employee will have immunity for notifying their employer of their suspicion of financial exploitation of an account holder, notifying a third party reasonably associated with the elder adult, and for testifying or otherwise participating in a judicial proceeding arising from a notification or report of financial exploitation unless the employee acts in bad faith or with a malicious purpose (19-34-5(a)).
  - For financial institutions: A financial institution that acts “in good faith and with the exercise of reasonable care, places or does not place a hold on any transaction will have immunity from civil or criminal liability or disciplinary action resulting from that action or failure to act”.
- A financial institution that in good faith and with the exercise of reasonable care places or does not place a hold on any transaction shall be immune from any civil or criminal liability or disciplinary action resulting from that action or failure to act (19-34-5(b)).

# Providing Account Records Without a Subpoena

- The new law allows the OHA, the Attorney General’s office, a law enforcement agency to obtain records from a financial institution without having to serve a subpoena (19-34-6). The provisions regarding what records can be obtained without a subpoena are as follows:
  - A financial institution “shall provide, on request, access to or copies of records relevant to the suspected financial exploitation of an elder adult” to OHA, the Attorney General’s office or a law enforcement agency “either as part of its report or at their request”.
  - The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation not to exceed sixty (60) calendar days prior to the first transaction that was reported or sixty (60) days after the last transaction that was reported.
  - An extension of the request for records may be made by OHA, the Attorney General’s office or a law enforcement agency, if after receipt of the records, it is determined the suspected financial exploitation has occurred outside the scope of the original request.

# New Training Requirements for Financial Institutions

- 19-34-7(a) of the new law imposes training requirements on financial institutions. These training requirements are to provide training concerning financial exploitation of elder adults to:
  - Existing employees, and;
  - New employees within the first three (3) months of their employment.
- 19-34-7(b) of the new law sets forth what the training must include:
  - Recognition of indicators of financial exploitation of an elder adult,
  - The manner in which employees may report suspected financial exploitation to OHA and law enforcement, and;
  - Steps employees may take to prevent suspected financial exploitation of an elder adult as authorized by law or an agreement between the financial institution and its customers.
- OHA and the elder abuse unit of the Attorney General's office shall develop standardized training that financial institutions may offer or financial institutions may develop their own training programs.

# Obtaining Update From Law Enforcement of Their Investigations

- The new law permits (but does not require) the Attorney General's office and local law enforcement to disclose to the financial institution, *upon request*, "the general status or final disposition of any investigation that arose from a report made by that [financial institution] of suspected financial abuse of an elder pursuant to [the new law]" (19-34-8).

# Other States Which Have Adopted Similar Legislation for Banks and Credit Unions

- Alabama Senate Bill 181 becomes effective January 1, 2022
- Delaware Title 31 Section 3910
- Louisiana Chapter 20, 6:1371 to 6:1376
- Minnesota 45A.01 to 45A.07
- Mississippi 81-5-107
- Montana 32-1-1501 to 32-1-1504
- Nebraska 8-2903
- North Dakota Century Code 6-08.5-01 to 6-08.5-05
- Tennessee 45-2-2201 to 45-2-2206 and 45-10-119
- Texas Finance Code 280.001 to 280.006
- Utah 7-26-101 to 7-26-401
- Virginia 63.2-1606(L)
- Washington RCW 74.34.215

# Questions

- I understand OHA is now fielding information from financial institutions on these issues, true?
- We have a few situations where a customer has come back to us angry, asking why we shared the transactions with OHA and isn't it their right to privacy now impacted? What does OHA share with the victims and how are other financial institutions responding to customer inquiries such as these?
- Is it the safe harbor in the US Patriot Act that allows financial institutions to share information with elder protective services?
- Does OHA forward this information on to law enforcement to prosecute?
- Regarding the scope of the new law, does it apply to just customers who are Rhode Island residents? I'm sure most of these interactions would take place through the branch network. But for banks with RI call centers, who field calls from customers in other states, I assume this new law would still only apply to those customers residing in the state of RI.
- We originate and service loans and deposit products throughout the country. If there is suspicion of elder abuse, how would we know what steps to take for each given state as this would be under State law?

# Thank You

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Agency	Contact	Information
Office of the Attorney General Elder Abuse Unit	(401) 274-4400, prompt 6	Investigates and prosecutes crimes against persons aged 60 and older.
Office of Healthy Aging Elder Rights and Safety Unit (Adult Protective Services)	(401) 462-0555	Investigates elder abuse and self-neglect complaints, refers to police, Office of the Attorney General, hospitals, and victim service agencies.
Alliance for Better Long-Term Care	(401) 785-3340	Investigates abuse complaints by elders and the disabled in the long-term care system; advocates to solve problems.
RI Dept. of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH)	(401) 462-2629	Investigates complaints of abuse and neglect of disabled persons and those under the age of 60.
Saint Elizabeth Safe Haven for Elder Justice	(401) 739-2844	Temporary shelter for elder victims, case management and safety planning support for elders in shelter and the community.
United Way	211	Information and referral services.
Victim of Crime Helpline	(800) 494-8100	Information and referral services for older victims.
RI Coalition Against Domestic Violence	(401) 467-9940	Information, support, advocacy for victims of domestic violence and sexual assault.
East Bay Community Action Program	(401) 437-1000	Case management services for elders, age 60 and older, who are victims of abuse or self-neglect.
West Bay Community Action	(401) 732-4660	Case management services for elders, age 60 and older, who are victims of abuse or self-neglect.
Tri County Community Action	(401) 351-2750	Case management services for elders, age 60 and older, who are victims of abuse or self-neglect.
Child and Family Services	Providence: (401) 781-3669 Newport: (401) 849-2300	Case management services for elders, age 60 and older, who are victims of abuse or self-neglect.