The background of the slide features the Seal of the State of Maryland. It is a circular emblem with a gold border containing the Latin motto "BONÆ VOLUNTATIS TVÆ CORONATI". The central image depicts two men in 17th-century attire standing on either side of a shield. The shield is divided into four quadrants, each containing a red cross on a white background. Above the shield is a crown, and a red banner with a white cross is draped across the top. The entire seal is set against a dark blue background.

Maryland's Financial Abuse Reporting Law for Financial Institutions

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Disclaimer

I'm not the Attorney General, nor the Commissioner of Financial Regulation.

If you think I say anything that can be used against the State, you misheard me.

This presentation is mine, and mine alone, the Attorney General has never seen it.

Financial Institutions Article 1–306

- In 2000 a new law was passed in Maryland that permitted fiduciary institutions to report suspected financial exploitation to Adult Protective Services.
- What is Adult Protective Services (APS)?
- Why was this law necessary?
- Reporting was not required in the 2000 statute.
- Why was it not required?

Financial Institutions Article 1–306

- In 2012 the statute was amended to **require** fiduciary institutions to report suspected financial abuse of an elder adult.
- An elder adult is defined as any Maryland resident 65 or older.

Financial Institutions Article 1–306

What is a “financial institution” or “fiduciary institution”?

Financial Institutions Article 1–306 (cont.)

Section 1-306 (d) contains some of the new mandatory reporting language:

- (d) (1) notwithstanding any other law . . . , a fiduciary institution **shall make an abuse report** as provided in this subsection if an employee of the fiduciary institution, . . . :
- (i) has direct contact with an **elder adult** or reviews or approves an **elder adult's** financial documents, records, or transactions . . . ; and
 - (ii) observes or obtains knowledge of behavior or unusual circumstances or transactions that leads the employee to know or have reasonable cause to suspect that the **elder** adult is the victim of financial abuse.

Financial Institutions Article 1–306 (cont.)

To whom do the fiduciary
institutions have to report?

Is it like APS in the 2000 law?

Financial Institutions Article 1–306 (cont.)

(d)(2) **the abuse report** required under paragraph (1) of this subsection **shall be made:**

(i) 1. **To** the adult protective services agency in a local department of social services, the local law enforcement agency, **or** a State's Attorney; **or**

2. **If** the employee knows that the elder adult resides **in** **a long-term care facility** located in the state, to an ombudsman for the long-term care facility, the local law enforcement agency, **or** a State's Attorney; **and**

Financial Institutions Article 1–306 (cont.)

When does the fiduciary institution have to make a mandatory report and how does it file the report?

Will a phone call suffice?

Financial Institutions Article 1–306 (cont.)

(d)(2)(ii) 1. **By telephone** notification **within 24 hours** after the employee knows or has reasonable cause to suspect that the elder adult is the victim of financial abuse; **and**

2. **In writing** sent **within 3 business days** after the employee knows or has reasonable cause to suspect that the elder adult is the victim of financial abuse.

Financial Institutions Article 1–306 (cont.)

Does a fiduciary institution have to tell anyone (say the victim or a spouse or adult child of the victim of suspected financial exploitation) that the fiduciary institution has filed a report with APS, or local law enforcement, or the State's Attorney?

Financial Institutions Article 1–306 (cont.)

1-306(e) says an institution doesn't have to tell anyone it filed a report:

(e) (1) except as provided in paragraph (2) of this subsection, a fiduciary institution . . . **may decline to provide to any person information that would disclose or indicate whether a report of financial exploitation or an abuse report has or has not been filed under this section.**

Financial Institutions Article 1–306 (cont.)

So under the statute a fiduciary institution may, but does not have to, tell anyone, even a spouse, that the fiduciary institution has filed a report with APS, or local law enforcement, or the State's Attorney.

Financial Institutions Article 1–306 (cont.)

So, if they “may decline” to tell you, that means that they can tell you, correct?

Financial Institutions Article 1–306 (cont.)

Yes, but not really. Fiduciary institutions live in fear of violating privacy laws so they are going to err on the side of not telling anyone they are not clearly required to tell.

Financial Institutions Article 1–306 (cont.)

Any way, even if a bank or credit union revealed to a victim's spouse that it had filed a report, the law precludes fiduciary institutions from sharing the information in the report with anyone other than the receiving agency.

Financial Institutions Article 1–306 (cont.)

**(e)(2) a fiduciary institution or an officer, employee, . . . [etc.]
may not decline to provide information requested by . . .
[APS, an ombudsman, law enforcement, or a prosecutor] in
connection with an investigation of suspected financial
abuse.**

Financial Institutions Article 1–306 (cont.)

What else are fiduciary institutions required to do with respect to elder financial exploitation?

Financial Institutions Article 1–306 (cont.)

(d)(7) a fiduciary institution shall establish and implement a training program to:

- (i) assist employees in recognizing signs of potential financial abuse of an elder adult, . . . ; and**
- (ii) inform employees about the requirement to file abuse reports as provided under this subsection.**

REPORTING SUSPECTED EXPLOITATION OF A CUSTOMER

- Tellers or customer service representatives should report suspicions to security/management.
- Security/management will decide whether a report should be made, and if so whether to Adult Protective Services, the Long-Term Care Ombudsman, the police, **or** the State's Attorney.
- Security/management will also determine whether a Suspicious Activity Report should be made to FinCEN.

REPORTING SUSPECTED EXPLOITATION OF A CUSTOMER

The system for reporting and investigating differs depending on whether the victim is an:

- 1) elder adult,
- 2) a vulnerable adult,
- 3) neither, or
- 4) both.

ELDER ADULTS

Maryland fiduciary institutions are required to report suspected financial exploitation of elder adults, customers who are 65 or older, and reside in Maryland.

(WHAT ABOUT SOMEONE 64?)

ADULTS UNDER AGE 65

- If a suspected victim of financial exploitation is possibly a **vulnerable adult**, but under age 65, reporting by a fiduciary institution is encouraged, but not required. (The 2000 statute is still on the books.)
- A report may be made to the local Adult Protective Services.
- Can a fiduciary institution report suspected financial exploitation of a non-elderly vulnerable adult to anyone else?

NEITHER VULNERABLE NOR ELDER ADULT

If the suspected victim is clearly not a vulnerable adult nor an elder adult, then the appropriate entity to contact may be the police or the appropriate regulatory agency, e.g., IRS, Comptroller, FTC, Consumer Protection Division, U.S. Postal Inspection Service, or Home Improvement Commission, etc.

Will the fiduciary institution contact them?

NEITHER VULNERABLE NOR ELDER ADULT

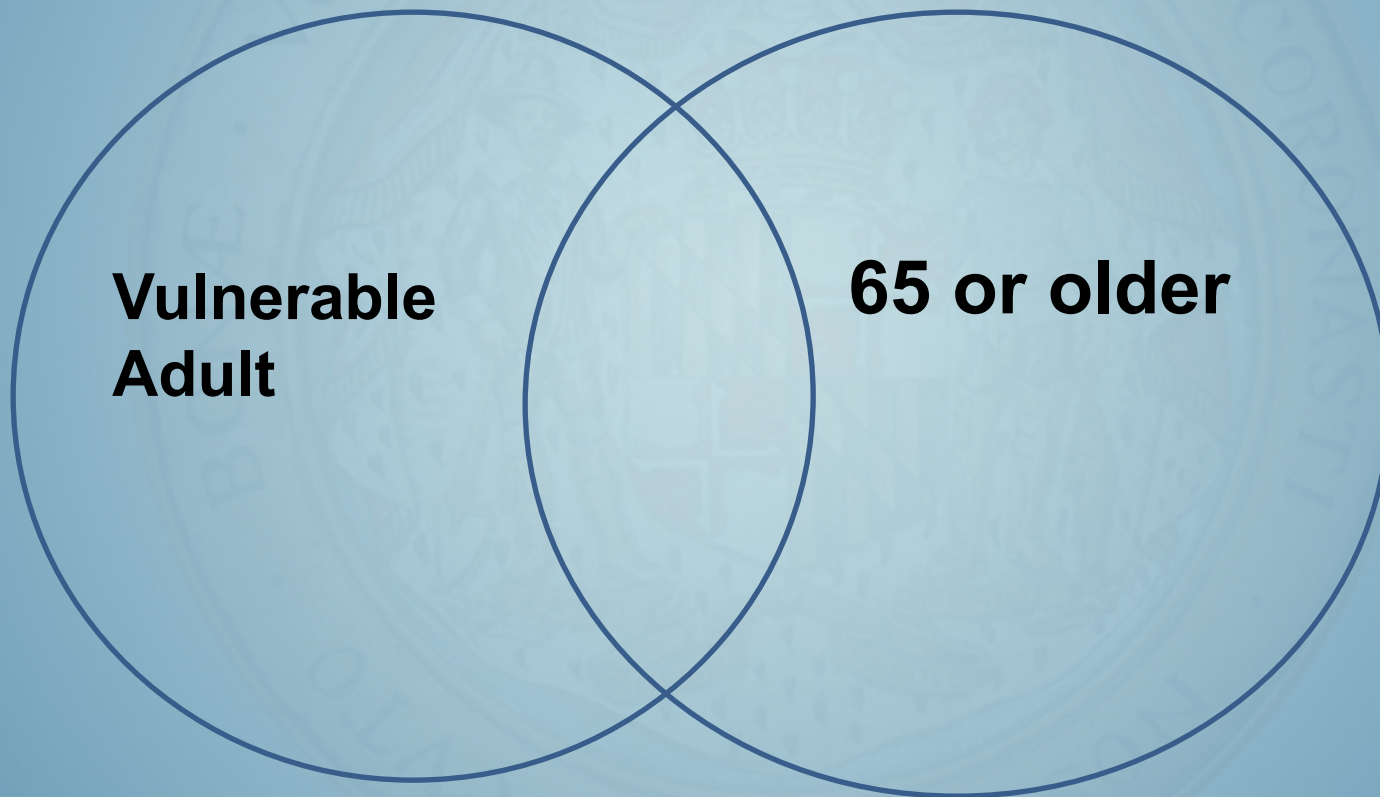
Unless mandated to report, almost all fiduciary institutions will not contact the police or other consumer protection agencies unless they have the customer's consent.

Are fiduciary institutions mandated or encouraged to report suspected financial exploitations of customers who are neither elderly nor vulnerable adults?

NEITHER VULNERABLE NOR ELDER ADULT

The liability protections provided to reporters of abuse under Maryland's vulnerable adult laws, Family Law 14-101 *et seq.*, and under Financial Institutions 1-306, are not applicable to situations that do not involve either an elder or vulnerable adult.

What group have we missed?



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Thank You