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BILL ANALYSIS



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Senate Bill 463 (Substitute S-1)
Sponsor: Senator Coleman Young II
Committee: Families, Seniors, and Human Services

Date Completed: 10-26-11

CONTENT

The bill would amend the Social Welfare Act to do all of the following:

- Include exploitation in the definition of "abuse", and include financial exploitation in the definition of "exploitation", for purposes of reporting and investigation requirements regarding suspected abuse of a vulnerable adult.**
- Require financial institutions to train employees who perform financial services to identify and report financial exploitation of a vulnerable adult.**
- Grant civil immunity to a person who made a good-faith report or assisted in reporting suspected financial exploitation of a vulnerable adult.**

Report of Abuse, Neglect, or Exploitation

Under the Act, certain professionals who suspect or have reasonable cause to believe that a vulnerable adult has been abused, neglected, or exploited, must immediately make an oral report to the county department of human services of the county in which the abuse, neglect, or exploitation is suspected or believed to have occurred. This requirement applies to a person who is employed, licensed, registered, or certified to provide health care, educational, social welfare, mental health, or other human services; an employee of an agency licensed to provide those services; a law enforcement officer; and an employee of a county medical examiner's office. After making the oral report, the person may file a written report with the county department.

In addition to the professionals who are required to make an oral report, any person who suspects that a vulnerable adult has been abused, neglected, or exploited may report to the department of human services of the county in which the abuse, neglect, or exploitation is suspected to have occurred.

Sections 11a through 11f of the Act include the reporting provisions described above; require a county department, after receiving a report, to investigate whether the adult is in need of protective services and determine if he or she is or was abused, neglected, or exploited; provide for confidentiality; set a civil penalty for failure to make a required report; and prohibit an investigation under these provisions if it would involve a person in a State facility.

Under Sections 11 to 11f, "abuse" means harm or threatened harm to an adult's health or welfare caused by another person. Abuse includes nonaccidental physical or mental injury, sexual abuse, or maltreatment. Under the bill, abuse also would include exploitation.

"Exploitation" means an action that involves the misuse of an adult's funds, property, or personal dignity by another person. Under the bill, exploitation also would include financial exploitation. The bill would define "financial exploitation" as the action of a person who, by intimidation or deception, knowingly takes control, title, use, or management of an incapacitated or vulnerable adult's assets or property with the intent to permanently deprive that adult of his or her asset or property.

Under the bill, "intimidation" would include threatening to deprive an incapacitated or vulnerable adult of food, nutrition, shelter, necessary medication, or medical treatment. "Deception" would mean that a person knowingly does one or more of the following to an incapacitated or vulnerable adult:

- Creates or confirms a false impression in an incapacitated or vulnerable adult's mind.
- Fails to correct a false impression that the person is responsible for creating or confirming in an incapacitated or vulnerable adult's mind.
- Makes a promise to an incapacitated or vulnerable adult that the person does not intend to perform or that the person knows will not or cannot be performed.
- Misrepresents or conceals a material fact that relates to the terms of a contract or an agreement that the person enters into with the incapacitated or vulnerable adult or that relates to the existing or preexisting condition of any of the property involved in a contract or an agreement that the person enters into with the incapacitated or vulnerable adult.
- Uses any material misrepresentation, false pretense, or false promise to induce, encourage, or solicit an incapacitated or vulnerable adult to enter into a contract or agreement.

The Act defines "adult" or "adult in need of protective services" as a vulnerable person not less than 18 years of age who is suspected of being or believed to be abused, neglected, or exploited. A vulnerable person is an adult who cannot protect himself or herself from abuse, neglect, or exploitation because of a mental or physical impairment or because of advanced age. Under the bill, this also would include someone who cannot protect himself or herself from financial exploitation.

"Incapacitated adult" would mean an adult who is an incapacitated individual as that term is defined in the Estates and Protected Individuals Code (an individual impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, other cause to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions).

Training

Beginning after September 1, 2012, the bill would require a financial institution to provide training on how to identify suspected financial exploitation to its employees who perform financial services. The training would have to include where and how to report suspected financial exploitation, identifying unusual banking or financial activity that could be financial exploitation, and identifying behavior exhibited by an incapacitated or vulnerable adult that could indicate he or she was the victim of financial exploitation.

"Financial institution" would mean a State or nationally chartered bank or a State or federally chartered savings and loan association, savings bank, credit union, brokerage firm, payday lender, or any person who provides financial services that maintains a principal office or branch in Michigan. "Financial institution" would not include an insurance company or a person who sells only insurance products or services.

Immunity

The Act provides immunity from civil liability for a person who makes a report in good faith or who assists in the implementation of reporting requirements. Such a person is presumed to have acted in good faith. The immunity extends only to an act performed under the reporting requirements and does not extend to a negligent act that causes personal injury or death.

Under the bill, in addition, a person acting in good faith who made a report or who assisted in the implementation of the reporting requirements relating to financial exploitation would be immune from civil liability that he or she might otherwise incur by making the report or by assisting in making a report.

MCL 400.11 & 400.11a

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would define financial exploitation and would require care providers, as identified in Section 11a, to report financial exploitation to the county human services department in the county where the exploitation took place. As described above, care providers are currently required to report instances of exploitation, including the misuse of an adult's funds. As part of the Department of Human Services' protective services component for mistreated adults, financial management services are available. As the Department's current policy requires the misuse of funds to be reported, the bill would not have a fiscal impact on the State or local units of government, but would provide a more clear definition of the type of exploitation.

The bill also would require financial institutions to provide training to their employees in how to identify potential financial exploitation of vulnerable adults. The bill describes certain topics the training would have to cover, but would not require the Office of Financial and Insurance Regulation (OFIR), or any other State agency to review or approve training courses or materials. Therefore, the requirement should result in few, if any, costs to OFIR or other agency.

Additionally, the bill would not require OFIR to verify that training efforts were undertaken by financial institutions. To the extent that OFIR voluntarily made verification efforts, some new administrative costs could be associated.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.