

Legislative Analysis



INCLUDE FINANCIAL EXPLOITATION AS ABUSE OF INCAPACITATED OR VULNERABLE ADULT

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5193 (Substitute H-1)

Sponsor: Rep. Sarah Roberts

Committee: Senior Health, Security, and Retirement

Complete to 6-17-10

A SUMMARY OF HOUSE BILL 5193 AS REPORT FROM COMMITTEE ON 6-10-10

House Bill 5193 would amend Section 11 of the Social Welfare Act to specifically add "financial exploitation" to the definition of abuse, and to add related definitions of the terms "deception," "financial institution," "intimidation," and "position of trust" to the act.

[A related bill, House Bill 5187, would add "financial exploitation" to the list of conduct (suspected abuse, neglect, and exploitation) that must be reported to the county department of social services by certain specified health, education, and human service providers and employees of agencies providing such services.]

The bill would define the terms as follows:

Financial Exploitation would mean the action of a person in a position of trust and confidence and 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 him or her of the assets or property.

Deception would mean that a person knowingly does the following to an incapacitated or vulnerable adult:

- (1) Creates or confirms a false impression in the mind of an incapacitated or vulnerable adult.
- (2) Fails to correct a false impression that the person is responsible for creating or confirming.
- (3) Makes a promise that the person does not intend to perform or that the person knows will not or cannot be performed. However, a person's failure to perform a promise is not by itself sufficient proof that the person did not intend to perform the promise.
- (4) Misrepresents or conceals a material fact that relates to the terms of a contract or an agreement that he or she 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.

(5) 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.

Suspected Financial Exploitation would be defined to mean when a person who is required to report financial exploitation under this section observes or has knowledge of behavior or unusual transaction, or a pattern of behavior or unusual circumstances or transactions that would lead a person with similar training or experience to form a reasonable belief that an incapacitated or vulnerable adult is the victim of financial exploitation.

Intimidation would include but not be limited to threatening to deprive an incapacitated or vulnerable adult of food, nutrition, shelter, necessary medication, or medical treatment.

Position of Trust would be defined to mean that a person is any of the following: (1) a person who has assumed a duty to provide care to an incapacitated or vulnerable adult; (2) a joint tenant or a tenant in common with an incapacitated or vulnerable adult; or (3) a person who is in a fiduciary relationship with an incapacitated or vulnerable adult, including a de facto guardian or de facto conservator.

Financial Institution would mean a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union, or brokerage firm, and any person who provides financial services, that maintains a principal office or branch in the state. The term does not, for these purposes, include a life insurance company.

MCL 400.11

FISCAL IMPACT:

The bill (with HB 5187) could increase the number of reports of suspected abuse of adults filed with and investigated by Adult Protective Services staff within county offices of the Department of Human Services. Further, it could increase complaint referrals to the Bureau of Children and Adult Licensing related to abuse or neglect of individuals served within adult foster care facilities or homes for the aged. Data does not appear to be available to estimate the number of new reports that would result from the bills.

Any increase in reports and referrals of suspected abuse or neglect would increase the workload for Adult Protective Services staff within DHS county offices and for staff within the Bureau of Children and Adult Licensing. When similar legislation was introduced last session, the Department of Human Services indicated a belief that the bills will increase staffing needs in these areas, but did not have a specific cost estimate.

Legislative Analyst: E. Best
Fiscal Analyst: Bob Schneider
Kevin Koorstra

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.