

Government of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE OF PUERTO RICO
Guaynabo, Puerto Rico

RULE NO. 93

**RULE TO ESTABLISH A PROTOCOL FOR THE PREVENTION AND DETECTION
OF CASES OF FINANCIAL EXPLOITATION OF OLDER PERSONS OR ADULTS
WITH DISABILITIES**

SECTION 1. LEGAL BASIS

The Office of the Commissioner of Insurance of Puerto Rico adopts Rule No. 93 of the Regulations of the Puerto Rico Insurance Code, under the authority conferred in Section 2.030 of Public Law No. 77, enacted on June 19, 1957, as amended, known as the Puerto Rico Insurance Code, and the provisions of Public Act No. 206, enacted on August 9, 2008, an Act to Order the Commissioner of Financial Institutions, the Puerto Rico Public Corporation for the Supervision and Insurance of Cooperatives, and the Office of the Commissioner of Insurance for the Implementation of Necessary Regulations, in order to require that all financial institutions, cooperatives or insurers in Puerto Rico establish a protocol for the prevention and detection of possible cases of financial exploitation of older persons or adults with disabilities, and in accordance with Public Law No. 170, dated August 12, 1988, as amended, known as the Uniform Administrative Procedures Act.

SECTION 2. PURPOSE

The purpose of this Rule is to require that all insurers and health services organizations that are authorized to transact business in Puerto Rico establish a protocol for the prevention and detection of possible cases of financial exploitation of older persons or adults with disabilities.

SECTION 3. DEFINITIONS

The following terms shall have the meanings set forth below, unless the text of any Section of this Rule clearly implies a different meaning:

- a. Adult with a disability- Means any adult that has a physical, mental or sensorial disability that substantially limits one or more essential life

- activities; has a history or medical record of a physical, mental or sensorial disability; or is considered to have a physical, mental or sensorial disability. This physical, mental or sensorial disability limits the capacity or the knowledge to make responsible decisions regarding his or her own person, and the management of assets, property or estate.
- b. Financial Exploitation – Means the improper use of funds of a capable older person or of an adult with a disability, of his or her property or resources by another individual, including, but without limitation, misrepresentation, embezzlement, conspiracy, falsification of documents, falsification of records, coercion; fraudulent transfer of property or denial of access to assets.
 - c. Office – Means the Office of the Commissioner of Insurance of Puerto Rico.
 - d. Older person – Means any person who is sixty (60) years old or more, who has the full legal capacity and ability to perform essential life functions such as mobility, communication, and self-care.
 - e. Protocol – A set of standards or procedures that a person will use to prevent, detect, and manage possible cases of financial exploitation of older persons or adults with disabilities.
 - f. Guardianship – Means overseeing the care of the person and the person’s assets, or only the assets of persons who are not under *patria potestas* and are unable to govern themselves. Guardianship is governed by the provisions of the Puerto Rico Civil Code.
 - g. Representative of the older person or adult with a disability – Means the relative, guardian, caretaker or individual who by means of a court order, administrative order, legal document or authorization executed by the adult with a disability has been granted the necessary power to secure or transact matters related to insurance.

SECTION 4. PROTOCOL REQUISITE

All insurers and health services organizations will establish a Protocol that will enable the detection of possible cases of financial exploitation of their customers or insureds.

All insurers and health services organizations will train their general agents, adjusters, brokers, and authorized representatives regarding managing and counteracting possible cases of financial exploitation of older persons or adults with disabilities.

SECTION 5. REQUIREMENTS OF THE PROTOCOL

The Protocol that is adopted shall provide for indentifying suspicious conduct or indicators of financial exploitation of older persons or adults with disabilities.

The Protocol will include the actions or procedures to be followed in the event of suspected financial exploitation of older persons or adults with disabilities.

The Protocol will include mechanisms for alerting the public and creating awareness regarding the financial exploitation of older persons or adults with disabilities.

SECTION 6. IDENTIFICATION OF SUSPICIOUS CONDUCT

A. All insurers and health services organizations will train their train their general agents, adjusters, and authorized representatives to identify and manage suspicious conduct that is indicative of possible financial exploitation of older persons or adults with disabilities. These suspicious actions or behaviors may include, but are not limited to, the following indicators:

- 1) The older person or adult with a disability looks abandoned or neglected.
- 2) The older person or adult with a disability seems dazed, nervous or fearful.
- 3) The older person or adult with a disability does not remember having requested any insurance transaction and seems concerned or confused regarding the issue.
- 4) The older person or adult with a disability provides contradictory or questionable justification for the insurance transaction.
- 5) The older person or adult with a disability expresses fear of being evicted or institutionalized if he or she does not appoint a guardian, representative or someone to take charge of his or her care.
- 6) There is a person or relative who is insisently asking for information regarding insurance benefits for the older person or adult with a disability, without their consent.
- 7) There is more than one person claiming to be the guardian of the older person or adult with a disability.

- 8) The person who alleges to be the guardian of the older person or adult with a disability refuses to show evidence of his or her authorization or shows contradictory evidence.
- B. The fact that an older person or adult with a disability is identified under any of the above scenarios with regard to suspicious behavior does not necessarily mean that it is occurring or the is a victim of financial exploitation.

SECTION 7. IDENTIFICATION OF SUSPICIOUS INSURANCE BUSINESS ACTIVITIES

- A. All insurers and health services organizations will train their general agents, brokers, adjusters, and authorized representatives to identify and manage suspicious transactions that are indicative of possible financial exploitation of older persons or adults with disabilities. These suspicious business transactions include, without limitation, the following indicators:
- 1) Suspicious signatures on documents related to insurance transactions.
 - 2) The older person or adult with a disability expresses or appears to have a lack of knowledge of the transactions, claims, insurance applications, among other matters related to insurance.
 - 3) A person who requests a change of residential or mailing address from the address previously reported by the older person or adult with a disability.
 - 4) A person who requests information about the product or service requested by the older person or adult with a disability without their authorization.
- B. The fact that an older person or adult with a disability is identified under any of the above scenarios with regard to suspicious behavior does not necessarily mean that it is occurring or the person is a victim of financial exploitation.

SECTION 8. AFFIRMATIVE ACTION TO BE INCLUDED IN THE PROTOCOL

All insurers and health services organizations must include in the Protocol a set of affirmative actions that convey a consistent message to their staff and the general public against financial exploitation of older persons or adults with disabilities and the prevention of this exploitation. The affirmative actions in any Protocol include, but are not limited to, the following:

- 1) Periodically educating staff regarding conduct that could constitute financial exploitation of older persons or adults with disabilities, and the management and prevention of such conduct.
- 2) Maintaining an educational campaign for consumers and the general public regarding the financial exploitation of older persons or adults with disabilities.
- 3) Maintaining contact with other entities that will assist in obtaining information regarding new schemes related to financial exploitation of older persons or adults with disabilities.

SECTION 9. MANAGEMENT OF POSSIBLE CASES OF FINANCIAL EXPLOITATION OF OLDER PERSONS OR ADULTS WITH DISABILITIES

All insurers and health services organizations will train general agents, brokers, adjusters, and authorized representatives to identify suspicious insurance business conduct or activity that is indicative of a possible case of financial exploitation, and ensure that the situation is addressed and referred to the proper channels. The Protocol should set forth the minimum procedures to be followed in a possible case of financial exploitation of older persons or adults with disabilities. These procedures include, but are not limited to, the following:

- 1) Investigating the reasons why an older person or an adult with a disability has made unusual changes in the insurance services or products he or she requested.
- 2) Verifying the documentation that authorizes an individual to act on behalf of the older person or adult with a disability.
- 3) Alerting the older person, the adult with a disability or his or her guardian or representative of the possibility of financial exploitation. This may be done in cases in which it is deemed that the older person or adult with a disability is not at risk and can act or neutralize the situation.
- 4) Obtaining, if possible, photographic evidence or a description of the individual who is suspected of committing financial exploitation of an older person or an adult with a disability.
- 5) Notifying the insurer and health services organization, as applicable, of cases in which it is suspected that there is a case of financial exploitation of an older person or an adult with a disability.

- 6) Orienting older persons or adults with a disability that have been victims of financial exploitation to prevent the reoccurrence of the situation.
- 7) Notifying the Special Fraud Investigation Division at the Office regarding a possible fraud scheme.

SECTION 10. REFERRALS OF POSSIBLE CASES OF FINANCIAL EXPLOITATION

The Protocol should include a procedure to be followed for reporting or referring possible cases of financial exploitation of older persons or adults with a disability. The referral procedure should include, but not be limited to, the following:

- 1) Performing an internal investigation when information is received regarding a possible case of financial exploitation of an older person or adult with a disability. The investigation should have a duration of not more than five (5) business days. In cases where it is deemed that the situation is urgent, the internal investigation should be carried out at the earliest possible time.
- 2) On completing the internal investigation and finding that there is a possible case of financial exploitation of an older person or an adult with a disability, or there are any concerns regarding the case, a referral form should be completed, which should include, but not be limited to, the name, age, address, and telephone number of the possible victim of financial exploitation, if available; information on the individual suspected of committing the financial exploitation, if available; a description of the situation or activities that constitute the possible financial exploitation; the name and contact information of the person who witnessed or became aware of the possible case of financial exploitation; and if the case has been referred to any pertinent agency.
- 3) Referrals to the pertinent agencies should be made no later than within five (5) business days from the moment of the identification of the possible case of financial exploitation of an older person or adult with a disability, or if there are any concerns regarding the case.
- 4) Cases that have been identified should be referred to the agencies that are responsible for protecting individuals at different levels. In cases where there is a suspicion of financial exploitation of an older person, the respective referral should be made to the Department of the Family, the Office of the Older Persons Advocate, the Puerto Rico Police, and, if pertinent, to the Social Security Administration. In cases where there is a suspicion of financial exploitation of an adult with a disability, the respective referral should be

made to the Department of the Family, the Persons with Disabilities Advocate, the Puerto Rico Police, and, if pertinent, the Social Security Administration. All insurers and health services organizations should use a uniform referral form designed for that purpose by the respective agencies.

- 5) Establishing the method for keeping the information on possible cases of financial exploitation of an older person or an adult with a disability. The records should contain all of the information related to the case, including the internal referral sheet, the investigation, and the referral to the respective agency. The records should be held for at least five (5) years, to be counted from the date of referral to the respective agency.
- 6) Collaborating in the investigation carried out by the agencies to which the possible case of financial exploitation of an older person or an adult with a disability was referred.

SECTION 11. CIVIL IMMUNITY

Unless bad faith or malicious persecution can be demonstrated, no tort civil liability may be imposed on any person who in good faith provides information to the Puerto Rico Commissioner of Insurance or any law enforcement agency regarding fraudulent acts related to the financial exploitation of older persons or adults with disabilities, that have been committed, are currently being committed or may be committed in the future.

SECTION 12. CREATION AND ESTABLISHMENT OF THE PROTOCOL

All insurers and health services organizations must create and establish the Protocol within sixty (60) days from the effective date of this Rule. A copy of the Protocol must be filed with the Office within that period of time.

SECTION 13. PENALTIES

Any insurer or health services organization that violates any of the provisions of this Rule will be subject to the penalties provided in Chapters 2, 3, 19, and 27 of the Code, as well as any other penalty that may be provided in the future.

SECTION 14. SEVERABILITY

If any word, sentence, paragraph, subsection, section, or part of this Rule were found to be null and void by a court of competent jurisdiction, the order of the court will not affect or invalidate any of the remaining provisions of this Rule and the effect of such order is limited to such word, sentence, paragraph, subsection, section or part that has been ruled to be void.

SECTION 15. EFFECTIVE DATE

The provisions of this Rule will be effective thirty (30) days after filing at the Puerto Rico Department of State, under Public Law No. 170, *supra*.

RAMÓN L. CRUZ-COLÓN
COMMISSIONER OF INSURANCE

Approval Date:

Date Filed
at the Department of State:

Date Filed
at the Legislative Library: