Finally, the financial institutions have expressed concerns regarding the 'reasonable cause' standard in the draft statutory language that follows. All the members of the Task Force respect the position the financial institutions have taken and their concern that the mandatory reporting standard – as applied to them – may be unacceptable. The financial institutions position, however, failed to garner support by other members of the Task Force. While some members shared the concern, they accepted that any mandatory reporting scheme demands it be enforceable to be effective. Other standards and approaches considered were rejected as unworkable. (Appendix 3: Can Bank Tellers Tell? – Legal Issues Relating to Banks Reporting Financial Abuse of the Elderly).

Central to the concern is the nature of the interaction a financial institution employee has with a customer; that it is often remote. But the nature of the interaction is largely irrelevant or at best one aspect of triggering a report. If a financial institution employee develops knowledge of facts – regardless of whether those facts were obtained through an intimate, repeated, one-time or electronic interaction – it *only* triggers the obligation to report if a reasonable person in the same situation as the employee and with the same information he or she had would have concluded abuse was occurring. Thus, it is not the level of interaction, but the context that matters. Obviously, if an at-risk elder were to admit to a financial institution employee they were being physically threatened if they did not write a check to a caregiver, that would trigger the obligation. But under "urged" reporting, that employee could ignore the admission, process the check, and nobody would become aware of the abuse. Also, any sanction to the employee only flows from that employee's willful and knowing decision to ignore the information and not report. In the example provided, to willfully disregard the admission of abuse. Both the willful disregard and the employee's knowledge must be proven to the highest legal standard of beyond a reasonable doubt for any criminal penalty to apply.

Financial institutions are not special in how they interact with their customers. Indeed, all the listed mandatory reporters will interact with the at-risk elderly population differently. Consider a pharmacist. Many prescriptions are filled without the pharmacist speaking to the elderly person. The prescription is electronically sent from the doctor to the pharmacy, dispensed behind the counter into a pill bottle, and a pharmacy technician or cashier conducts the sales transaction. But if the at-risk elder made the same admission to the pharmacy technician (only involving the threat of violence in exchange for opioids), it would trigger a mandatory report. Likewise, through their expertise in the profession (just like a banker) and perhaps information from previous transactions or the oddity of a pattern of prescriptions, a pharmacist might separately develop good faith facts that would trigger their obligation to make a report because any reasonable pharmacist with the same information would have arrived at the same conclusion. Financial institution personnel, like all others, can be trained to assist their at-risk elderly customers by reporting potential abuse when it is justifiable. The nature of the interaction is not a reason to treat financial institutions differently.

In 2011, according to the American Bankers Association's Cumulative Elder Financial Abuse Statutes Comparison (Appendix 4), 20 states had implemented mandatory reporting requirements for financial institutions (CA, DE, FL, GA, HI, KS, KY, LA, MO, MS, NV, NC, NH, OH, RI, SC, TN, TX, UT, and WY). Many of these states use the reasonable cause to believe standard. Many

states also have misdemeanor penalties that include potential incarceration. If the financial institutions in approximately 20 states can comply, then those in Colorado should be able to as well. National financial institutions are already compliant. And smaller independent banks, because they are not compelled to change their duty of care to the customer under the Task Force recommendation, should not be expected to create new systems or modify current banking practices in order to comply. In fact, with the strong support of the financial institutions, the Task Force unanimously endorsed inclusion of clarifying language to ensure that duty of care remain status quo and no mandatory reporter suffer an elevated duty of care. Thus, institutions would not need to "examine and question every transaction involving a person over the age of 70."

No civil court decision has been identified to the Task Force in which failure to report was the basis for civil liability of a financial institution despite those laws being in place in numerous other states. Therefore, the fear of increased civil liability lacks objective support. Even under the current "urged" reporting, a tort lawyer could clearly argue an employee at a financial institution willfully ignored known financial exploitation. So, the civil liability risk remains unchanged. Equally important, immunity would cover any employee who makes a report in good faith. This critical incentive structure is necessary to encourage financial institutions (and all mandatory reporters) to report, rather than look the other way while our at-risk elders are exploited.

Finally, according to the experienced law enforcement members of the Task Force, more than 70% of the elder abuse cases they prosecuted were financial exploitation crimes, making financial institutions a critical partner. Financial institutions must work toward implementing a reporting policy on behalf of their at-risk elder customers and cooperate with law enforcement to identify and prosecute the abusers. The Task Force believes that without the willing participation of financial institutions as good corporate citizens, the power of the statute could be significantly weakened.

The recommended change to the Title 26 "urged" reporters should read:

> 26-3.1-102. **Reporting requirements.** (1) (a) An immediate oral report should be made or caused to be made within twenty-four hours UPON DISCOVERY to a county department or during non-business hours to a local law enforcement agency responsible for investigating violations of state criminal laws protecting at-risk adults by any person PAID OR UNPAID specified in paragraph (b) of this subsection (1) who has observed the mistreatment, self-neglect, or exploitation of an at-risk adult or who has reasonable cause to believe that an at-risk adult has been mistreated, is self-neglected, or has been exploited and is at imminent risk of mistreatment, self-neglect, or exploitation.
>
> (b) AS REQUIRED BY TITLE 18, ARTICLE 6.5, THE PERSONS LISTED IN SUBSECTION (C) OF THIS PART (1) ARE MANDATED TO MAKE A REPORT TO LAW ENFORCEMENT OF ANY INSTANCES OF PHYSICAL ABUSE, SEXUAL ABUSE, CARETAKER NEGLECT, OR EXPLOITATION OF A PERSON AGE 70 OR OLDER.