

# Definitions Subcommittee Meeting

## Wednesday, June 4, 2008

### Individuals Present:

Sam Orbovich, Darrell Shreve, Mary Youle, Maura McNellis-Kubat, Deb Tulloch, Barb Doherty, Jennifer Kirchen, and Kevin Hansen

### Notes

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- reviewing previous discussions/recommendations from April 15 meeting
- discussing CEP structure and the CMS dual-reporting
  - who has standing to bring a lawsuit to challenge the CMS/MDH edict
  - differences: resident-to-resident abuse and unexplained injuries
  - appeal currently filed by an ICFMR for this reporting scheme
    - reporting non-suspicious bruising possibly from a D/D son
  - modifying CEP system to a centralized reporting system
  
- changing the definition of "final disposition" (adding a sentence)
- "willful or reckless"
  - interesting but perhaps leaving intent out of the equation is better
- MN definitions vs. Federal definitions
- self-neglect
- financial exploitation
  - Florida's definition
  - "knows or should know the VA lacks capacity"
  - MN getting at two person: those who know the VA and those who don't
  
- Maura
  - drafting language for including ICFMR facilities within the purview of this section under Subd. 13 (Lead Agency)
  - checking on the usage of the "detriment" language under Subd. 9 (Financial Exploitation)
- Kevin
  - incorporating Hawaii language for Fiduciary Obligation and Colorado language for Self-Neglect

## New Version (Wording)

Red Text = Changes made in the March subcommittee meeting

Blue Text = Changes made in the May subcommittee meeting

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### Subd. 1 – Scope

leave alone

### Subd. 2 – Abuse

(b) Conduct which is not an accident or therapeutic conduct as defined in this section, **which would be considered by a reasonable person to produce or could reasonably be expected to produce** physical pain or injury or emotional distress including, but not limited to, the following:

(1) hitting, slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult;

(2) use of repeated or malicious oral, written, or **gestured language toward a vulnerable adult or conduct toward a vulnerable adult which would be considered by a reasonable person** to be disparaging, derogatory, humiliating, harassing, or threatening;

(3) [remains the same]

(4) [remains the same]

(c) **we want to omit “as defined in section 609.341”**

### Subd. 3 – Accident

leave alone

### Subd. 4 – Caregiver

Caregiver means an individual or facility who has responsibility for the care of **or services for** a vulnerable adult as a result of a family relationship, or who has assumed responsibility for all or a portion of the care of or [services for] a vulnerable adult voluntarily, by contract, or by **informal** agreement.

### Subd. 5 – Common Entry Point

- **health concerns**
- **keeping a record of all calls coming in**
- **conflict with state law and CMS guidelines (dual reporting)**
- **centralized reporting system**

### Subd. 6 – Facility

leave alone

### Subd. 7 – False

leave alone

### **Subd. 8 – Final Disposition**

“... has substantiated maltreatment, the final disposition also identified, if known, which individual or individuals were responsible for the substantiated maltreatment, **and/or** whether a facility was responsible for the substantiated maltreatment. **For the purpose of Minn. Stat. § 245C.02, subd. 16, when more than one vulnerable adult is determined to have been maltreated during the same event, the maltreatment of each vulnerable adult shall be treated as a separate incident of maltreatment.**

### **Subd. 9 – Financial Exploitation**

Financial exploitation **includes, but is not limited to:**

(a) In breach of a fiduciary obligation, **as defined in Subd. 9a and recognized elsewhere in law**, including pertinent regulations...

(a)(1) engages in unauthorized expenditure of funds entrusted to the actor by the VA **(we want to omit “which results or is likely to result in detriment to the VA”)**

(a)(2) **intentionally or negligently** fails to use the financial resources of the VA to provide food, clothing, shelter, health care, therapeutic conduct, or supervision for the VA **(we want to omit “and the failure results or is likely to result in detriment to the VA”)**

(a)(3) **misuses a power of attorney, guardianship privileges, or conservatorship privileges; or**

(a)(4) **misappropriates, misuses, or transfers money belonging to the vulnerable adult from a personal or joint account;**

### **Subd. 9a – Fiduciary Obligation**

**Fiduciary obligation means a person’s obligation to a vulnerable adult who places confidence in the person and the person assumes a position of superiority or influence over the vulnerable adult. In addition to a fiduciary obligation recognized elsewhere in law, a fiduciary obligation occurs when a person is a joint tenant or tenant in common in real property, financial instruments, or financial accounts with a vulnerable adult.**

### **Subd. 10 – Immediately**

leave alone

### **Subd. 11 – Inconclusive**

leave alone

### **Subd. 12 – Initial Disposition**

leave alone

### **Subd. 13 – Lead Agency**

(a) “... home care providers, nursing, homes, **intermediate care facilities for persons with mental retardation**, residential care homes, ...”

#### **Subd. 14 – Legal Authority**

“Legal authority includes, but is not limited to:

- (1) **a fiduciary obligation as defined under this section in subd. 9a or as recognized elsewhere in law**, including pertinent regulations;
- (2) a contractual obligation; or
- (3) documented consent by a competent person.

#### **Subd. 15 – Maltreatment**

leave alone

#### **Subd. 16 – Mandated Reporter**

**“Mandated reporter” means a professional or professional’s delegate who regularly engages in:**

- (4) “the care of **or services for** vulnerable adults
- (9) Banks, financial institutions, credit unions, and all financial institution employees, as defined in Minn. Stat. ...**

**The obligation of a mandated reporter to report incidents of vulnerable adult abuse, neglect, or financial exploitation continues even though that professional or professional’s delegate may not be currently engaging in the practice at the time of an alleged incident.**

#### **Subd. 17 – Neglect**

(a)(1) reasonable and necessary to **attain** or maintain the vulnerable adult's physical or mental health or safety, considering the physical and mental capacity or dysfunction of the vulnerable adult

(b) **Self-neglect is defined as** the absence or likelihood of absence of care **by a vulnerable adult for care or services provided to themselves**, including but not limited to, food, clothing, shelter, health care, or supervision necessary to maintain the physical and mental health of the vulnerable adult which a reasonable person would deem essential to obtain or maintain the vulnerable adult's health, safety, or comfort considering the physical or mental capacity or dysfunction of the vulnerable adult. **Choice of lifestyle or living arrangements shall not, by itself, be evidence of self-neglect.**

#### **Subd. 18 – Report**

"Report" means a statement concerning all the circumstances surrounding the alleged or suspected maltreatment, as defined in this section, of a vulnerable adult which are known to the reporter at the time the statement is made.

**- Adding language to clarify what the reporter knows at the time of the report and what they convey to the CEP when reporting.  
Possibly reference Minn. Stat. § 626.557(4) for procedures used.**

**Subd. 19 – Substantiated**

leave alone

**Subd. 20 – Therapeutic Conduct**

leave alone

**Subd. 21 – Vulnerable Adult**

"Vulnerable adult" means any person 18 years of age or older who:

(1) is a **resident or inpatient** of a facility;

**- no "patient" language; leave it as is**

(4) regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction:

(i) that impairs the individual's ability to provide adequately for the individual's own care without assistance, including the provision of food, shelter, clothing, health care, or supervision; **or**

(ii) **the individual has an impaired ability to protect oneself from maltreatment.**

**- Adding language to make it impossible for someone who's abused a guardianship, conservatorship, or power of attorney to attain another similar power of another individual in the future (establishing a system of background checks, for example)**

**- Possibly removing the right of inheritance (similar to a Slayer's Statute) if the substantiated perpetrator abuses a family member (using ideas from Estate/Trust Law)**