

**REPORT OF THE INVESTIGATIONS SUBCOMMITTEE**  
**Vulnerable Adult Act Stakeholders Work Group**  
**June 13, 2008**

**Task:** *The revised task of the Investigations Subcommittee was to respond to feedback on two issues raised by members of the large Stakeholders group at its meeting on April 18, 2008, and to complete its work on one remaining issue identified by the Investigations Subcommittee for possible legislative action.*

**Subcommittee Members:** Carmen Castaneda (Co-Chair), Hennepin County Adult Protection Services; Maura McNellis-Kubat (Co-Chair), Department of Human Services Licensing Division; Janet Reigstad, Stearns County Human Services; Randy Snyder, Board of Examiners for Nursing Home Administrators; Tara Widner, United Steelworkers Union; Kris Lohrke, Office of Health Facility Complaints

**Members Present:** Carmen Castaneda, Maura McNellis-Kubat, Jerry Kerber (DHS Licensing)

**Issues for Analysis:**

1. Complete work on one remaining item identified by the Investigations Subcommittee for possible legislative action:  
*“Clarify how an investigation is conducted, clarify what will or will not be investigated, and communicate the results of the investigation when completed.”*
2. Reopen item “g” for review based on feedback from members of the large Stakeholders’ group:  
*“Have a system to “flag” alleged perpetrators who may not yet have been substantiated for vulnerable adult maltreatment in order to alert prospective employers.”*
3. Review the process of prioritization of cases by the lead agencies for assignment for investigation. *Are assignment decisions by the lead agencies affected by the results of internal investigations completed by facilities?*

**Results**

Two central themes run throughout the Subcommittee’s responses to all three issues reviewed: a) the matter already is covered in the Vulnerable Adult Law; and/or b) the response is governed by the process of prioritization of cases for assignment for investigation by the lead agencies.

1. *“Clarify how an investigation is conducted, clarify what will or will not be investigated, and communicate the results of the investigation when completed.”*

- The Subcommittee reviewed Minn. Stat. 626.557, Reporting of Maltreatment of Vulnerable Adults Law; Minn. Stat. 626.556, Reporting of Maltreatment of Minors Law; and DHS Administrative Rules 9555.7100 through 9555.7700, the Protective Services Rule, to determine if these documents contained investigative procedures, criteria for assessment, duties of the investigating agencies, timelines for response, notification processes, and the elements to be contained in the content of the investigative report.

- a) All three documents contained some of these criteria, but not all of them.
    - The Vulnerable Adult Law focuses heavily on facility investigations.
    - The Protective Services Rule spells out investigative procedures only for County Adult Protection Units.
    - The Child Protection Law is more inclusive but is almost exclusively oriented toward investigations by County Child Protection Units.
  - b) Because the Vulnerable Adult Law incorporates investigations by three separate lead agencies, identical investigative procedures are not uniformly appropriate.
- The Investigations Subcommittee is concerned that the law not be written in too prescriptive a manner as to challenge the validity of investigative findings on the basis of form rather than content. Discretion is inherent in investigations based on the nature of the complaint, the severity of the incident, the duties of the alleged perpetrators involved, and the decision-making capability of the alleged victim. While a fact-based investigation is scientific and objective, it also is governed by too many variables to individually quantify in statute.
  - Rule making can be more difficult, costly, and time consuming than amending a statute.
  - Lead Agencies rely on Minn. Stat. 626,5572, the Definitions Section of the Vulnerable Adult Law, to determine if maltreatment reports constitute abuse, neglect, or financial exploitation to warrant review for investigation. Lead Agencies likewise will continue to utilize the authority of Minn. Stat. 626.557, Subd. 9(b) to prioritize the assignment of cases for investigation.
  - **Recommendation**: Guidelines for conducting an investigation already are contained in the Vulnerable Adult Law. However, the Investigations Subcommittee concurs that some improvements could be made. For example, whereas the definition of an “Investigation” is contained in law in the Reporting of Maltreatment of Minors statute, it is not present in the Vulnerable Adult Law. Likewise, the Child Protection Law spells out the duties of the local social service agency upon receipt of a report in far more detail than the Vulnerable Adult Law. Consequently, the Investigations Subcommittee would like additional feedback from the large group as to what additional directives in law the stakeholders believe are needed.

2. *Reopen item “g” for review based on feedback from members of the large Stakeholders’ group:*  
*“Have a system to “flag” alleged perpetrators who may not yet have been substantiated for vulnerable adult maltreatment in order to alert prospective employers”.*

- The Investigations Subcommittee relied on expertise from the managers of the DHS Licensing Division to clarify its current practices in identifying perpetrators of maltreatment against vulnerable adults. The purpose of retaining data on perpetrators is to prevent their employment or services in programs serving vulnerable adults in order to protect consumers from abuse, neglect or financial exploitation.

- The present practice by DHS Licensing already “flags” the name of a person under investigation for alleged maltreatment. This information, however, remains with DHS Licensing and is not available to a potential employer until the investigation is completed. If the proposed employer inquires about a person on whom an investigation is being conducted, they will not receive a clearance letter to hire that individual.
- Members of the large Stakeholders group would like to amend this process to comport with other states to allow disclosure to potential employers that maltreatment allegations exist against a named applicant.
- Chapter 13.46 of the Minnesota Government Data Practices Act does not allow such disclosure during the course of an investigation because investigative data is classified as confidential.
- More research is needed to identify those states that currently employ this practice and how it is achieved. The Subcommittee would welcome input from the Stakeholders group to identify these states and their statutes.
- To model our laws after this proposal, we would need to change the Vulnerable Adult Law and the Minnesota Government Data Practices Act to allow the disclosure of confidential investigative data for the purposes of hiring employees. The Subcommittee, however, voices its caveats about possible harm that can occur to job applicants and their proposed employers if the law is changed. Employers may pass over an employee who has maltreatment allegations pending. These allegations may be false, not substantiated in a subsequent investigation, or based on malicious reporting. The employer subsequently may be sued for damage to that employee’s property right to work.
- The Subcommittee likewise cautions against changing other statutes without knowing in advance the possible unintended results this could have on the release of active investigative data for law enforcement and other parties.
- **Recommendation.** The Subcommittee maintains its original position that it does not endorse this proposal to share this information with prospective employers based on due process rights of individuals who may have allegations made against them. Until maltreatment allegations have been investigated and substantiated using preponderance of evidence standards, the protective services system should not treat the accused as “guilty”. Licensing regulations already can require that a person under investigation be supervised during a pending investigation in order to protect facility residents.

*3. Review the process of prioritization of cases by the lead agencies for assignment for investigation. Are assignment decisions by the lead agencies affected by the results of internal investigations completed by facilities?*

- This issue was delegated to the Investigations Subcommittee by the Reporting Subcommittee. It was the decision of the Reporting Committee that the original question

about internal vs. external investigations related more to decisions for prioritization for assignment than to reporting duties of the facility.

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- The Investigations Subcommittee likewise had agreed to place this item back on its work list when it was raised by Stakeholders at the large group meeting on April 18, 2008. Members of the large stakeholders group objected when this item was ruled out for possible legislative action based on resource arguments raised by the Subcommittee. The Subcommittee had cited statutory authority contained in Minn. Stat. 626.557, Subd. 9(b) that allows each lead agency to develop guidelines for prioritizing reports for investigation.
- The central issue is whether or not a lead agency should be allowed discretion to rule out a case for investigation if protective interventions have been put into place to protect the vulnerable adult so that future harm no longer exists and the vulnerable adult now is safe.
- The Stakeholders cite arguments that costs and resources should not be driving factors in amending the law when a greater good is at stake. Employers infer that they would like an external party (a lead agency) to investigate reports of maltreatment by a facility employee so that a neutral party's decision can have bearing on the personnel action taken by the employer. Employee groups infer that they would like an external party (a lead agency) to investigate reports of maltreatment by their members so that this individual might have assistance with the personnel action taken by the employer. Advocates for vulnerable adults would like to see the lead agencies investigate in order to make sure that an alleged perpetrator ends up on the Central Registry as a substantiated perpetrator.
- **Recommendation.** The Investigations Subcommittee maintains its position that the Vulnerable Adult Law is for the primary purpose of protecting vulnerable adults. While due process rights are important for both employers and employees involved in maltreatment reporting and internal investigations, the duty of the lead agencies must give primacy to stopping, reducing, eliminating and preventing maltreatment to the vulnerable adult. Consequently, its resources, which are not unlimited, necessarily must be directed to immediate risk and needs of victims. The right to prioritize case investigations exists in statute and can be modified without statutory amendments. Thresholds for case assignments are dynamic: they can be raised and lowered based on the needs of the time. For example, if a pandemic flu epidemic hits tomorrow, the priorities of the lead agencies must be redirected to new needs. If vulnerable adults lose their caregivers as a result of a pandemic flu epidemic, Adult Protection Units will deploy most of their resources temporarily to protective services for persons who now are experiencing self-neglect. As a result, some cases of financial exploitation or emotional abuse may not be assigned for investigation even though they meet the statutory criteria for investigation. If the law were amended to require investigations of all maltreatment reports received, the services delivered would necessarily be cursory and possibly ineffective. In these times of large budgetary cuts to Medicaid in particular, we cannot ignore the need to allocate investigative resources to the most needy vulnerable adults who will experience the most severe harm if left unserved.

**Additional Note:** The Investigations Subcommittee recognizes that its membership consists primarily of lead agency representatives. Consequently, its members made additional efforts to step outside of our roles to achieve objectivity in our review of the issues. It would be desirable to have greater representation of other interested parties on this Subcommittee.