

# Vulnerable Adult Stakeholder Group 2009 Minnesota Legislative Initiative

Minnesota first created a report and response system for the maltreatment of the elderly and persons with disabilities in 1980. This Vulnerable Adult Act was substantially revised in 1995. For the past year, stakeholders from more than 20 organizations have been meeting regularly with an even greater number of staff from ombudsman offices, the Attorney General's office, as well as state and county protection and regulatory agencies, to identify priorities for bringing the law in line with contemporary practice. These changes are warranted because (1) People are increasingly choosing to receive care and services at home rather than in residential facilities, so protections must be responsive throughout the community; (2) Financial exploitation is a growing problem that affects victims, families, and providers; and (3) Proposed changes will give authorities tools to protect victims of maltreatment and those at imminent risk of harm. Accompanying this summary is a list of organizations that have cooperated in its development.

## **Protect vulnerable adults from financial exploitation.**

- ✓ Strengthen the definition of "financial exploitation" to improve our ability to identify, investigate, and prosecute these cases. [Stakeholder Group decision on proposed language expected December 19.]
- ✓ Encourage financial institutions to report suspected financial exploitation of vulnerable adults and to cooperate in investigations by clarifying their immunity from legal challenges when they report in good faith.

### **Subd. 5. Immunity; protection for reporters.**

(a) A person, business, entity, or an employee of a business or entity who makes a good faith report is immune from any civil or criminal liability that might otherwise result from making the report, or from participating in the investigation, or for failure to comply fully with the reporting obligation under section 609.234 or 626.557, subdivision 7.

(b) A person employed by a lead agency or a state licensing agency who is conducting or supervising an investigation or enforcing the law in compliance with this section or any related rule or provision of law is immune from any civil or criminal liability that might otherwise result from the person's actions, if the person is acting in good faith and exercising due care.

(c) A person who knows or has reason to know a report has been made to a common entry point and who in good faith participates in an investigation of alleged maltreatment is immune from civil or criminal liability that otherwise might result from making the report, or from failure to comply with the reporting obligation or from participating in the investigation.

(d) The identity of any reporter may not be disclosed, except as provided in subdivision 12b.

Also...Add language to 13A.04 for immunity for good faith reporting and to 13A.02 identifying vulnerable adults as an exception to the prohibition on release of financial records. The intent would be to heighten awareness among financial institutions without requiring them to report.

- ✓ Assure that victims of financial exploitation have access to medical Assistance if necessary, regardless of their county of residence.

The problem we find is that when a vulnerable adult is a victim of financial exploitation (even a case where the perpetrator is found guilty by a court), counties have varying ways and time lines to establish a hardship waiver for medical assistance. The risk for the client is failure to get the home care or nursing home care that would be available under medical assistance. We propose a uniform standard by which counties would grant hardship waivers for victims' eligibility to receive medical assistance for nursing facility and elderly waiver services.

### **Respond to emergencies when vulnerable adults are missing and endangered.**

- ✓ Develop an "Endangered Person Alert" to mobilize public response to missing vulnerable persons at imminent risk of harm...comparable to and adapted from the Amber Alert.

We need Senate Counsel's advice on language to develop and implement this proposal.

### **Streamline the Vulnerable Adult Act reporting system.**

- ✓ Replace our 87 separate county reporting entities with a statewide hotline (Common Entry Point), developed with care to preserve the values of immediate and local response.

In the long run, we would be amending references to the Common Entry Point throughout 626.557, and the definition in 626.5572:

#### **Subd. 5. Common entry point.**

"Common entry point" means the entity designated by each county responsible for receiving reports under section 626.557.

However, without any appropriation to develop the technology and with unresolved issues about the protective services response, it will be preferable in the 2009 legislation to direct the continued public and private stakeholder discussions of system design, use of technology, and how the centralized CEP will promise easier public awareness.

- ✓ Combine the dual reporting obligations for nursing facilities, boarding care homes, and hospital swing beds with a single intake form that is reported to the Department of Health and reported electronically to the Common Entry Point.

### **Proposed Statutory Change to Address Dual Reporting**

Subd. 4. **Reporting.** A mandated reporter shall immediately make an oral report to the common entry point. Use of a telecommunications device for the deaf or other similar device shall be considered an oral report. The common entry point may not require written reports. To the extent possible, the report must be of sufficient content to identify the vulnerable adult, the caregiver, the nature and extent of the suspected maltreatment, any evidence of previous maltreatment, the name and address of the reporter, the time, date, and location of the incident, and any other information that the reporter believes might be helpful in investigating the suspected maltreatment. A mandated reporter may disclose not public data, as defined in section 13.02, and medical records under sections 144.291 to 144.298, to the extent necessary to

comply with this subdivision.

Subd. 4a. Reporting by certified nursing homes and boarding care homes. A boarding care home that is licensed under sections 144.50 to 144.58 and certified under Title 19 of the Social Security Act, a nursing home that is licensed under section 144A.02 and certified under Title 18 or Title 19 of the Social Security Act, and a hospital that is licensed under sections 144.50 to 144.58 and has swing beds certified under the Code of Federal Regulations, title 42, section 482.66 may submit a report electronically to the common entry point, rather than submitting an oral report. The report may be a duplicate of the initial report the facility submits electronically to the Minnesota department of health to comply with the reporting requirements under the Code of Federal Regulations, Title 42, section 483.13. The commissioner of health may modify its requirements for reporting to include items required under subd. 4 that are not currently included on its electronic reporting form.

Subd. 4b. **Internal reporting of maltreatment.** (a) Each facility shall establish and enforce an ongoing written procedure in compliance with applicable licensing rules to ensure that all cases of suspected maltreatment are reported. If a facility has an internal reporting procedure, a mandated reporter may meet the reporting requirements of this section by reporting internally. However, the facility remains responsible for complying with the immediate reporting requirements of this section.

(b) A facility with an internal reporting procedure that receives an internal report by a mandated reporter shall give the mandated reporter a written notice stating whether the facility has reported the incident to the common entry point. The written notice must be provided within two working days and in a manner that protects the confidentiality of the reporter.

(c) The written response to the mandated reporter shall note that if the mandated reporter is not satisfied with the action taken by the facility on whether to report the incident to the common entry point, then the mandated reporter may report externally.

(d) A facility may not prohibit a mandated reporter from reporting externally, and a facility is prohibited from retaliating against a mandated reporter who reports an incident to the common entry point in good faith. The written notice by the facility must inform the mandated reporter of this protection from retaliatory measures by the facility against the mandated reporter for reporting externally.

### **Assure that first responders have tools to serve a growing and changing population.**

- ✓ Update the functional definition of vulnerable adult to reflect the increasing number of vulnerable persons receiving services in home and community settings.

In 626.5572, Subd. 21.

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

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

(2) receives services at or from a facility required to be licensed to serve adults under sections 245A.01 to 245A.15, except that a person receiving outpatient services for treatment of chemical dependency or mental illness, or one who is served in the Minnesota sex offender program on a court-hold order for commitment, or is committed as a sexual psychopathic personality or as a sexually dangerous person under chapter 253B, is not considered a vulnerable adult unless the person meets the requirements of clause (4);

(3) receives services from a home care provider required to be licensed under section 144A.46; or from a person or organization that exclusively offers, provides, or arranges for personal care assistant services under the medical assistance program as authorized under sections 256B.04, subdivision 16, 256B.0625, subdivision 19a, 256B.0651, and 256B.0653 to 256B.0656; or

(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; and

(ii) because of the dysfunction or infirmity and the need for assistance, care or services, the individual has an impaired ability to protect ~~the individual~~ himself or herself from maltreatment.

(b) For the purposes of this subdivision, "care or services" specifically pertains to care or services designed to ensure the health, safety, welfare, and maintenance of the vulnerable adult.

- ✓ Standardize components of Vulnerable Adult investigations throughout the state.

Proposal adapted from current MN Administrative Rule, 9555.7300:

Each lead agency shall develop guidelines for prioritizing reports for investigation. When investigating an allegation, the lead agency shall include in its investigation the following activities, as appropriate:

- (1) interview of the alleged victim;
- (2) interview of the reporter and others who may have relevant information;
- (3) interview of the alleged perpetrator;
- (4) examination of the environment surrounding the alleged incident;
- (5) review of pertinent documentation of the alleged incident; and
- (6) consultation with professionals.

- ✓ Create a task force of responders, consumers and providers to coordinate educational curricula and address the use of new and emerging technologies for education.

The VAA Stakeholder Group recognizes that a formal Task Force carries implications of cost and that a less formal "group process" to coordinate educational efforts is acceptable.

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