

Legislative Workgroup Meeting
VAA Stakeholder Group
Thursday, December 4 from 1-3pm (William Mitchell)

Members Present: Iris Freeman (Wm. Mitchell), Stella French (OHFC),
Maura McNellis-Kubat (DHS Licensing), Deb Peterson (AG's Office),
Jane Ochrymowycz (Alz. Association), Kelsey Walter (ECRA),
Mary Youle (Aging Services), Darrell Shreve (Aging Services),
Carmen Castaneda (Hennepin County APS), Kim Dayton (Wm. Mitchell),
Barb Doherty (MNALL), Jon Lips (Care Providers), Toby Pearson (Care Providers),
Heidi Holste (AARP), Deb Siebenaler (DHS AAPS), Jennifer Kirchen (DHS AAPS),
Kevin Hansen (ECRA)

Agenda:

- Meeting with Sen. Moua (Sen. Judiciary)
- Status review for each priority item on the Grid
- Financial Exploitation and Fiduciary Obligation
- Discuss the calendar and defining our priorities/language for next year
 - Organizations' ability to review, write letters of support if applicable
- Presentations by Stakeholder group members (supporting materials to use)

Meeting with Sen. Moua

- feedback from Darrell, Carmen, Kelsey, and Iris
- some reservations from Sen. Moua as to the size of items
 - perhaps having a sharper focus to the list
- recommendations on possible House authors
- Kathy Pontius and Ken Bacchus to assist in this endeavor (drafting language for our initiatives)
- possibly could be up to 2-3 bills
- if she was not Senate author, she would hand it to someone who would do so
- her assistant is Eric Dick (receiving updates on Stakeholder group progress via

- the email list and regularly checking the Wiki site for new info)
- concerns about the Criminal Code crossing over into the VAA provisions
 - didn't really ask if there was anything controversial in the bill/proposed items
 - very important issue from her perspective; some items are crucial in her view
 - committed to the reforms as Committee Chair; willing to work with us on them even if she doesn't carry the bill herself
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- possibly finding House support with Rep. Diane Loeffler
 - advocate for Hennepin County, understands waivers/MA issues
 - sits on the HHS Committee and Finance Committee
 - projected deficit near \$5.2B for 2009
 - Rep. Loeffler projected the deficit at \$6B, as well
 - any proposal with significant fiscal impact must be really examined or omitted from our proposals

Priority Grid Worksheet

- new column of "Where we stand today" on the updated version

1.) Centralized Reporting System (Centralized CEP)

- **research needed on savings from other states' use of a Central CEP**
- OHFC Point of view: Pleasing the Federal government (yes or no?)
 - DHS Point of view: No increased costs projected...
 - hiring freeze, cuts across the board
 - don't have money now for needed programs, so where does money for our proposals come from
 - policies proposed are good, fiscal implications are not
- mixed opinions from the counties about this approach
 - some counties directly lobbying for this approach, however
- request from Sen. Moua: financial implications (no surprise attacks from opponents of our proposed initiatives)
- developmental approach, giving a boost to keep talking about the

possibilities for such a system and how to overcome opposition
(including discussion about financial implications)

- how could technology be utilized to assist in this new system
- there isn't mass consensus on this issue at this point
 - what could be discussed to get to a point of consensus
- other programs being evaluated/explored within DHS/MDH
- if a crime occurs, the investigation will still occur on the local level
 - always have the option to call local 911 (law enforcement)
 - this option will still remain even with a Centralized CEP (along with County APS to preserve emergency responses)

2.) Electronic Submission of OHFC/CEP Reports

- temporary fix for the dual reporting (NH, Boarding Care, Swing Bed)
- CMS Subcommittee: working on updating MDH online form to gather all of the required CEP intake information
 - not projected to be a problem at this point
- quick return on time spent fixing the online form to save time later with the electronic submission to the CEP (if approved)
- CMS Subcommittee looking at issue of how this affects Hospice Reporting (Darrell Shreve or Barb Burandt)
 - Hospice doesn't have the 24-hour reporting requirement
 - they wouldn't be included in the dual-reporting fix
 - Michelle Fedderly (Hospice MN) consulted on this
 - previously discussed: ICFsMR wouldn't be included for this either

3.) Fiduciary Obligation

- concerns from Kim Dayton
- jointly owned property with a vulnerable adult
- examining the VAA and the Criminal Code
- what is the nature of the fiduciary obligation?
 - jointly held property is utilized during estate planning
 - trying to avoid probate would possibly create a bad situation
- the existing statutes in MN combined with the case law shows that

someone who becomes a joint owner for property and then abuses that interest CAN be prosecuted for that abuse

- the statute that creates a POA states a standard as to how the Attorney in Fact must act and the duties owed to the Principal
- MN Courts do hold people accountable who are joint account holders and abuse their “power” over the account
- PRESUMPTION that there is a joint account, but there are ways to show that the funds are contributed by or owned by only one of the account holders on the account
- distinction between changing the VAA or the Criminal Code definitions (similar definitions, but different standards/requirements)
- concerns from Deb Peterson
- current statute has been used to try 3 cases and charge 50
 - memorandums about fiduciary obligations
 - on its face, the statute SHOULD be self-explanatory
 - difficult to work within the language as it’s currently written
- Attorneys-in-Fact should be
 - Judge Hearten at Ct. of Appeals (2001) stated in an opinion that someone who has a POA as a claim of right to funds of the principal (intentionally without claim of right; this opinion hasn’t been challenged yet)
 - Campbell case may clarify this
 - Violet Columbus is used against AG’s Office too
- civil law out there isn’t helping with criminal prosecutions
 - Campbell case, if it survives review, would clarify everything and the law wouldn’t really need to be changed since that case could be used for future prosecutions
- increasing the statute of limitations for amounts high enough that implicate a longer time to misappropriate those funds

- fiduciary obligation an automatic assumption
 - defining fiduciary obligation in a way that's more behavioral
 - concerns of waiver requirements and hardship waiver provisions being consistently applied in every county
 - no automatic fiduciary duty if a joint account holder/owner
 - interpretation of the statute
 - the debate spurs the need for more information (information needed from the Criminal Code Subcommittee)
 - potentially leaving this item on the side for 2009
 - making the proposed language immediately available to the Legislative Workgroup once the CCS finishes drafting/presenting
 - different ways of interpreting the best path to follow, perhaps the CCS should also examine paths that are very bad to go down (i.e. some items that are really dangerous to pursue)
 - one of the most complex and deeply felt issues for resolution
 - CCS Subcommittee meeting Monday at 9am (Wabasha/Kellogg)
 - email Tara Patet about location/time to attend
 - deciding whether or not to proceed with the Campbell decision on our front-burners of the mind
- 4.) VAA Statutes: Financial Exploitation
 - see Item 3
 - 5.) Functional Definition of a Vulnerable Adult
 - positive report back from the Disability Community
 - 6.) Other Definitions (Abuse, Caregiver)
 - no discussion at this meeting
 - 7.) Standardizing Components of Investigations
 - adapted from Minn. Rule 9555.7300 into the VAA (626.557)
 - 8.) "Comfort Language" for Financial Institutions Voluntarily Reporting
 - adding language into the VAA (626.557 Subd. 5 – Immunity)
 - meeting with Sandra Anderson (Board on Aging, formerly of Wells Fargo)
 - 9.) DHS/MDH/DPS Task Force for Education and Training
 - no controversy about the need for this
 - opportunity to discuss education across the state

10.) Endangered Person Alert

- "EPA" used as the title placeholder for now (used in Arizona, now)
- Consortium for Citizens with Disabilities (CCD) really liked this idea
- this didn't even have to go through legislature in AZ
 - not a law, per se
 - part of the Administrative Rules in many states (using the Admin. Rules for a state agency, such as DPS)
- currently, the BCA in Minnesota has a similar alert (information presented to Hennepin County Sheriff's Office, contact them for their system currently used and requirements to use the system)
 - no reinventing of the wheel, budgetary concerns
- Federal legislation imposes an age limit, perhaps not the best route
 - again, why we don't use the "Silver Alert" title (young persons with a DD or a TBI, etc.)

11.) Criminal Code Statutes: Financial Exploitation Definition

- see Item 3

Generating Letters of Support

- As of the 12/19 meeting, hopefully we'll have draft language from the Senate
- hopefully, this will encourage letters of support
- how do we fully hit it home that this is a collaborative effort?
- please also reference document of agencies involved and resources consulted (posted on the Wiki (soon) and provided at this LWG meeting)
- Iris sending out her report that she used with the Sen. Moua
 - also, PowerPoints Iris created will be on the Wiki (soon)

House Author Prospects

- Senate Author traditionally from the Judiciary Committee (usually the Chair)
- House Author traditionally from the HHS Committee
 - Sen. Moua wanting us to speak with Rep. Thao
 - Sen. Moua's assistant said Moua had spoken with Rep. Thao (favorable response from Rep. Thao, it seems)
- who else in the House would be a good choice?

- Rep. Thao
 - four years in Greater MN (education in Morris, MN)
 - group of us should go speak with him to gain his support
 - where do his passions lie? Is he too busy?
- Rep. Ruud
- each LWG member make a list of good choices and send via email
 - Iris' email: advocacystrategy@aol.com
 - Kevin's email: justice@eldercarerights.org

Requests to Present on our VAA Stakeholder Work

- Iris presenting for Mpls/St. Paul Senior Workers Association
 - not Seniors and Workers for Quality
- Mark Wandersee speaking with the MNLCOA (??)
 - VAN Meeting on January 13, 2009
- New page (soon to be seen on the Wiki) for Presentation Materials
 - PowerPoints with information
 - Statistics from work put forth thus far
- assist with community organization
- tracking these meetings and who all is hearing our "message"
- also, a sign-up sheet to send information to interested members
- Wiki site also is public (no password needed), so direct people to it
 - Address: <http://mnvac.pbwiki.com>
- any requests for presentations, please try to copy Iris on the email to assist in her in her "glue" function for this group (somewhat trying to coordinate.... ☺)

Albert Lea – Good Samaritan Nursing Home Case

- county level prosecution of two of those staff members (one age 19, one age 18)
 - 5th Degree Assault which include fines and potential probation
- several other staff members (aged 17 and younger) not criminally tried as they are juveniles (Family Court/Juvenile Court taking those cases)
- 15 victimized residents, 3 of which have passed away
- some agencies requested to provide statements regarding the incident
- OHFC Report

- maltreatment was substantiated (no facility culpability though)
- taking a backseat as criminal charges are pending
- removal of licensure for the charged workers (workers challenging this)
- questions coming in as to how many high-school aged workers exist in nursing homes across the state (Aging Services receiving these requests for info)
- Sheila Gast conservatorship case (she cannot be appointed conservator anymore pursuant to a court order)
 - false representation case

Need for Future Meetings

- Any meeting needed before the 19th? Any before the legislative session?
- Anything that we can accomplish via email notifications?
- Proposed language from CCS will be submitted ASAP to the LWG members
- What group of individuals will be doing the legwork at the Capitol
 - Lobbying Team meet periodically to discuss strategy and make updates
 - Request going out to the Large Group VAA Stakeholders for those interested in helping lobby at the Capitol and assist as needed
- List of involved agencies/resources/organizations may be modified at some point pending letters of support that may be forthcoming
- First full week of January for next LWG Meeting