

MNVAC Meeting Minutes
William Mitchell College of Law
Saint Paul, Minnesota
April 18, 2008
12:30 pm – 4:30 pm

Feedback Tool Presentation (Kevin Hansen)

- Facilitate work of subcommittees;
- Where subcommittees are seeing the gaps and voids;
- Who would subcommittees like to survey;
- 1995: law enforcement, private industry, care facilities, consumer advocates, attorneys on government side.
- Online survey this time and only one survey where each participant can tell where they're coming from (advocate, law enforcement, etc.)
- Reading through of survey mission and description of each subcommittee's mission.
- Snap survey is what will be used (free of charge).
- Post on wiki?

Investigations Committee (Carmen Castaneda)

- Identified what issues committee does want to study and which ones are not feasible.
- Read presentation handout.
- Q&A:
 - Item (g): As soon as lead agency is dealing with allegations, that alleged abuser has been terminated, they end their investigation, and that allows that person to get into another job. This is a gap in the application of the statute.
 - DHS says that they continue investigating but it does become a lower priority. If another background study comes up with that person's name on it, DHS sees it as a red flag.
 - Other states have used this flagging system and it doesn't affect due process rights: it states a fact that a person is being investigating.
 - We should write law as it should be written with full resources. If we think investigations are important then funding should not be the decision why we continue investigations.
 - Couldn't some of this be done during reference checks? Currently employers can't make a statement about the behavior they just confirm that the person was employed here.
 - Committee confirms to put this back for consideration.

Education & Training Committee (Jennifer Kirchen)

- There aren't a lot for major areas of change other than a reordering.
- All players being fully responsible for education.
- Presentation:

- 3 trainings annually instead of 1 in subdivision 9e
- Funding is a huge issue when it comes to education so asking for something similar to child protection. Ask for actual trainers from state for education.
- Common entry point training.
- Q&A:
 - Absent federal dollars (how the child protection trainer is funded) we would have to ask for considerably less in order for state to consider funding.
 - The current statute as written is not being complied with. How can we get compliance with something that's already being mandated? Funding issue.
 - DHS investigators receive more training but there isn't a lot of joint training out there.
 - Area on Aging also does give some funding as well.
 - Data collection (relatively inexpensive and could be justified in arguing for more funding). Perhaps we should be looking at what kind of data is important to know. How many reports lead agencies would like to investigate but they can't.
 - DHS does have a SSIS database that will have data collected from the CEP that will be directly transmitted to DHS and will give us accurate numbers.
 - Some of the training after 95 changes in statute was given to people that have now retired. In 2002 there were lost years of training after funding was cut down drastically.
 - All of the trade associations have all done over past 14 years a substantial amount of training on VAA and its members get credit for that. Is there a way that counties could participate and get certification after taking VAA training courses (considering that the courses are pre-approved). Would require collaboration between MDH and DHS.
 - Have we addressed community aspect of it, such as the PCAs? This is issue (h) on education and training spreadsheet. Any core curriculum for PCAs that have the VAA in it? Currently DHS offers training on monthly basis for PCOs but currently DHS is considering creating a video that would be available for providers to show PCAs when they employ them. One of the issues is language.
 - What about training of family caregivers or other kinds of caregivers? What kind of criteria or education do those people need to have in order to receive funding? The marketplace is really large right now. It may be addressed in the rule of the law around homecare providers and there are exceptions like if you're providing care for one person and you don't need to be licensed. There are people doing homecare that aren't protected by licensure in homecare provider act.
 - What about Subd. 9e(b): who are the "others" being educated? It seemingly means nothing. Do we tighten it up? Others isn't defined in

statute so we'd have to define it. Do we have to train agencies, etc? Who is training for? It is compelled currently.

- Committee will look at 9e(b) again to see if it can be tightened and defined. Look at whether it should be pulled out or given meaning.

Break

Protections Committee (Wendy Weidner)

- Raised more questions than we answered and need some ideas as to where other committees are going and see where we're going.
- Presentation:
 - For issue (a) we just looked at the definitions of facilities.
 - For issue (b) we left to wayside until clarification.
 - Issue (d) we'd need to have discussion with Definitions and Scope of Statute about POAs and PCAs. What can we put in statute such as preventing people from inheriting after being convicted.
 - (e) we discussed and not sure it was something we wanted to address. News media seems to handle that on its own and of course there is a resource issue.
 - (f) has already been planned and is beginning so left that alone.
 - (g) needs defining of "unbefriended" or "invisible"
 - Committee needs to keep plugging away at it and look at what other committees have come up with to determine where committee should spend time tweaking.
 - Committee did not prioritize.
- Q&A:
 - (e) should be re-examined. Currently there are no immediate reactions to "wandering elders". Especially people suffering from early onset dementia that do need more awareness. Perhaps changing missing person police policy about making an exception to waiting 24 hours for a missing person report/declaration for people with dementia or vulnerable adults. There are also more and more people with traumatic brain injuries. Perhaps if someone would fall under definition of vulnerable adult then waive the 24 hour wait period.
 - Amber Alert may not be right avenue as that is criminally based.
 - Also there's a Code Adam for stores where they lock down exits and entrances to stores when a child is missing.
 - In terms of (d), how do you enforce PoA prohibitions? There will be lots of push back on that, with requiring background checks when you don't need an attorney to set up a PoA. There is a due process concern if you're looking at an adult protection determination as they have a different standard. If we're going to come up with system that this law from a caregiver law to a community law than addressing financial exploitation and PoAs is essential.
 - There could be a system that would meet due process requirements.

- Develop a constructive trust.
- There could also be Expungement rights (as in New Hampshire).
- How long would it take to get a finding of financial exploitation if there is a statutory hearing scheme? We don't want it to take 18 months to get results of investigation.
- Attorney's fees if you win to give incentives. A new civil action that doesn't exist. A new section somewhere else (wouldn't be in VAA). Scope of Statute should examine this issue.
- A lot of appeal rights for alleged perpetrators but little or no appeal rights to victim. What's missing in current system are enforcement capabilities.
- Conservators and Guardians do get background checks for substantiated decisions. That doesn't automatically disqualify candidates, it goes to courts for consideration.

Scope of Statute Committee (Deb Peterson)

- Presentation and Q&A combined:
 - (a): philosophy this year not to introduce legislation that requires fiscal note. This session a bill was introduced had to do with financial exploitation, redefining a fiduciary and that's stuck in committee and hasn't come out.
 - (b) is statutory and parallels theft by false representation and theft by swindle. AG's office didn't introduce legislation on this topic this session because it would require a fiscal note.
 - (c): there should be difference between criminal fraud and civil fraud so committee decided to leave this out.
 - (e) sounds similar to child mortality review panel where you sit through process of investigation.
 - Review panel enacted in 2002.
 - This panel should be eliminated entirely. It's an administrative agency type statute and if the agencies determined that there isn't a reason for maltreatment that should be the end of it.
 - If there's a concern about disparity about appeal rights Jerry Kerber would like to go on record for decreasing rights of perpetrators.
 - Jennifer Kirchen does think eliminating panel may be okay but cutting down appeal rights of victims and perpetrators would be dangerous.
 - Review panel is inefficient so what about getting system in place that works for the victim.
 - You can have finding of financial exploitation or abuse and that's the last thing that happens. In child abuse situation things are at stake that keep bringing court into issue. If you're not a licensed provider and there's a substantiated finding of abuse and it's been stopped then that's usually it unless victim takes it to civil court.
 - Many vulnerable adults couldn't request this panel review.

- (j): some states have voluntary reporting for financial institutions. It's appropriate in those states for them to release that information to law enforcement agencies. This one was a huge focus for committee.
 - Drug counselors violate federal law if they do not have informed consent of person they're representing to report vulnerable adult abuse.
 - Confusion between federal and state law and how that can be addressed.
- Shortage of resources for VAs in community and focus of committee was on this group of adults. There are a finite amount of resources so perhaps taking licensed providers out of statute that already have fines and criminal sanctions pressed upon them in federal statute.
- Financial exploitation is what committee is focusing on including heightened penalties and a separate system. What about putting a TRO or HRO? Freeze assets and then have due process after that.

Reporting Committee

- Presentation:
 - Should (a) be shifted to definitions?
 - (b) is unclear
 - (c): APS should be made aware of emergency guardianship filings. Perhaps scope of statute should look at this one?
 - In other settings if person commits allegations of maltreatment, a county that is overloaded can ask AGs office to take case. Does this happen with financial exploitation cases? AG does take these kinds of cases.
 - (d) should be pulled into scope of statute committee. If counties substantiate maltreatment, when a background study is done on PCA then that PCA is disqualified. Problem is getting into community based care where there's not connection to the system.
 - (e) seems more like a training continuity issue and some of this will flesh itself out with SSIS process as well. Worthy of examination also.
 - Sharing information with tribal social services, Indian hospital, and counties is a major problem. Many Tribes are very protective of information. Counties won't often touch tribal issues because of lack of sharing information. Working to get information sharing between Tribes is crucial and an entirely different issue. That requires understanding of Tribal sovereignty issues.
 - Adult Protection Team statute has been helpful and developing those teams in counties with Tribes has sometimes worked well.
 - State can't mandate Tribes to cooperate and it's an important policy that maybe doesn't belong in VAA.
 - Perhaps Scope of Statute can urge cooperation between Tribes and APS.
 - (f) requires continuity in definitions. If there are good definitions then it's clear what is or is not maltreatment. That can be looked at through definitions committee.

- (g) was examined in investigations committee.
- Ongoing current investigation does not stop obligation to report externally. Fact that internal investigation is continuing has no bearing on reporting to external authorities. Perhaps that needs to be clarified.

Definitions Committee (Barb Doherty)

- Presentation:
 - (b) is not about committee definitional charge.
 - (e) is not feasible
 - Handout will be available on wiki site.
 - Definition of abuse alterations: clarify intent of statute. Eliminated intent for sexual or criminal abuse. Also language about Expungement of convictions. More references to reasonable persons standard re: emotional abuse.
 - Caregiver: included people in community by adding “services provided”.
 - Committee did not address definition of facility.
 - Financial exploitation: committee wanted to piggy back on language in Senate Bill that’s sitting in committee so want to take that language and plug into statute.
 - No firm conclusions on including ALFs in definitions.
 - Really taking a hard look at language used by other states for mandated reporters, particularly looking at financial institutions.
 - Self-neglect: required clarification.
 - Report: discussion of issue of what reporter knew at time report was made.
 - Definition of vulnerable adult: not having such a strong emphasis on only inpatient but expanding range of persons that are receiving at home services.
 - Discussed the parallels and difficulties with new CMS regulations and how that will affect everything in definitions and requirements for reporting. Should CEP be only based on community cases?
- Q&A:
 - Informal caregiver plugged into definition? Committee did not use word informal in it. Training issue because an informal person can fall into this caregiver category.
 - CEP: implementing language that implied CEP should receive all those calls from counties? When there is a report of maltreatment and CEP report is warranted, counties should be mandated to take those reports.
 - This isn’t a change, simply an enforcement of what’s in statute so perhaps stronger language.
 - If the phone calls that come in and CEP person makes an error and says it’s not maltreatment then that call is gone forever and we’ll never know what the rate is on the number of calls (implies a training issue is involved) not being officially reported.
 - It’s a budget issue.
 - Some states use one phone number across state that goes to one entry point.

- What about having three different CEPs following the lead agencies. If your entity as lead agency is under DHS then you telephone them, if it's Adult Protection then you telephone county, then if your lead agency is under Health Department than you telephone them.
 - Problem is that people often don't know who regulates them.
 - In every facility there is one CEP number and in this case it would just be a different number.
 - Who facility calls to complain could be printed on license.
 - 87 county numbers developed to keep local incidents with local investigators, etc. In 1995 reform counties felt strongly about keeping things local.
- Group should consider a centralized reporting system. Other states then spit out report to applicable county for investigation.
- There is current legislation taking facilities out that deal with sexual offenders.
- Under self-neglect, in order for this to occur there has to be incapacity on part of adult. Perhaps there should be clarification for autonomy and decisions made by a capable adult. Key to self-neglect is that you're making decisions without capacity to understand the consequences. Perhaps further research on how other states define self-neglect.
- Removing inpatient requirement makes a lot of vulnerable adults. By taking out inpatient, person getting chemical treatment on outpatient basis is then a vulnerable adult.

CMS and Minnesota's VAA

- 45 days ago it became clear CMS wasn't happy with investigation and reporting of maltreatment.
 - In past CMS was comfortable that when mandated reporter or nursing facility reported to CEP, they fulfilled their federal obligations. Prior to this implementation there was concern that some people were falling through cracks.
 - What's happened lately is that federal government forced MDH to act quickly to fall in line with CMS. Now there's a dual process of reporting. Facilities must make telephone call under state statute to CEP to do that and also write up a report to meet CMS requirements.
- Handout will be posted on wiki site.
- Do we want subcommittee that specifically looks at this? How do we make process more efficient for compliance with state and federal statute?
- Is this time to pull nursing facilities out of VAA? If you were just to go with federal system, facilities would lose protection of use of therapeutic conduct and accidents so they must report more things. What they would lose also would be for them to be mandated reporters for financial exploitation because federal definitions don't require them to report that currently. Other side of this is that if you were to pull nursing facilities out of VAA system you would clear up a lot of CEP and county time.

- Both definitions (state and federal) are different which create different standards. Unexplained injuries are clearer under federal regulations and under VAA if there's a bruise you have to report it. Maltreatment definition is different at state level and federal level.
- Currently right now for same event, facilities must do two reports which results CEP to take down oral report, which may not be as thorough as CMS report.
- Difficult and risky for nursing facilities to have two reporting systems. Can't submit any providers with two different systems and expect it to go smoothly. If MDH agrees that CMS is right about this then nursing facilities should be pulled out of VAA.
- Nursing home, Medicare and Medicaid receiving facilities all fall under this. ICFs are not covered by this.
- CMS was particularly critical of VAA system, this is problem specific to Minnesota even though past 15 years it has been fine.
- Look at the two forms (CMS and CEP) and seeing what the differences are. Perhaps looking at changing how report under VAA can be made (oral or written rather than just oral).
- We should look at what the downside of pulling facilities out? There won't be one centralized data collection system.
- We'll establish a date and gather participants to look at this issue.

Outside Facilitator Funding

- Does group want to provide funding for facilitator?

There will be another large group meeting in June. Date to be decided later.