

# Meeting Notes - VAA Stakeholders

## February 15, 2008

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- Attendees: Mark Wandersee (ECRA), Roberta Opheim (Ombudsman for Mental Health/DD/Chemically Dependent), Arlene Wegener (Ombudsman), Carmen Castaneda (Hennepin Cty APS), Janet Reigstad (Stearns - MACSSA), Sheri Hansen (LqP Cty. Social Worker), Wendy Weidner (Ombudsman – LTC), Jan Sinna (MNALL), Barb Doherty (MNALL), Jennifer Kirchen (DHS - APS), Deb Siebenaler (DHS – APS), Kris/Sue/Arnie/et. al (OHFC), Maura McNellis-Kubat (DHS), Britt Lindsay (MN Disability Law Center – Ann Henry), Sonja Larson (ECRA), Doug Beardsley (Care Providers), Sue Voight (VKR Law Firm), Sam Orbovich (Orbovich & Gardner), Darrell Shreve (MHHA), Jon Lips (MN Care Providers), Kim Dayton (Prof. at Mitchell), Kevin and Alicia (ECRA and Wm. Mitchell), Dave Hall (Cty Social Worker – Carlton Cty (MACSSA)), Randy Snyder (BENHA), Eric Jonsgaard (LSS – Guardianship Program), Deb Peterson (Atty. General’s Office – Medicaid/MA fraud), Tara Widner (SteelWorkers Union), Kevin Nendick (President of United SteelWorkers Union), Cathy Warner (United SteelWorkers Union), Jane Ochrymowycz (Alzheimer’s Association – MN/ND Chapter), Mary Brown (ECRA), Harbir Kaur (ECRA), Deb Tulloch (APS – Washington Cty.), Barb Jacobson (ARRM), Paul Blom (Right at Home: Community-Based In-Home Services), Greg Marita (Legal Aid Society of Minneapolis), Pam Zimmerman (Senior Linkage Line), Heidi Holste (AARP)

- review of the Stakeholder Goals document (Improvements for 2009 Legislative Session)

- review for the VAA
- MN response system for victims
- increase in training/recognition of warning signs
- what are the priorities?

- Documents to add to Wiki:

- testimony from legislative sessions (1995)
- MN VAA Outline for Reform: February 1994

### Review of Excel Spreadsheet: VAA Categories/Goals

- Categories

- 1) - Education and Training
- 2) - Protections Against Injury/Maintain Autonomy
- 3) - Reporting Criteria/Definitions/Processes

- Reporting Group, Processes Group, Definitions Group (split them up for ease of subcommittee work)

- rename = Reporting: Criteria, Definitions, and Investigations

- “Process” inherent within all three?

- clarity with respect to Cty. Gov't and State Gov't roles within situations

  - duplication of effort vs. gaps

- Remedies: statutory definition side? Part of the investigations?

- Reporting Criteria and Definitions as one group in and of itself

- exceptions in the law for reporting (grown over last 12-14 years, different than 1995)

  - intricacies in the reporting structure that currently exists in MN now

4) - Increased Scope of Statutes

- Amendments to Statutes as an outcome/result from this group (existing criminal sanctions pursuant to MN Statutes)

- combine Categories 3 and 4 into new categories (modify titles, create new groups for the concerns therein?)

  - are the goals of definitions similar to changing current statutes?

5) - Overall Concerns

- public buy-in "It is the public policy of this state to protect Vulnerable Adults..."

  - PR campaign/public policy arguments

  - similar to approach for child welfare (equal level of public support)

  - allocation of funds for elder protection vs. child protection/DV

  - changing the mindset of Minnesotans

- clearing the muddy waters (providing greater clarity to the statutes)

- working with Tribes (CEPs) and whom else perhaps to invite to Stakeholder Meetings

- determination of something being addressed in current legislative work, tabled for a later legislative session, dropped altogether or addressed in a non-legislative manner? (determination about this discussed during Stakeholder meetings)

- reporting, adult protection, investigation (per interpretation of the current statutes)
- corresponding rule (published in 1982 when the statute published in 1981)
  - directive for counties, when looking at the statute, need to look at the rule (list as a corresponding document)
  - comments to the statutes (notes from the legislative sessions)
  - finding clarity among who can address a situation or communication between lead agencies
  - a lot more living situation types than in the 80s and 90s (more situations for VAs, who oversees each new type?)
    - framework we have now doesn't cover all instances of conduct
    - new system not operating the way it's supposed to, right now (original intent of legislature?)

### Subcommittee Work

- fleshing out assigned topics (don't want to get overwhelmed, division of work and topics)
- brainstorming/work/meetings with results brought back to the large group for discussion/changes/etc.
  - small groups: Point Person? Co-Chair?
  - division of those with new perspectives and those with plenty of experience
- survey to all counties and many providers as to what are really the problems they see
  - three government groups that would work with response from the county level
- have a subcommittee to determine what information is lacking, to submit via survey
  - Deb Siebenaler (Co-Chair), Harbir Kaur (Co-Chair), Kevin Hansen
- investigators in licensing and investigators in health (getting lead agencies involved as well as getting the Tribes involved too)
- New Categories for the VAA Spreadsheet

- Kevin Nendick (Chair), Mary Brown, Sheri Hansen, Darrell Shreve, someone from OHFC ?

## 2 – Investigations

- Janet Reigstad, Carmen Castaneda, Randy Snyder, Tara Widner, Maura McNellis-Kubat

## 3 – Definitions

- Sam Orbovich, Jennifer Kirchen, Barb Doherty, Maura McNellis-Kubat, Doug Beardsley, Deb Tulloch

## 4 - Increased Scope of Statutes

- Deb Peterson (Co-Chair), Sue Voigt (Co-Chair), Kevin Hansen

## 5 - Protections Against Injury and to Maintain Autonomy

- Heidi Holste, Britt Lindsay, Arlene Wegener, Barb Jacobson, Wendy Weidner

## 6 - Education and Training

- Harbir Kaur (Co-Chair), Jennifer Kirchen (Co-Chair), Jane Ochrymowycz, Mary Brown, Cathy Warner, Barb Doherty, Paul Blom, Pam Zimmerman

- committees further flesh out what was developed in the VAA Excel Spreadsheet

- prioritize items with category to bring back to the large group

- ensure that there are no gaps within the category

- sub-committees meet within the next 6 weeks to work on their project

## Process for Progress

- consensus pieces, different interests with groups that may be present with the Stakeholders

- 1995 Process: many Stakeholders actually funded an independent mediator and facilitator (Gary Stern, Wilder Foundation) who had no knowledge of anything and could keep people honest. Each meeting would have an agenda to break down a specific topic for each session. Gary would make certain everyone had an opportunity to speak, and silence those who need to be silenced.

- Collectively, as Stakeholders, to pull together funding to create an independent facilitator

- Gary Weissman, ADR Instructor to possibly help facilitate this time (experience with mediation, negotiation, and arbitration)
- participatory working group (monitoring the attachment of various Group names that are participating in the Statutory Reform for legislation)
  - name use when final document is ready; groups signing onto that pending approval/consensus
- determining what participating group will be most effective for carrying proposals forward

### Reforming the VAA Spreadsheet

- clear definitions of what is abuse, what is neglect, what is reportable
  - Education category
- who investigates (internal or an outside agency)
  - Education category
- no standardization for reporting/investigating (for all 87 counties and how it's done across the board)
- financial exploitation arena
  - article from Star Tribune (high percentage of family members doing the abuse)
  - lack of judicial understanding? Education? (Judge found the statute unconstitutionally vague...)
  - definition of "fiduciary obligation defined elsewhere in law" including fiduciary to encompass joint tenant for property documents, checking accounts, or other financial documents
    - family members getting on the bank account and draining the VA/elderly person's resources
- increasing the penalty/revision to theft statutes (August 2007)
  - felony theft over \$1K
  - financial exploitation: over/under \$5K
  - financial exploitation over \$35K with same criminal liability as theft by false rep., theft by swindle, corporate theft (Minn. Stat. 628.26 statute of limitation changed to 5 years instead of 3 years due to the timeframe of amassing that amount of money)

- reference Minn. Stat. 609.52 subd. 3(1) for theft over \$35K
- Category 4: LSS end of the process as guardian/conservator, so increase power to sue and recapture money for the VA/elderly person (civil remedies for guardian/conservator)
- don't want to criminalize human error, but hold people accountable (coaching and counseling for possible errors)
  - process-type fix (implementation of accountability)
- people sign up a family member for MA, person has monies spent other than for the person's care (ignorance) and Feds/State pays much more for LTC needs (investigation by counties and the financial strain therefrom (saving dollars); families not knowing...educating financial workers and getting info to families of and the VAs themselves)
- gray area of lead agencies: who takes the reigns?
  - delegating authority?
- counties without an APS social worker designated
  - increasing the source of funding to provide services (so much financial exploitation (hardship waivers, guardian appointments, unnecessary expenses that could be spent more wisely elsewhere)
- taxpayers are not benefited by underfunding necessary programs (disproportionate allocation of funding to children's services)
- financial exploitation: constant issue
- diversity of the PCAs
  - education efforts: thought and efforts tailored to fit the sub-populations and different needs of that group
- financial exploitation
  - control over a VA/elderly person and not wanting to
  - lack of clarity of what SHOULD be reported and what MUST be reported (mandated reporters or not)
- protecting without undermining the autonomy of those using housing with services (autonomy and ability to control one's own affairs with as little intrusion as possible)
- decision by Ct. of Appeals (Staley, 2007 case)
  - changing of the law should reverse that opinion: they are wrong
  - the court enraged many people

- the court reversed the disqualification of the person who committed the behavior against the facility, no one wants that person in the workforce and provider gets civil immunity from firing a person who is disqualified from providing services
- check on Westlaw to read it
- financial exploitation
  - Case: County decided not to prosecute the nephew of an uncle in a facility. Nephew refused to pay bills and left with all of uncle's money. District Ct and Ct of Appeals held nephew personally liable for amounts of bill and attorney's fees as well.
- administrative remedy against families who abuse power over another individual (guardianship, conservatorship, POA, etc.)
  - if you have POA over VA/Elderly person and leave with \$\$ and not pay bills
    - state should use revenue recapture act, take a tax refund back from that bad person and give the money to the MA program or care facility
    - going after perpetrator, not the victim of the perpetrator
- banker who knows that a client is emptying a bank account for someone else
  - provider law to "anyone-who-can-abuse" law (community law)
  - CMS has many sanctions and remedies against Nursing Homes than in previous years ... more of a protect-from-family/community/individual members rather than protecting from nursing home admin/staff
- provider perspective
  - look at the definitions in the law
  - facility/provider focused law right now, change to deal with the increased amount of community services provided now
  - conflicts between state and federal laws
    - personally liability or not, i.e. (definitions)
    - clarify role of responsible party over a VA/Elderly Person whether guardianship/conservatorship/POA or a community-based service provider)
- look at definitions for therapeutic conduct
  - what is reportable (clients reporting every bruise to sheriff, and nothing is happening from that)

- financial exploitation

- county attorneys without time/resources/inclination to prosecute those cases (enhanced penalties can only go so far...)

- must have an investigation done to proceed for the county attorney; education for the law enforcement to help build a case to proceed upon

- roving team: Go Go Elder Justice Squad!

- looking at ageism (financially exploited adult is lower on the totem pole than rape/murder...bringing this issue to their attention)

- provider piece: difficult position for them (VA caseworkers have issues saying it's an issue until the victim is put in a precarious position) ... create a hardship first before a hardship waiver can be obtained on behalf of the VA/Elderly person

- **WHEN** is it financial exploitation ... define better/more clearly?

- why is the provider the enforcer and the one who makes that determination

- making sure we examine balancing protecting people with their ability to have rights/risks for living in the community

- providers seeing the point of putting people in plastic bubbles and being accountable when it bursts

- when people have created problem with a provider, but not to the point of court intervention

- needing a system or a better system to track bad care providers from working with another provider (background checks, pulling their number)

- maintaining the investigation of a person (someone would then be disqualified from providing service, and marked in a system)

- reports made

- providers aren't always given information (receipt of privileged information when a perpetrator is within a care facility)

- investigations against employee but can't suspend or terminate an employee pending the result of the investigation

- education: fixing the disconnect in implementation of this (can provide name of investigated person to facility/service provider)

- licensed facilities

- working with the facility and working for a private party on the side (system isn't foolproof enough)



- Definitions (Section 3)
  - clarifying how an investigation is conducted: resource issue
  - counties have discretion for what they can/can't take (financial resources)
- financial exploitation
  - duress, coercion (for a non-fiduciary person)
  - leaves too much open
  - depends on victim's level of cognizance
- creating a team with law enforcement (interdisciplinary)
  - education law enforcement AND county attorneys
  - reducing motivation from futility of efforts
  - training and awareness
- clarify definitions (really...)
- standardizing the process (same in every county)
- transparency to the process
  - guardian alerted right away (family member involvement)
  - shorten the timeline (evidence still there, memory still there, people still around, information still available)
- education
  - better way to educate family members/guardians as to what is abuse/neglect/exploitation, civil remedies, criminal penalties, where to go (whom to go to), what to do (actions to file, what their rights are)
  - resources available
  - educating providers as to what NOT to do (what the penalties can be for the offense)
- financial exploitation
  - 1994/1995: organization/group adverse to this were elder law attorneys and estate planning attorneys
  - hesitant for the processes/implementations enacted
- Ct. of Appeals after *Staley* (2007)

- more favorable to the VA protections/rights
  - *Klevin* case
- rights when talking to consumer
  - 7 different Bills of Rights
  - VA should be more consumer-friendly
- perpetrators bouncing around from one provider to another (getting that person permanently out of the system)
- public policy arguments/issue
  - education on maltreatment: what it is, educating and resources put toward working with counties (lots of duties and responsibilities but not a lot of power to do what they need to do (or finances))
  - what is needed for a team? What should be mandated for a team? Putting power and finances forward to assist with enforcement of the duties/laws as written
  - alternative education (for counties) and extend that by possibly obtaining grants
  - CEP: streamlining intake of maltreatment reports (promote a higher level of consistency)
  - AARP: resources/funding to help with a campaign?
    - connections from them as well
- standardization: county and local levels
  - system information system, used for child welfare, can now use for adult protection (all the counties in MN)
  - standardized reporting of CEP reporting, reporting to lead agency, investigations (notices to victim/perp/facility)
  - alleviate some of the concerns addressed (state-wide system, but counties will own their own data to present to county boards to levy for more funding)
- training county personnel
  - huge amounts of staff turnover in APS
  - staff having access to basic information on an annual basis
  - training for counties on Atty. General's office as a resource for prosecution (out-state counties don't always have the resources needed)

- community issues

- lots of rules and regulations for those in the community (money from waiver programs)

- need to improve on the front-end planning for people receiving services in the community (background checks)

- advanced health care directives (for those receiving public \$\$) ... safety plan that addresses domestic abuse/sexual assault within family unit

- family's ability to handle potential affairs down the road (appointment of individuals with substitute-decision making power)

- education

- training for sexual abuse/DV of an elderly person/VA

- persons providing services need to be trained to recognize the dynamics of domestic abuse/sexual assault

- currently no funding for evaluating services provided or a study for how effective the services are that are being provided

- funding for admin/study/evaluative projects

- public policy: where are our values? Evenly distributed?

- education

- consumer/family: taking on fiduciary obligations (financial exploitation)

- educating attorneys/law enforcement (forensic accountants)

- criminal vs. civil (penalties/remedies/causes of action)

- changing the title of the complete act itself

- VAPA pre-1995, VAA post-1995

- VAA modeled on child protection acts (reconciliation with family members/structures)

- "Crimes Against Vulnerable Persons" (CAVP) or "Crimes Against the Elderly Act" (CAEA)

- not everything that happens is a crime, but many things are...

- caution in labeling (intent is important for many of the issues dealt with under the current VAA)

- more inclusive with criminal and/or civil aspects

- definition of a vulnerable adult for law enforcement purposes?
  - education component for this
- POA: consequences
  - penalties for perpetrators (defining penalties, how a person abusing a POA is held accountable, ending a POA (revocation), enacting a new POA)
    - principal has the obligation, if revoking a POA, to notify those necessary parties (unless the POA document specifically limits the power to a certain timeframe)
  - background checks for individuals exercising control over another person (especially a VA)
- training for law enforcement
  - not knowing how to put a hold on someone, then refusing to do so after that
  - financial considerations to compensate guardians/conservators appointed by the court
  - funding to allow mothers/social workers to go the extra mile with cases if they feel it necessary
- responding to a report and offering protective services to a VA
  - advocating for an elderly person/VA to stay in an unsafe situation if it is their choice to do so
  - community inquiry as to why behaviors are allowed
  - self-determination (eccentricity vs. self-neglect?)
- training social services in investigatory skills
  - how to ask questions, document information, forensic accountant training (follow the money)
- investigations in a facility
  - employment is meaningful to an employee in a facility, but their role as a community services provider as a second role/employment isn't as substantial to take away (??)
- Courts: level of understanding?
  - educate judges/courts/court of appeals/etc.
  - understanding dynamics of abuse/family relationships

- expert witnesses to assist with this (amicus brief?)
- ability to be informed: VA/elderly person
- family members/care providers need to be informed about the law and also what “proper” care is for that person
  - choices/eccentricity vs. self-neglect (difficult line to draw)
  - can the person make their own decisions?
  - careful observation/investigation over a period of time (making the effort, when possible, to do a very detailed analysis)
- funding, funding, funding, funding, funding, funding, funding
  - Federal resources to help the states out
- HMO (client that has to have homemaker services)
  - HMO will not provide services until she gets a psych assessment (person afraid she will be committed, so she refuses)
- prioritizing where services go/to whom services go to allocate the funding within an organization
- MAKING BANKERS MANDATED REPORTERS
- clarify the language of the VAA to improve understanding of the duties counties are obligated to perform
- transportation: mandated reporters?
  - transportation workers; health providers
- people who have capacity
  - cannot legislate values/morals
  - choices, choices, choices ... respect autonomy/eccentricity
- education and training
  - people who say the CEP won't accept a report or investigate (people don't understand; need explanations for public)
- WHEN is it financial exploitation?
  - what are the criteria definitions? Qualifications for it?
- tighter prevention processes
  - a strong prevention rather than a strong response (or both...)

- educating the public about the position of the VA in society (how we treat that person...“invisible” elder or “unbefriended” elder)
  - who takes the report, does the investigation, etc.
  - what to do when someone who has a substitute-decision making power over someone abuses that power...educate the public
  - how we treat the VA/Elderly population in general
- education and training
  - limited/segmented
  - expand thinking to include people in the “gray” areas that we often forget about (those living out in the community)
  - VAs: mindset jumps to facilities
  - VA population and where they’re living, what services they get
- mandated training for persons providing services to those out in the community
  - over-reporting: trying to do the right thing, but resources are scarce (support them in their living preference)
- increase training
  - family caregivers
  - volunteer workers
- looking at diversity within the state and within communities
  - understanding cultural differences out there and ensuring the law is responsive to those concerns

NEXT MEETING:

- April 18<sup>th</sup> from 12:30-4:30pm
- Kelley Board Room, William Mitchell College of Law