

VAA Subcommittee on Investigations

April 7, 2008

9:00-10:30am

Minutes

Attendance:

- Carmen Castaneda (Hennepin County APS)
- Maura McNellis-Kubat (DHS – Licensing)
- Janet Reigstad – (Stearns – MACSSA)
- Randy Snyder (NH Board of Examiners)
- Alicia Jaworski (ECRA intern, scribe)

CC: Tasks of the group: go over all 9 items from category sheet and decide if we want to add more, delete some of them, and prioritize. We will apply a variety of criteria (see IIB of Agenda. We want to really look at whether any of them are viable for legislative action and make any suggestions as to how to proceed in making these changes. We finally need to look at what we want to say at the large group meeting.

Introduction of subcommittee members

CC: Before we start analysis of 9 items, does anyone have additional items that have come to your attention not on list that we should have. I have one. Just relevant to counties is the issue of jurisdiction. How do you determine jurisdiction for an investigation. Nothing in statute that says how you determine jurisdiction for investigations. Statute is absolutely silent on jurisdiction which is maybe a good thing. So one thing I'd like to add is point number 10: jurisdiction.

MMK: Issue (a): every time a statute gets re-examined, something comes up that is already required or dealt with. For example, it's required when investigation is completed, for us, we must issue a report and it's identified who to send it to.

CC: One problem is statute is written in a way when it doesn't apply to all of us.

MMK: It only says lead agency on things.

JR: Maybe it's something to bear in mind that we should make it clear.

CC: Issue (b): Seems like this is really two issues.

JR: Facilities do internal investigation and whatever they do with that doesn't really affect responsibility of lead agency in doing an investigation

MMK: DHS ensures that they did actually do an investigation.

MMK: Internal investigation requirements are clear here, there is potential secondary issue of employee misconduct and how employer handles that. DHS tries to stay out of that.

CC: sometimes it's an employee misconduct issue and not an abuse issue.

MMK: It's written like we do the internal and then there's an outside investigation which isn't true.

RS: Is there a problem in this area from your perspective?

MMK: Statute seems adequate in this area unless large group has different concerns.

JR: So action on this is to review the statute and rule this out.

CC: So we will go with (a) for discussion today and rule out (b).

MMK: Issue (c): I think there's room for discussion on this one.

JR: Issue of how we get financial records.

CC: Is our group willing to look at making banks mandated reporters? Is it part of definitions? More and more states are coming on to this. If we can get AG behind us (large group) it would really relieve people of some of the pressure to report on this. So we'll look at (c).

CC: Issue (d): When groups investigate, everyone pulls their own resources, you can't legislate it. It's discretionary based on finances of agency. You can't require or legislate this.

JR: there is a structure of collaboration inherent already with law enforcement.

CC: Let's rule out (d) because we can't fix this.

CC: (e)

RS: Is there duplicity in system now?

MMK: There were some overlaps (prior to 95 rewrite). But that change really largely took care of that.

JR: From small county perspective without the resources of larger counties, as you get smaller and smaller counties the ability to do an investigation and to that well. Remember that social workers are not trained to do an investigation particularly with financial stuff. I'm looking at (e) thinking instead of saving costs

we need to do more training and procedural expertise on doing investigations at the county level.

MMK: So real issue is that this is still an unfunded mandate.

JR: At county level, there's no discrete funding that comes for this service. It's part of a diminished grant, there's no specific pot of dollars to do investigations.

CC: Not one dollar of federal funding for adult protection. Real issue is educating and making this more effective.

JR: And to teach people how to conduct investigations that will stand up to appeal, stand up to court process.

MMK: To assure the validity.

CC: In statute we already have training requirements. It's already there so it's an issue of quality review that it's being done and well.

MMK: Issue really comes down to funding. I think (e) needs to come out. This really isn't...there isn't any revising or streamlining to reduce costs.

CC: If anything there aren't enough investigations going on in the counties. So (e) is going to be taken out.

MMK: Reading of Issue (f)

RS: You have absent owners who don't care about staffing so if (f) is talking about holding owners accountable that could be interesting.

CC: Isn't this a licensing issue really in dealing with internal investigations.

MMK: You have what's required in terms of licensing and then you also have the employer/employee relation.

CC: Public has right and interest in getting report to licensing agencies but does public have interest in how they internally investigate? Why should that come to VAA? Licensing laws yes.

JR: So this should be looked at under licensing rules instead of this.

RS: I think this is already here in statute.

JR: Maybe someone could research what is already going on with accountability in the facilities. Then we could report back to group about what is happening and the rules around licensing.

MMK: (b), (d), (e), (f) are already covered in statute.

MMK: Issue (g) when an investigation is being done that person is still being supervised throughout investigation.

JR: But you wouldn't know at county if person is being investigated in another place.

CC: This seems to go against due process rights.

RS: Nursing home assistant registry, is that where this is coming from?

MMK: People get on the nursing home assistant registry pretty fast if they're being investigated. What's actually written here can't be done.

CC: Let's take out (g).

MMK: reading Issue (h)

CC: I won't destroy stuff after 7 years if it keeps coming in. Each investigation changes the date. It's a clinical record with 47% of cases being self-neglect. DHS is misinterpreting it.

JR: Even if that's the personal file of a person we still have to destroy it after 7 years.

CC: We'll keep cases for years because they keep reopening. We don't go back and destroy original if we're still working on something new with the case.

JR: I understand concept that you may have a perpetrator (not self-neglect) and you've done several investigations you found were inconclusive and now you have another one, would all that past data help you add up to a case?

CC: Is that a problem for DHS? Do you want to have that data saved? This only applies to regulatory agencies.

MMK: If something additional occurs during that time period and seems to have substance that information would be identified in the file. At 4 years you can look at the whole file. How long do we want to hold people accountable for things that are unsubstantiated?

CC: Our attorney says that it's discretionary, they're guidelines.

JR: I think at some point if your data is so old that bringing it forward as a lynchpin on a substantiated finding just won't fly.

MMK: We'll decide to do an investigation of more recent incident if we see that there's a history there. We'll know that there were inconclusive findings four years out. At intake, one of things they do is look up history of facility. It's all on computers now.

CC: (h) is going to be taken out.

MMK: It's extremely clear what the destruction schedule is, it could conceivably be clarified as to who this applies to.

MMK: Issue (i)

CC: statute already allows for that. You can bring in experts to do this. APS team is discretionary and not mandated. It is best practice and state of the art.

AJ: 37 counties currently have inter-disciplinary teams.

JR: I think there needs to be more technical assistance to smaller counties as to what is best practice but in terms of legislation it's already there.

CC: I'll look up rule on this, outside expert stuff, and APS teams. This isn't mandatory and teams are already in statute.

(i) cut out.

CC: Does anyone want to return to jurisdiction?

MMK: This doesn't apply to us, but maybe another subcommittee could address the issue of sharing of information. It would be nice if right in the VAA there was authority to exchange or provide certain types of information.

JR: That's always been a confusing point to me, whether counties should notify various licensing boards.

MMK: Somewhere granting, in VAA, health boards access to all information except the reporter for unsubstantiated findings only. Could we add that to our list of tasks?

CC: We'd have to find out whom to exchange data with. Where would we put that in VAA? (To RS) is that something you'd like to handle?

RS: I think if we look at streamlining, I mean what are we hiding?

CC: Let's be clear about CEP data and that's confidential. Is that included?

MMK: For DHS it's the reporter. We give all the info except the reporter.

JR: I'm on page 6, Subd. 9(g).

CC: My concern is that if we make this so boards have everything in the file could the perpetrator eventually get the whole thing?

RS: Seems to me they could.

MMK: Maybe we should leave it alone. Reason it's done the way it is, is for different purposes.

CC: As we look at all the criteria and start to apply them, we know the trouble with getting into the VAA.

CC: OK, so we now have 3 items we have to apply the criteria to. (a), (c), and (j).

CC: (a), clarifying how investigation is conducted and communication when investigation is completed. It's in rule for us on all of this. Rule is so old, it should be updated. What we could say is that we should update the rule. Otherwise this would say we should be putting into statute exactly how the investigation should be done. I don't think we should put best practices in the statute.

MMK: Maltreatment of Minors includes some things like that. In that statute they have certain methods of investigations. We wouldn't have an objection to having some of those basics right in statute, like offering a face to face investigation.

CC: That's already in the rules, so perhaps we should bring it into the statute?

JR: The rule only applies to us?

MMK: If there's confusion about the rule then it would make sense to taking the most basic pieces that are least controversial and putting them in statute would make sense.

CC: We're going to need a lot of research on this. We'll consider bringing portions of DHS rules into the statute.

MMK: That's why I don't think it applies because it's an AP rule.

CC: Why don't we do this to the counties and not all investigatory bodies? Communication when investigation is completed is already in statute.

[Established: clarifying how an investigation is conducted, look at pulling rule into VAA]

CC: You can't legislate resources.

MMK: It is covered that we have to have priorities. I think we have to make our identified priorities accessible to people.

CC: I think we've already applied a lot of the considerations under IIB of Agenda. It's a package, communication already in statute, what will be investigated is already in the statute.

JR: I anticipate the large group will question what are the priorities of the lead agency. So perhaps we should come up with the priorities of all agencies.

CC: It's an administrative policy issue but it's better not to put stuff in the statute.

CC: (c): this seems to be another subcommittee's charge.

JR: we agree with concept of making bankers mandated reporters and allowing us to access their information.

MMK: We do better going to facility or family of records than getting records from law enforcement.

JR: The kinds of records we need, we don't get through the clause.

MMK: I think this clause is a holdover from 94 revisions.

MMK: Perhaps we should have Definitions look at banks at mandated reporters.

CC: Refer to increased scope of statutes in making banks mandated reporters. So (c) will be pushed out to another subcommittee.

CC: We should probably decide who will do research on what before large group meeting. I'll take (a) because that has the rule and stuff.

MMK: I'll just explain (f) to the group even though we're not going to go into it. Maybe for the ones we think are covered, we should explain that they're covered in statute and explain where.

CC: I can just put it in PowerPoint explaining what we did today. Getting quickly to jurisdiction, where do we put it? Should we give it to another subcommittee?

RS: Seems to fit into Definitions.

JR: At the very least it should be to the benefit of a resident of Minnesota. Then issue is whether they're a resident or MN or are they visiting?

RS: I think this would be really good subject matter to bring up at the large group for discussions.

Looking at request from survey subcommittee.

RS: I would assume concerns on jurisdiction would be state-wide. Also, the bankers as mandated reporters, is there significant need for that?

CC: So that's 2 questions: jurisdiction and banks as mandated reporters.

MMK: How do you get people to take a look at the statute before they take the survey? So maybe we should just ask that: have you read the VAA?

CC: Then we should have a follow up about applying it.

RS: Are there sections of it that you find confusing or are duplicates? Maybe we leave it open-ended.

Meeting adjourned.