

REPORT OF THE INVESTIGATIONS SUBCOMMITTEE
Vulnerable Adult Act Stakeholders Work Group
April 7, 2008

Task: *The charge of the Investigations Subcommittee was to review nine issues identified by the Vulnerable Adult Stakeholders Group; to prioritize and condense the issues; and of the remaining items, to analyze the feasibility of pursuing them and to make suggestions on how to proceed.*

Subcommittee Members: Carmen Castaneda (Co-Chair), Hennepin County Adult Protection Services; Maura McNellis-Kubat (Co-Chair, Department of Human Services Licensing Division; Janet Reigstad, Stearns County Human Services; Randy Snyder, Board of Examiners for Nursing Home Administrators; Tara Widner, United Steelworkers Union.

Issues for Analysis

a) Clarifying how an investigation is conducted, having communication when the investigation is completed, and clarify what will or will not be investigated (pursuant to CEP rules or any other pertinent organization)
b) Creating an identification process for when an internal investigation may cease and an outside group (OHFC, APS, etc.) should step in to further investigate and potentially bring charges against an individual or facility (or both)
c) Providing a mechanism for an outside group (APS, AG's Office, etc.) to access bank records when advocating on behalf of an individual (if not requiring banks to be mandated reporters); educating banks, allowing disclosure of information
d) Creating a structure of collaboration when multiple agencies become involved in a specific situation so one organization is not carrying entire financial burden of pursuing an investigation
e) Revising and streamlining investigatory processes such that costs saved could be more wisely spent elsewhere to provide services
f) Increase accountability among entities conducting internal investigations into allegations of abuse of a vulnerable adult
g) Enacting a "yellow flag" system for an individual who is currently under investigation but the investigation has not been resolved (important for moving around between employers and quality control)
h) Modifying the "date of destruction" so that unsubstantiated information is available for investigations that are possibly conducted at a later date
i) Possibly creating an inter-disciplinary investigation and enforcement team

Results

The Investigations Subcommittee recognized that opening the Vulnerable Adult Law for legislative action can be precarious work that should not be taken lightly. Proposed changes sometimes can bring unintended results that actually weaken protections for vulnerable adults, can create conflicting disparities with collateral statutes, and can be duplicative of statutory language that already exists. The Subcommittee, therefore, was satisfied with its work in ruling out seven of the nine proposals for legislative consideration. It was unanimous in its decision to pursue two remaining items.

Items Ruled Out by the Subcommittee as Not Viable for Legislative Action

b. *Identifying a process for when an internal investigation can stop and a lead investigative agency (OHFC, DHS, APS) takes over to investigate and/or seeks to bring criminal charges against an individual or facility.*

- This issue relating to the investigative process already is covered in the Vulnerable Adult Law. Minn. Stat. 626.557, Subd. 4a requires each facility “to establish and enforce an ongoing written procedure in compliance with applicable licensing rules to ensure that all cases of suspected maltreatment are reported.”
- Once an incident is reported to the Common Entry Point, the lead investigative agencies of Health, Human Services and Adult Protection Services independently make their own decisions whether or not to investigate. This decision is separate from an investigation performed by a facility and is not governed by the quality or results of the internal investigation.
- Law enforcement likewise independently makes its own decision based on laws and resources whether or not to investigate and to bring criminal charges.

d) *Have multiple agencies investigate a specific allegation and share the financial costs of the investigation.*

- This issue relating to the investigative process already is covered in the Vulnerable Adult Law
- Minn. Stat. 626,557, Subd. 9b provides for notification to law enforcement of vulnerable adult maltreatment reports if there is reason to believe a crime has been committed. It likewise requires each lead investigative agency to complete the investigation within its jurisdiction and to “cooperate and ... assist another agency upon request **within the limits of its resources and expertise**” and to exchange data as authorized by law. Finally, the lead investigative agency “shall obtain the results of any investigation conducted by law enforcement officials”.
- Each lead investigative agency is funded by different sources and will use its resources in unique ways to bring protection to the vulnerable adult.

e) *Revise and streamline the investigatory process so that costs realized in savings can be applied elsewhere to provide services.*

- It is difficult to legislate cost savings in investigations due to the unique aspects of each allegation and the resources that may be required to accomplish an effective intervention.
- The 1995 revisions to the Vulnerable Adult Law considerably streamlined investigations by clarifying jurisdictional responsibility and eliminating duplication of efforts between the three lead investigative agencies.
- Both the Vulnerable Adult Law and the DHS Protective Services Rule specify investigative activities that the lead agencies must perform. Any streamlining of these duties is a function of training and skill building for investigative staff.
- Separate funding streams of the lead investigative agencies may be limited to the performance of specific tasks of each agency and may not be eligible for use by another agency.

f) *Increase accountability among entities conducting internal investigations into allegations of abuse of a vulnerable adult.*

- The Vulnerable Adult Law regulates the performance of governmental agencies in conducting vulnerable adult maltreatment investigations.
- The internal investigative practices of facilities already are regulated by licensing laws.
- It would be duplicative to bring these standards into the Vulnerable Adult Law.

g) *Have a system to “flag” alleged perpetrators who may not yet have been substantiated for vulnerable adult maltreatment in order to alert prospective employers.*

- The Subcommittee did not endorse this proposal based on due process rights of individuals who may have allegations made against them. Until maltreatment allegations have been investigated and substantiated using preponderance of evidence standards, the protective services system should not treat the accused as “guilty”. Even persons who have been substantiated for maltreatment have certain further appeal rights to challenge these determinations.
- Licensing regulations can require that a person under investigation be supervised during the pendency of the investigation in order to protect facility residents.

h) *Modify the “date of destruction” so that unsubstantiated information is available for investigations that are conducted at a later date.*

- The statute lacks clarity as to whether or not the data destruction dates for completed investigations apply to county investigations. Minn. Stat. 626.557, Subd. 12b (d) references “data maintained ... by the commissioners of health and human services”. Does this mean OHFC and DHS Licensing, but not county adult protection programs?

- Adult Protection Services “investigates” cases of self-neglect where there is no second-party perpetrator involved. These cases tend to be clinical records that may be more similar to case management services than to investigations. DHS Bulletin #02-85-01 dated March 12, 2002 states that consumer records should be kept for at least “three years following termination of services”. This requirement conflicts with Minn. Stat. 626.557, Subd. 12b (d).
- For county self-neglect records, the classification of findings may not have any bearing on the clinical practice of serving that individual..

i) *Create an inter-disciplinary investigation and enforcement team.*

- This provision already is established in statute. Minn. Stat. 626.5571 allows counties discretionary authority to establish a multidisciplinary adult protection team comprised of the local social service agency, the county attorney, the county sheriff and representatives of health care and advocate groups.
- There are 37 counties in the State of Minnesota that have Adult Protection Teams.

Items Reviewed by the Subcommittee for Possible Legislative Action

a) *Clarify how an investigation is conducted, clarify what will or will not be investigated, and communicate the results of the investigation when completed.*

- Additional research is needed on this issue, especially a review of the Reporting of Maltreatment of Minors Act, Minn. Stat. 626.556 to see what specifications for conducting investigations are included.
- We could consider either updating the Protective Services Rule 9555.7300 or bringing some of its investigation requirements into the Vulnerable Adult Law. Because this Rule only affects County Adult Protection Programs, it does not regulate the other lead agencies of OHFC and DHS Licensing. Therefore, it may be more applicable to specify investigative requirements in the statute itself.
- The Subcommittee would like to pursue further research into the need for licensing boards to receive more information from lead investigative agencies. At this point, Minn. Stat. 626.557, Subd. 9c (g) allows the transmittal of a “summary of the investigative findings” of a lead agency to a licensing board. It does not allow the exchange of the actual investigative report. In some investigations, this may provide data on individuals unrelated to the action of the licensing board, so it may be too far reaching and unnecessary.

c) *Provide a mechanism for the lead investigative agencies to access bank records when conducting vulnerable adult maltreatment investigations, provide education to banks on maltreatment, and allow banks to disclose information.*

- The Investigations Subcommittee supports the strengthening of requirements on banks for disclosure of financial records that will assist in vulnerable adult maltreatment investigations.
- We defer to the two Subcommittees on Increased Scope of Statute and Definitions on their deliberations about making financial institutions mandatory reporters.