

July 25, 2008

**Scope of Statutes Subcommittee
July 18, 2008**

Reporting by Banks

Tess Rice, the general counsel of the Minnesota Bankers Association joined the subcommittee and described some of the activities undertaken by the MBA as part of a joint effort (beginning in 2005) with Hennepin County Attorney Amy Klobuchar's office to address financial exploitation of the elderly. These included a video, training materials, and CEP contact lists. She also shared that MBA has a project underway with the Department of Public Safety dealing with the prevention of lottery and sweepstakes fraud.

Rice also described two sections of state law that relate to banks and their responsibilities with respect to the records of their customers. Minnesota Statutes 13A.02 prohibits access to financial records by government authorities except in certain situations—e.g., the customer's consent, a search warrant, a judicial or administrative subpoena. Section 13A.04 provides financial institutions are not prohibited from notifying government agencies when the institution has information that may be relevant to an investigation and from providing access to relevant financial records. However, according to Ms. Rice, if someone outside of the financial institution identified financial exploitation and notifies the bank, the bank cannot disclose information under Section 13.04A.

Rice also indicated that banks are particularly worried about private causes of actions alleging a violation of the obligations to protect the privacy of the customer's financial records. She also indicated that her membership, which includes 96 percent of the banks in Minnesota, would be opposed to mandatory reporting, although Wells Fargo is implementing mandatory reporting for its banks in order to maintain internal consistence following California's enactment of a mandatory reporting statute. Wells Fargo is also using software that identifies activity that is not characteristic of the account.

Options under consideration include the following:

1. Statutory language to provide immunity for reporting in good faith. The Vulnerable Adult Act provides immunity from liability for persons, but banks and other financial institutions would benefit from clarifying language that would assure them of immunity from liability when they or their employees report in good faith. Add language to section 13A.04 for immunity for good faith reporting as well as to section 626.557 subd. 5 (immunity). Amend the definition of "person" to include financial institution (bank, credit union, investment company, credit/debit card company).
2. Provide specific mention in section 13A.02 of vulnerable adults as an exception to the prohibition of release of financial records. The intent would be to heighten awareness among financial institutions, not to require them to report.
3. Strategies to provide information at key points of risk—e.g., opening a new account, creating a new power of attorney. This could involve partnerships between MBA, the Credit Union Network of Minnesota, and government agencies to develop and distribute information and materials.
4. Statutory language to provide the office of the attorney general subpoena power when investigating possible violations of the VAA. Currently, the attorney general, like other law enforcement agencies, must obtain a search warrant, which requires persuading a judge that

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there is probable cause. This would go in Section 8.31 (Additional Duties of Attorney General).

5. As part of 626.557 subd 9b, the "lead agency" may enter facilities and inspect and copy records as part of the investigation, and under subd 10 (b) Duties of social service agency they may enter facilities and inspect and copy records. Do we want to add: "The lead agency (and social service agency) may obtain subpoenas for financial records, including records maintained by banks, credit unions, investment companies, credit/debit card companies for records of the VA to aid in investigations of financial abuse/exploitation."?
6. Mandatory reporting by financial institutions under the VAA. The difficulty is how the tellers can be expected to know who is a vulnerable adult. There was consensus that age would not be an appropriate criterion. What would be?

Vulnerable Adult Maltreatment Review Panel

At the June stakeholders meeting, there was interest expressed in learning more about the VA review panel, and Iris Freeman volunteered to bring information to the subcommittee. She combed through old files to provide historical insight. The intent was to provide the vulnerable adult with the opportunity to request a "second look" at the situation in a process that would not be excessively formal.

The panel operates under M.S. 256.021. The panel consists of DHS, MDH, the ombudsman for LTC, the ombudsman for mental health, and the Board on Aging. It meets quarterly to review lead agency determinations in response to requests from a vulnerable adult or interested person. The panel reviews the request, the investigation memorandum, and any other data on the investigation maintained by the lead agency that are pertinent and necessary to its review of the final disposition. If the panel does not agree with the investigative determination, the panel returns the matter to the lead agency for reconsideration, along with specific investigative recommendations. The lead agency must reconsider and report back to the panel, providing its specific rationale for its determination within 30 days.

The panel is required to submit an annual report that contains data on the number of reviews, the number for which the panel agreed with the lead agencies, the number returned to the lead agencies, and their responses to the relevant legislative committees.

Options under consideration:

1. An expanded role for the vulnerable adult or interested person—e.g., provide additional documents to the panel (which currently reviews only information from the lead agency).
2. An administrative hearing right for the victim, the victim's legal representative, perhaps the two ombudsmen, similar to the right to a hearing for the accused.

Concerns include the following:

- Wasting agency resources on cases where the individuals simply can't or won't accept that the determination was appropriate.
- Entangling the agencies in messy family disputes.
- Adding "do overs" to lead agencies may not be productive unless they also get additional resources.

The subcommittee ran out of time and did not discuss the dual reporting issue.