

VAA Reform Group

Categories and Issues Modified and Developed in the February 15, 2008 Meeting
Prepared for the VAA Stakeholders by Kevin Hansen and Alicia Jaworski

Issues	Statute/Rule
1) Education and Training	
a) Scope of the Vulnerable Adult law	
b) Training for those workers dealing with a Vulnerable Adult (VA with or without any dementia) including what NOT to do and the penalties associated with any violations (possibly mandating the training)	
c) Training for those working with a VA with Alzheimer's	
d) Training for PCAs and education regarding the consequences of their actions	
e) Educating mandated reporters who and what they must report	
f) Educating facilities on the situation to which they release an individual, whether it's safe or not (if the facility has such information, to begin with)	
g) Educating judges and the courts to understand the dynamics of elder abuse and family relationships (exploitation by family members); requesting the use of expert witnesses and/or an amicus brief	
h) Educating individuals by holding them accountable without criminalizing a human error (coaching and counseling; implementing accountability)	
i) Educating families on proper financing of medical care costs for the vulnerable adult they're caring for and any associated fiduciary obligations they may undertake (having financial workers assist in getting the information out to the families/individuals to help reduce governmental costs)	
j) Educating PCAs on care issues, tailoring the presentations to accommodate the various sub-groups and cultures within the PCA profession	
k) Educating law enforcement about building a strong case for the prosecuting attorney to proceed upon in court (preserving evidence and obtaining statements) and various tools at their disposal for assisting a vulnerable adult	
l) Educating governmental service (APS, DHS, Social Services) providers across the state using modern technological approaches	
m) Educating various organizations/departments on how to conduct an effective and thorough investigation into an alleged incident (evidence handling, asking investigatory questions, document preservation, accountant training, etc.)	

2) Protections (Prevent Injury/Maintain Autonomy)

a) Seeking a strong PREVENTION, rather than seeking a strong RESPONSE		
b) No retaliatory treatment for a PCA or a vulnerable adult for a report against the care facility they're in (similar to a "whistleblower" action)		Minn. Stat. § 181.932
c) Addressing new concerns created by new varieties of electronic communication (sexual assault, fraud, domestic violence, financial exploitation, etc.) and providing a vulnerable adult's caregiver with information on this		
d) Providing a method for a release of information that a caregiver or an office can get on behalf of an incapacitated individual (who can't provide for the release of that information themselves)		
e) Creating methods of addressing a situation where the caregiver, guardian, conservator, or power of attorney is the perpetrator (clarifying ways to compel accountings and court proceedings, improve tracking methods of individuals or agencies working with a vulnerable adult, remove a PCA's license number to prevent that individual from committing similar crimes elsewhere, provide/perform background checks, and maintain the investigation to its conclusion even after employment may be terminated)		
f) Providing an increased awareness for "wandering elders" (those with dementia) similar to an Amber Alert without the criminal factors		
g) Utilizing wording and construction that will not support ageism or any related concerns which might have a prejudicial effect against individuals		
h) Creating a database of information and providing for those who can access the information contained therein to check background information for caregivers, facilities, or the status of an investigation regarding a vulnerable adult		
i) Determining ways to identify and protect the "unbefriended" or "invisible"		
j) Making a way for APS or another agency to be able to apply for an Order for Protection or a Hardship Waiver on behalf of an individual instead of just that individual being able to or his/her guardian doing it		
k) Ensuring that self-determination and autonomy are protected within the statutes (clarifying between self-neglect and eccentricity of choices)		

3) Increased Scope of Statutes

<p>a) Increasing the penalty from a gross misdemeanor to a felony when an individual's negligent conduct causes the death of another (animals get this felony protection in MN whereas humans do not)</p>	
<p>b) Increasing the penalty for financial exploitation of a VA from a level V offense to level VI offense (i.e., theft by swindle), if the amount is over \$35K. Also, if same amount, then a lookback period of 5 years and increase the statute of limitations to 5 years instead of 3 (similar to MA rules)</p>	<p>Minn. Stat. § 609.52 subd. 3(1)</p>
<p>c) Coordinating the VA statutes with the consumer fraud statutes to allow increased penalties for offenders and increased protections for victims</p>	
<p>d) Allowing a recovery of funds through the statutes - making provisions for criminal punishment as well as creating a civil form of action for the individual (or an agency, guardian, or conservator on behalf of the individual) against perpetrators by using age categories to allow an agency to seek higher penalties</p>	
<p>e) Strengthening the current VA review panel or, if not possible to do that, then eliminate the review panel altogether</p>	
<p>f) Coordinating domestic violence statutes with elder abuse concerns (check the statutes; increased rights and protections for domestic violence victims)</p>	<p>Minn. Stat. § 611A</p>
<p>g) Allowing the use of the Revenue Recapture Act, when a person with substitute-decision making power over a vulnerable adult improperly uses funds, to withhold a tax refund (transfer money to MA program or care facility)</p>	
<p>h) Expanding the language of the statutes from a care provider focus (nursing homes or long-term care facilities) to a community focus (family or individual community members)</p>	
<p>i) Coordinating Federal and State laws to minimize conflict and clarify liability and penalties for each division</p>	
<p>j) Make financial institutions and their employees mandated reporters</p>	

4) Reporting

a) Reviewing maltreatment concerns: excluding perpetrators from providing care, consequences for a perpetrator (especially those who are a licensed individual), and re-examining the language of "serious or recurring"	
b) Clarifying and outlining the different responsibilities an employee has vs. those an employer has, and creating appropriate consequences for each level of involvement dependent upon each individual situation	
c) Requiring notification to APS or a relevant office after an emergency guardianship/conservatorship has been obtained to allow an investigation of the situation by APS or another relevant office	
d) Requiring background checks to be performed on any individual who provides care or acts in a substitute-decision making capacity for another (power of attorney, guardian, PCA, conservator, etc.)	
e) Standardizing the reporting and follow-up process so there is consistency across all 87 counties and among the Tribes	
f) Clarifying what events SHOULD be reported and what MUST be reported; using language and requirements to minimize over-reporting	
g) Ensuring employers of care providers are provided with adequate information in regard to an employee who is under investigation	
h) Creating a consistent method of intake of maltreatment reports at the various CEPs across the state (all 87 counties reporting similarly)	

5) Definitions

- | | |
|--|--|
| | |
| a) Re-defining or clarifying definitions for abuse and neglect | |
| b) Defining the different forms of abuse/exploitation (sexual, emotional, and financial), as well as what constitutes "malicious", to give the courts a set framework to operate within | |
| c) Outlining the qualifying criteria for receiving waiver money when an individual is giving or receiving care | |
| d) Defining a categorical (living) VA vs. a functional (diagnosis) VA using set factors and also providing for an "early onset" diagnosis | |
| e) Distinguishing between reporting and investigating, and clearly defining each term within the statutes | |
| f) Defining a standard of prosecution to create a consistent level of punishment for offenders (county and state levels) | |
| g) Redefining "facility" (who qualifies as such a designation, what that facility is obligated to do, etc.) and outlining the internal complaint process a facility must utilize in any internal investigation (requiring proof of such adherence) | |
| h) Modifying the "date of destruction" so that unsubstantiated information is available for investigations that are possibly conducted at a later date | |
| i) Defining registration requirements an ALF must undergo when taking in individuals, as well as possible restrictions on their marketing to the public (advertising requirements) | |
| j) Creating a categorical definition of a VA to prevent abuse of the systems that are designed to protect vulnerable adults | |
| k) Creating definitions of an "informal caregiver" and the implications and/or legal requirements of such a status | |
| l) Defining situations where it is appropriate for a lead agency to be delegated | |
| m) Defining "fiduciary" to encompass joint tenants for property documents, checking accounts, or other financial documents to which someone with substitute-decision making power has access to | |

6) Investigations

<p>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)</p> <p>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)</p> <p>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</p> <p>d) Creating a structure of collaboration when multiple agencies become involved in a specific situation</p> <p>e) Providing for a structure whereby one organization is not carrying the entire financial burden of pursuing an investigation with multiple agencies involved or when another organization can feasibly step in to assist</p> <p>f) Revising and streamlining investigatory processes such that costs saved could be more wisely spent elsewhere to provide services</p> <p>g) Increase accountability among entities conducting internal investigations into allegations of abuse of a vulnerable adult</p> <p>h) 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)</p> <p>i) Possibly creating an inter-disciplinary investigation and enforcement team</p>	
---	--

This document was last modified on:
 February 21, 2008
 Kevin Hansen
 Alicia Jaworski
 ElderCare Rights Alliance
 William Mitchell College of Law