

VAA Reform Group

Categories and Issues Developed in the November 2, 2007 Meeting
 Prepared for ElderCare Rights Alliance by Kevin Hansen

Issues	Short-Term	Long-Term	Statute/Ru
1) Education and Training			
a) Scope of the Vulnerable Adult law	X		
b) Training for those workers dealing with a Vulnerable Adult (VA with or without any dementia)		X	
c) Training for those working with a VA with Alzheimer's		X	
d) Training for PCAs and education regarding the consequences of their individual actions		X	
e) Educating mandated reporters on who they must report about and on what they must report about		X	
f) Educating facilities on the situation to which they release an individual, whether it's safe or not (if the facility has such information)		X	
2) Protections Against Injury and to Maintain Autonomy			
a) Seeking a strong PREVENTION, rather than seeking a strong RESPONSE	X		
b) Creating a categorical definition of a VA to prevent abuse of the systems designed to protect VA's	X		
c) No retaliatory treatment for a PCA or a VA for a report against the care facility they're in (similar to a "whistleblower" action)	X		Minn. Stat. § 18
d) Addressing new concerns created by new varieties of electronic communication (sexual assault, fraud, domestic violence, financial abuse, etc.) and providing		X	

<p>a VA's caregiver with information on this</p>					
<p>e) 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)</p>	X				
<p>f) 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, tracking methods of individuals or agencies working with a VA, or removing a PCA license number to prevent that individual from committing similar crimes elsewhere)</p>	X	X			Minn. Stat. § 6
<p>g) Coordinating domestic violence statutes with elder abuse concerns (check statutes; increased rights and protections for domestic violence victims)</p>	X				
<p>h) Providing an increased awareness for "wandering elders" (those with dementia) similar to an Amber Alert without the criminal factors</p>		X			
<p>i) 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.)</p>	X				
<p>j) Creating definitions of an "informal caregiver" and the implications and legal requirements of such a status</p>	X				
<p>k) Creating a database of information and providing for those who can access the information contained therein to check background info for caregivers, facilities, or the status of an investigation regarding a VA</p>	X	X			
<p>l) Determining ways to identify and protect the "unbefriended"</p>		X			
<p>m) Making a way for APS or another agency to be able to apply for an Order for Protection on behalf of an individual instead of just that individual or his/her guardian</p>	X				
<p>n) 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</p>	X				

or another relevant office			
3) Reporting Criteria, Definitions, and Processes			
a) Re-defining or clarifying definitions for abuse and neglect	X		
b) Defining the different forms of abuse (sexual, emotional, and financial), as well as what constitutes "malicious", to give the courts a set framework to operate within	X		
c) Outlining the qualifying criteria for receiving waiver money when an individual is giving or receiving care	X		
d) Defining a categorical (living) VA vs. a functional (diagnosis) VA using set factors and also providing for an "early onset" diagnosis		X	
e) 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"	X		
f) 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)	X		X
g) 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			X
h) 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	X		X
i) Distinguishing between reporting and investigating, and clearly defining each term within the statutes			X
j) Defining a standard of prosecution to create a consistent level of punishment for offenders (county and state levels)	X		
k) Redefining "facility" (who qualifies as such a designation, what that facility is obligated to do, etc.) and outlining	X		X

the internal complaint process a facility must pursue				
l) Modifying the "date of destruction" so that unsubstantiated information is available for investigations that are possibly conducted at a later date			X	
m) Providing a mechanism for an outside group (APS, AG Office, etc.) to access bank records when advocating for an individual (if not requiring banks to be mandated reporters) - educating banks, allowing disclosure of info	X			
n) Defining registration requirements an ALF must undergo when taking in individuals, as well as possible restrictions on their marketing to the public (advertising requirements)	X			
o) Creating a structure of collaboration when multiple agencies become involved in a specific situation			X	
p) 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			X	
q) Prioritizing what can be done overall and with individual situations to help allocate the funding amongst the largest possible group	X		X	
4) Increased Scope of Statutes				
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)	X			
b) Increasing the penalty for financial exploitation of a VA to elevate from 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).	X			Minn. Stat. § 609.52
c) Coordinating the VA statutes with the consumer fraud statutes to allow increased penalties for offenders and increased protections for victims	X		X	

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 on behalf of the individual) against perpetrators by using age categories to allow an agency to seek a higher penalty	X		
e) Utilizing wording and construction that will not support ageism or any related concerns which might have a prejudicial effect against individuals		X	
f) Strengthening the current VA review panel or, if not possible to do that, eliminating the review panel altogether	X	X	
g) Defining situations where it is appropriate for a lead agency to be appointed for the situation		X	

Overall Points to Remember
<ul style="list-style-type: none"> - Abuse reports to CEPs increase approximately 10% every year - The LTC system has de-centralized in the last ten years - Half of all elders in home/community-based systems qualify for nursing homes - The current VAA defines a mandated reporter, but doesn't provide adequate protections for the victim once the mandated reporter has finished his or her report - The current VAA focuses on proving a victim is vulnerable rather than on the abuse that may have occurred (other states address this by stating an age at which the Act is in force, usually 62 or 65) - The current VAA references the Domestic Abuse Act for some areas of victim protection, which may be inappropriate for some elder and vulnerable adults as the DAA requires an affidavit that "fear and harm" exist and some elders/VAs cannot do this as they may be cognitively impaired or medically fragile - It is more difficult under the current VAA to monitor care provided to an elder or a vulnerable adult in a home-care setting due to less case management

What We Can Do
<ul style="list-style-type: none"> - Review the overall systems and protections currently in place for effectiveness - Examine what different organizations and agencies can do for an elder or vulnerable adult - Remember to constantly allocate resources and responsibilities to ensure maximized outcomes for all involved - Re-focus the Vulnerable Adult Act on the protection of vulnerable victims