

**Vulnerable Adult Justice Project  
Large Group Meeting  
Friday, July 9, 2010 from 2-4pm  
William Mitchell College of Law, Room 123**

**Present**

Kevin Hansen (MH/DD Ombudsman Office), Janet Reigstad (Stearns Co. APS and MACSSA), Kimberly Ziegler (Ramsey County APS), Kris Maser (Maser and Amundson, P.A.), Jennifer Kirchen (DHS – Adult Protection), Stella French (MDH – OHFC), Ben Rosene (Ramsey Co. Attorney’s Office), Suzy Scheller (PRSL Law Firm), Barb Doherty (Private Citizen), Carmen Castaneda (Hennepin County APS), Nick Halbur (Private Attorney), Mary Youle (Aging Services), Doug Beardsley (Care Providers), Amy Sweasy (Hennepin Co. Attorney’s Office), Jane Ochrymowycz (CEJP Advisory Board), Deb Tulloch (Washington County APS), Deb Holtz (LTC Ombudsman Office), Anita Raymond (VOA – MN), David Joyslin (US Bank – Trust Relations Dept.)

**Discussion**

**- Updates**

- From Barb Doherty’s speech at World Elder Abuse Awareness Day (WEAAD), referencing articles from Dr. Laura Mosqueda in California, others in MN have been able to find important medical research on bruising patterns and information on how to distinguish “normal” bruising from that which comes as a result of being abused. It was reported that much of this information could be found on the Dept. of Justice’s website. There is also a potential videoconference coming up on this through DHS.
- Jennifer Kirchen gave an update on WEAAD’s success this year, with roughly 175 people in attendance and plans to expand for next year’s WEAAD event.
- Kevin Hansen reported on MNCASA’s grant to work on the Minnesota Accessing Paths to Safety (MAPS), which is funded by the Office on Violence Against Women (OVW). The statewide project is a collaboration between the MN Indian Women’s Sexual Assault Coalition (MIWSAC), MN Disability Law Center, MN Coalition Against Sexual Assault (MNCASA), and Minnesota Coalition for Battered Women (MCBW). MAPS will be focused on increasing service capabilities for victims of sexual assault and domestic violence who have disabilities.
- Carmen Castaneda and Jennifer Kirchen reported on a new project being piloted in Washington, Steele, Olmstead, Hennepin, Ramsey, and Dakota counties, called the “SDM Tool.” The structured decision-making tool is a

program that would be used at the lead agency level, not the CEP, to help standardize the approach to investigating (or deciding to investigate) reports of vulnerable adult maltreatment. The tool would have the ability to be modified per each county's prioritization structure.

- Deb Tulloch reported back on her case regarding financial exploitation and an "attempt." She worked with the county attorney in Washington Co. to have the crime charged as an attempt under the criminal statutes (Minn. Stat. 609.17) but cannot substantiate it as part of a civil investigation under the VAA definition. Should a subcommittee work on including this language or is it more appropriate for a criminal standard? "Attempt" language is found within the "abuse" definition in the VAA, to note.

#### **- Jurisdictional Issues Subcommittee Report (Kevin Hansen)**

- At previous meetings, terminology switch from "lead agency" to "lead investigative agency" was reviewed and approved. Also, the group reviewed inclusion of "local tribal governments" within the Multidisciplinary Teams statute (Minn. Stat. § 626.5571), which was approved as well.

- New language was shown that took into consideration feedback from the last VAJP Large Group meeting. Dept. of Health (MDH), under Minn. Stat. § 626.5572 Subd. 13(a), is now responsible for facilities and services not listed elsewhere within that subdivision, but only those facilities or services that are licensed or required to be licensed for "the care of vulnerable adults." The subcommittee felt this new language would prevent MDH from having to investigate everything it licenses, such as hair salons and tattoo parlors. The new definition for a home care provider, in Subd. 13(a), was modified to reflect that a vulnerable adult may define their home as many things, including private residences and housing with services establishments whether or not assisted living services are included.

- Clause (b) within the same subdivision, for the Dept. of Human Services (DHS), remained largely unchanged. The supplementary paragraph regarding day training and habilitation/supported employment services was first delineated to DHS, rather than subject to interpretation based upon the funding source for services. To fully capture the idea that all DT&H and SES services are now with DHS, the language "regardless of whether service licensure is required" was added at the end of the paragraph.

- Clause (c) within the same subdivision, for County APS investigations, was discussed as to whether or not "board and lodge establishments" (BLE's) should be included there or within MDH responsibility to investigate. It was stated that in many MN counties, MDH delegates the licensure ability to the counties to do, but retains that licensure ability in other counties. To keep with the logic used in

other provisions, the suggestion was made that it might be best to move BLE's to the MDH clause (the provision requiring DHS to investigate adult foster care was the model for this suggestion, as that is sometimes a delegated licensure authority to the counties). The topic was decided to go back to the subcommittee for discussion at its next meeting.

**- Criminal Code Subcommittee Report (Tara Patet)**

- No report at this time.

**- Break**

**- Protections Subcommittee Report (Barb Doherty)**

- Presentation of language worked on during last subcommittee meeting on June 28, 2010.

- Changes to "ombudsman" terminology were reviewed and approved by the large group.

- New changes to add in requirement for panel to send its request for documentation to the supervisor of the investigator who did the review were discussed (Minn. Stat. 256.021 Subd. 2(a)). Discussion also covered Subd. 2(b) changes which require the panel to notify the "director or manager" of the lead investigative agency (LIA) as to the panel's recommendations or if the panel "concur" with the LIA's determination.

- Proposed language regarding a definition for "specific rationale" was also addressed again and confirmed by members in attendance.

- Discussion largely focused on the proposed language regarding the VA and/or the VA's legal representative to testify or present evidence at an administrative hearing when a substantiated perpetrator appeals a determination of maltreatment or a disqualification. No issue was taken with the notion of the VA and his/her legal representative being notified of the appeal hearing. Questions were raised as to competency of the VA were he/she subpoenaed to testify at a hearing to appeal a maltreatment/disqualification decision. Also, members wanted to know more if there were ways to prevent a VA from being re-victimized or having his/her health/safety/welfare endangered because of a perpetrator subpoenaing the VA to testify. Question was asked regarding what may be done if the LIA does not wish the VA to testify because the testimony would be contradictory (i.e. VA doesn't want to get a family member or friend in trouble so would testify opposite to what actually happened, potentially). The point was also raised that there should be an advance request to testify/present evidence rather than showing up the day of the hearing and having someone

make an on-the-spot decision (or having to wait several days to testify/present evidence due to the duration of the hearing and others' presentation of evidence/testimony). Discussion focused on having the VA/representative having a permissive right to request to testify/present evidence and have the Human Services Referee/Judge (HSR/HSJ) in a fair hearing or the Administrative Law Judge (ALJ) in a contested case hearing make the determination in advance as to how the VA should participate and to what degree. Subcommittee will be taking these issues into account at their next meeting and will modify language accordingly.

- Lastly, discussion focused on whether an individual/facility appealing a decision made by an LIA should be referred to as an alleged perpetrator, a substantiated perpetrator, or both. Large group consensus was that the terminology to use to refer to the individual/facility is "substantiated perpetrator."

- Those in attendance were also informed of new student research coming from the CEJP at Wm. Mitchell, via Francis Chang, student. He is researching the consistency and similarity among the DHS HSR/HSJ case decisions regarding VA maltreatment determinations and the recommendations these HSRs/HSJs may make back to the commissioner of DHS or commissioner of MDH. Following this research, Francis will then be working on similar research from ALJ opinions from contested case hearings on VA maltreatment and disqualification decisions.

#### **- Other Issues or Initiatives to Consider**

- Deb Holtz reported on work that a small group of individuals are doing as it relates to a new definition for "emotional abuse," especially for victims who may have some form of cognitive impairment. The group currently working on this issue includes Deb Holtz and Cheryl Hennen (Office of Ombudsman for Long-Term Care), Stella French (MDH – OHFC), Kevin Hansen (Office of Ombudsman for Mental Health/DD), and Laura Orr and a student (St. Thomas School of Law). Deb reported that the group will work out a definition or some ideas for modification/addition to current language and bring to the VAJP for consideration and potential inclusion in legislative language.

#### **- Center for Elder Justice and Policy**

- The announcement was made that as of June 23, 2010, Iris Freeman would be serving in a new role with the CEJP as Associate Director for the Center. This announcement has also been sent out via email to the large VAJP group distribution list.

- The Financial Exploitation Manual was displayed and is also available here:

<http://cejp.org/resources/FinancialExploitationJune2010.pdf>

**- Next Meeting**

- The next meeting for the VAJP large group will be held on Friday, August 13, 2010 from 2-4pm at William Mitchell College of Law, Room 123. There will be a Legislative Audit to follow, as per usual, at a nearby location to be announced.

**- Adjourn**