

## Vulnerable Adult Justice Project—Stakeholder Meeting

William Mitchell college of Law, Room 123

Friday, October 8<sup>th</sup>, 2010, from 2-4 PM

Present: Mary Youle (Aging Services of Minnesota), Jane Ochrymowycz (CEJP Advisory Board WMCL), Doug Beardsley (Care Providers of Minnesota), Jenna Bowman (Alzheimer's Association), Stella French (Office of Health Facility Complaints), Anita Raymond (Volunteers of America Minnesota), Sheri Hansen (Lac qui Parle County Adult Protection), April Boxeth (standing in for Sue Voigt, from Voigt, Klegon and Rodé, LLC), Nate Swanson (Voigt, Klegon and Rodé, LLC), Jennifer Kirchen (DHS Adult Protection), Amy Sweasy (Hennepin County Attorney's Office), Cindy Carlson (Hennepin County Adult Protection), William Brown (WL Brown Law Office), Deb Siebenaler (DHS-Adult Protection), John Simshauser (Looking Forward Legal), Megan Stowers (Alzheimer's Association), Maura McNellis-Kubat (DHS-Learning), Ben Rosene (Ramsey County Attorney's Office), Sue Stout (Minnesota Hospital Association), Kevin Hansen (Ombudsman for Mental Health Developmental and Disabilities), Iris Freeman (WMCL), David Joyslin (US Bank)

### Updates:

-21<sup>st</sup> Annual MAGiC Fall Conference, Thursday, November 4<sup>th</sup>, 2010: Navigating Sensitive Issues with Competence and Compassion. Link: [www.minnesotaguardianship.org](http://www.minnesotaguardianship.org)

-Adult Services Work Group: Steering committee on Performance and Outcome Reforms. Seeks qualified applicants by Oct. 13, 2010.

Center for Medicare and Medicaid Services :Funding granted to six states "to help keep predators out of long-term care workforce" (states are: Alaska, Connecticut, Delaware, Florida, Missouri and Rhode Island) Purpose: prevent those with criminal histories and a record of abuse from working within long-term care settings.

-Kevin's Birthday!

Moving Toward the 2011 Legislative Session—VAJP Committee Proposals. Worksheet with all proposals sent with meeting materials.

### Criminal Code Committee Proposals (3)

#### **Minn. Stat. Sec. 609.233:**

##### Pleasant/troubling language:

-some providers would like to see more clear definitions, and some indication of how it will be interpreted by prosecutors?

-do we need more words for the section discussion "reasonably able"?

##### Response to concerns raised regarding language:

-most of the language in the law is already in the gross misdemeanor statute; it's intending to build off those already-established definitions and interpretations

-while 2(a) is new, it contains no new legal terms of art

-prosecutors will create their cases like every other case they must create (such as shoplifting): collecting evidence, analyzing whether a "choice to deprive" occurred, considering built-in defenses. Without a good case, it is unlikely a prosecutor would take the case.

-In case a “code blue” occurs, and the caretaker cannot stay with the non-coding patient, the caretaker would almost certainly not be charged; it isn’t unreasonable to leave in that situation.

-there are areas of MN which define “accident”, “error”, etc.

Important terms within statute:

-“intentionally deprive”, “intentionally forsake duty”, and “reasonably”

-these terms were deliberately chosen to distinguish a care provider making a mistake from intentionally abandoning his legal duties. This statute is not about catching mistakes which inevitably occur or persons taking care of too many patients; it’s about punishing intentional acts.

Further notes:

-In a non-facility cases, judges tend to give light consequences

HOLD FOR FURTHER WORK – Providers will recommend clarifying language.

**Minn. Stat. Sec. 243.166:**

Legislation to make criminal abuse of vulnerable adult a registerable offense under predatory offender registration law

ACCEPTED - NO FURTHER WORK NEEDED AT THIS TIME

**Minn. Stat. Sec. 609.2231:**

Proposes to make uniform the charge and penalty for assault of vulnerable adult; pertains to assailants who are not caregivers.

For example, if a relative is assailant, the penalty should be the same as it is for caregivers.

ACCEPTED - NO FURTHER WORK NEEDED AT THIS TIME

Protections Committee Proposals (3)

**Minn. Stat. Sec. 256.021:**

Creates some fairly minor language changes, clarifies rationale, clarifies how to respond to panel and the panel’s appropriate communications to interested person.

ACCEPTED - NO FURTHER WORK NEEDED AT THIS TIME

**Minn. Stat. Sec. 626.557:**

Clarifies how information is transmitted and notification given to health care agent regarding final disposition and delays in investigation.

ACCEPTED - NO FURTHER WORK NEEDED AT THIS TIME

**256.045:**

Vulnerable adult who is the subject of a maltreatment case will receive notice in the event that the finding is challenged.

Issues raised in discussion:

-how much of an “interested party” is the vulnerable adult?

-would someone object to the vulnerable adult testifying?

-would opposing counsel object to the presence of the vulnerable adult?

-do you have a right to know of an appeal about you, but to which you are not a party?

-3 potential interested parties: the vulnerable adult, their guardian, and the contested person/defendant

-can we create a category of “interested persons”?

HOLD FOR FURTHER WORK – Meeting will be set up for MDH, DHS, & VAJP Reps.

#### Jurisdictional Issues Proposals (3)

**-Minn. Stat. multiple sections in VAA and related laws** changed term “Lead Agency” to “Lead Investigative Agency”

ACCEPTED - NO FURTHER WORK NEEDED AT THIS TIME

**-Minn. Stat. Sec. 626.5571:** includes tribal government as a group that may be invited to join a county Adult Protective Services Multidisciplinary team

ACCEPTED - NO FURTHER WORK NEEDED AT THIS TIME

**-Minn. Stat. Sec. 626.5572:** amended definitions of all the “Lead Investigative Agencies”

– MDH, DHS, and Counties

some changes for DHS licensing for consistency across the board

-we hope that changes will solve discrepancies and misunderstandings; our law in MN is often different from other states and our practices vary across county lines

ACCEPTED - NO FURTHER WORK NEEDED AT THIS TIME

#### Timeline for Decision-Making on two outstanding items:

No decisions made today

Decisions must be made at some point in the near future

#### Moving Toward the 2011 Legislative Session—Other Pertinent Legislation

##### Uniform Power of Attorney Act (John Simshauser from Looking Forward Legal)

-follow-up to earlier presentation

Uniform Power of Attorney Act is not apt to be part of an omnibus bill

-Met with Probate and Trust section of the bar; they don’t know of any upcoming legislation, but they are creating their own review/opinion for the Bar Association. They would like to turn in a draft “soon” (they are “close to finishing”).

-Does the election factor into an upcoming proposal? Perhaps it is more related to the disparity of opinions on this subject

-recommendation for this group: let’s not spend a lot of time on this until it’s going to be seriously introduced.

-John will be keeping his ear to the ground for updates. Others in this committee should also pay attention if they are interested, and consider getting involved to represent the vulnerable adult in such legislation (other interested parties are well represented, ex. banks)

-Elements of the Uniform Act which will be of interest to this stakeholder group: (perhaps should be pursued as individual bills if this fails)

-highest concerning areas:

-gifting provisions: opens up a fair amount if attorney in fact is recipient/giving the gift (*by the attorney in fact to the attorney in fact*)

-springing powers: permits springing powers on the short form.

(springing power: an agent is given a power on the happening of a

future event; normally an incapacitating event) Currently, MN allows only for springing powers in the common-law power of attorney.

-neutral areas:

-attorney in fact allowing changes to estate plan

-agent standards and duties: how do they mesh or clash with duties of other court appointed fiduciaries under current laws?

-Uniform Act is durable by default. Currently, a principal has to elect to make the form durable. A common issue in a self-help situation. Do we want an active act of intent?

-Major question: Would MN lawmakers want to adopt the uniform act verbatim, or make appropriate changes?

DHS Postponed until November Meeting: Proposal regarding\_Maltreatment Determinations

VAJP Profile, Roster, and Committees Needed

Review our purpose and participating organizations

-Results from an online survey about this group: our priorities and purpose

-Purpose statement drafted last year remains a good purpose statement for this group.

It is not a membership organization; it's a stakeholder group

-Reasons not to maintain purpose statement? Please let us know!

-Question: Who else ought to be participating in VAJP and discussing these issues?

-Medical professionals

-More law enforcement

-Mental health advocates

-Tribal representatives

-Disability professionals

-Recommendations for improving the overall work:

-We should be doing public awareness

-we're doing our legislative work, networking, arguing out issues; but we could also effectively educate and raise awareness among general public

-Iris will send out information regarding our purpose, small groups.

Renew the Legislative Track Team

-It's time to renew our team!

-We'll need persons who actively work with legislative issues, and those with experience from two years ago

-We need to figure out if we can, through this membership, work on public awareness issues

-Thoughts or volunteers? It's time to speed-date in a legislative way/with the legislature (good, short information)

Start a committee to work on Communications, e.g., public awareness, wiki

-Public awareness:

-a concerted effort to talk with media outlets about vulnerable adult issues

-other methods to reach the public about these issues?

-Ideas for how we can do this effectively?

-make information available at conferences/committees?

-have information available at libraries and other public spaces?

-It's a good partner with the legislative process

-Wiki website link: <http://mnvac.pbworks.com/>

#### Center for Elder Justice and Policy News and Wrap Up

##### Updates:

- Professor Dayton broke her ankle playing hockey.
- Applied to Extended Care Foundation for funding: not approved
- Another grant proposal pending; hoping that we'll have more positive news by November
- Next meeting is the week of NAPSA (National Adult Protective Services Association) and today's coincided with the MN Elder Law CLE. With a multidisciplinary group, these challenges are expected, but we have to try and stay on track.

Next Meeting November 12<sup>th</sup>, Rm. 123 WMCL, 2-4pm.