

Vulnerable Adult Justice Project
Meeting Minutes for December 11, 2009 1-3pm
St. Paul Police Department Community Room
389 N. Hamline Avenue, St. Paul

Members Present: Iris Freeman and Kim Dayton (Wm. Mitchell – CEJP), Deb Holtz (LTC Ombudsman Office), Maura McNellis-Kubat (DHS – Licensing), Faye Bernstein (DHS – Adult Mental Health), Steve Dopson (Ramsey County APS), Janet Golden (ECRA), Stella French and Kris Lohrke (MDH – OHFC), Amy Sweasy (Hennepin County Attorney’s Office), Carmen Castaneda and Cindy Carlson_(Hennepin County APS), Liz Morrissey (MNCASA), Mark Shultz, Ashley Helgason and Sarah Leonard (Wm. Mitchell students), Jane Ochrymowycz and Marsha Berry (Alzheimer’s Association), Greg Marita (Minneapolis Legal Aid Society), Suzy Scheller (Pearson Randall Schumacher and LaBore Law Firm), Erin Whitcomb (MSW Student, U of MN), Phil Carruthers and Ben Rosene (Ramsey County Attorney’s Office), Heidi Holste (AARP), Troy Fields (UMACHA), ThaoMee Xiong (MN Coalition for Battered Women), Joel Smith (Kosieradski Smith Law Firm), Deb Tulloch (Washington County APS).

Introductions

Updates

Minnesota Coalition against Sexual Assault (MNCASA)—Liz Morrissey: MNCASA held a Minnesota Summit on the costs of sexual violence on December 4th and 5th. For more information on the Summit and the Prevention playing cards, go to www.mncasa.org.

Alzheimer’s Association Working Group—Marsha Berry: Group formed at the end of the legislative session to assess what the State has now for Alzheimer’s patients and what it needs to do. They have divided into sub-groups called expert teams, which have met twice. These teams cover such topics as research and healthcare. January 21st is the next meeting, and it is open to the public. Their wiki site address is <http://alzworkinggroup.pbworks.com/>.

Deb Holtz noted a posting on the Elder Abuse Listserv that this week’s 20/20 TV program would be airing a special on financial exploitation.

Project Lifesaver—Ann Bebeau: The St. Paul project is currently serving children, but will be extended to people with Alzheimer's or other dementias.

U.S. Senate Health Reform Bill—Iris Freeman: Iris shared two points about the health reform bill that is now in the Senate. 1) the Elder Justice language remains in the bill. 2) Two other amendments were filed to be added. One is the Elder Abuse Victims Act (which provides special prosecution resources and training) and the other is the Silver Alert Act (which is a grant for finding missing older people, much like an Amber Alert). If these become part of the Senate bill, there is a good a chance of becoming law, because they have already passed the U.S. House as individual pieces of legislation.

Subcommittee Reports

Protections Subcommittee Report—Stella French, Co-Chair: Subcommittee covered three main issues at their meeting. These were: 1) Criminal Background Studies, 2) Residents and Clients with Sexual Predator Backgrounds, and 3) Vulnerable Adult Review Panel.

Criminal Background studies: Questions that were raised: What type of background checks are being done/should be done? Who does them? Who should be doing them? What should they include? How much control should we have over people caring for the elderly in their homes (Do relatives really need background checks?) Kristen Johnson (DHS) attended the subcommittee meeting and described the system Minnesota has in place today. Members were prompted to examine this issue because a recent AARP report found gaps in Minnesota's background checks.

Discussion at today's meeting: Private background check companies will often come up with more than DHS' check. This is because DHS is only looking at disqualifying crimes in Minnesota or because the information is incomplete (such as omitting shoplifting, and domestic violence violations).

1995 was when MN started background checks on those who work with vulnerable adults. There are gaps in protection in homecare settings: are all individuals

categorically Vulnerable Adults? Who is subject and who is not subject to background checks?

Residents and clients with sexual crimes in their backgrounds: Current Minnesota law requires the disclosure of sexual crimes in the background of applicants to nursing homes and assisted living residences. The issue for discussion is whether that protection is sufficient, although many more questions were raised on December 11. How do we protect against other types of violent behavior? How does this affect a predator being discharged or transferred to another home? What are the requirements for disclosure? Vulnerable adult sex offenders may need nursing home level care but are unwelcome placements. Another factor is the impact of federal law. CMS will not allow restraints or seclusion of violent persons. Nursing homes were not the only places discussed at the subcommittee meeting. Any place where vulnerable adults are present is at issue.

Vulnerable Adult Maltreatment Review Panels: Minnesota established Review Panels for concerned persons to raise challenges to findings in Vulnerable Adult cases in 2000. Questions about the effectiveness of the structure for consumers have been raised for many years. Should victims have the same rights to appeal as perpetrators? Perpetrators have right to appeal because of the possible loss of property right (i.e. losing their jobs). Panels are purely administrative, so victims/perpetrators cannot appear before the panel. The Subcommittee will continue to discuss the question of whether the panels should be disbanded or given more authority.

Next meeting for the Protections Subcommittee will be on January 8th at the Women's Building at 1pm in one of the lower level conference rooms.

Jurisdictional Issues Subcommittee—Deb Holtz, Co-Chair: The subcommittee meeting focused on who is responsible for investigating the various types of vulnerable adult reports. Generally, the licensing agency investigates cases in facilities and programs, but there are gaps, such as medical clinics. If a facility is dually licensed, ~~who~~ which is the appropriate agency to be investigating? Maltreatment of minors reports do not present the problems that arise from designating "Lead Agencies" in the Vulnerable Adult Act.

Building flexibility into the law, such as courtesy investigations was a topic of discussion without agreement.

Another area of discussion was the role of professional licensing boards in vulnerable adult investigations and determinations.

Cindy Carlson brought up the issue that lead agency jurisdiction may also depend on what type of Medicaid waiver is funding the vulnerable adult's care.

There was discussion of PCPOs (Personal Care Provider Organizations) for whom 2009 legislation directed counties to investigate unlicensed Personal Care Provider Organization cases. Hennepin County is leading an effort to amend the 2009 law and establish DHS as the Lead Agency for the unlicensed PCPO's in accordance with a recommendation in the 2009 Office of the Legislative Auditor's Report on the PCA program.

Members noted that the assignment of Lead Agencies occurred 15 years ago, when the range of providers was narrower than today. We are looking at jurisdictional issues for Lead Agencies to assure that ambiguities and gaps can be resolved. The point is for all stakeholders and the general public to know where to make reports and for the agency best suited to respond quickly and effectively.

Criminal Code Subcommittee—Amy Sweasy: The Subcommittee discussed a gap in state law governing who must register as a sex offender, one they believe was an oversight that can be resolved this year. Facility caregivers convicted of sexual offenses with residents are not required to register under current law. The issue spurred further discussion of current law that exempts certain sexual relationships between caregivers and vulnerable adults from being defined as abuse or neglect.

A 5th degree assault of a child is a gross misdemeanor. The same applies when a caregiver assaults a vulnerable adult. The subcommittee recommends raising the penalty to that level for assault of a vulnerable adult by someone who is not a caregiver, and who knows or has reason to know that the person they are assaulting is a vulnerable adult.

In 1995, Vulnerable Adult Act workgroup proposed increasing the gross misdemeanor for criminal neglect of vulnerable adults to a felony. Provider organizations uniformly opposed a recommendation to make that change in 2009. In some states, when a vulnerable adult dies from neglect, the charge is felony murder. While it is not the end of the discussion, it will not be something brought up to the legislature this year. The subcommittee is looking into other states' approaches as well as working on a data base of pertinent Minnesota cases.

Preparing for the 2010 Legislative Session—Iris Freeman: Still working on getting in contact with Senator Moua and Representative Hilstrom. Have not heard from

Representative Peppin and Representative Howes. There is a call into Representative Kiffmeyer but no response.

Deb Holtz reported that the Board on Aging is going to go forward to request funding for more staff. We all wish them luck with that.

Other Discussion -

Deb Tulloch reported that despite the 2009 changes in the Vulnerable Adult Act, she continues to find banks resistant to providing records to investigators. Troy Fields of UMACHA called attention to the Gramm-Leach-Bliley Act, a federal act that governs the privacy of depositors' records, among other banking provisions. There is safe haven language in the law to protect banks that provide records in good faith to aid in investigations of alleged crime. UMACHA has been training banks on what to do in reporting financial exploitation. The education piece is very important and people need to know what has changed and how to use it. Question of whether credit unions and personal finance advisors? Are they being educated too? Troy says short answer is yes. Right now Minnesota bankers are not mandatory reporters of exploitation under state law (with the exception of Well Fargo whose entire corporate policy follows the requirement in their headquarters state of California).

Linda Olson (Adult Protection) and Anne Bebeau went to training about financial exploitation. All agree that, going forward, education with financial institutions, their directors, counsel, and staff, must be a priority.

Center for Elder Justice and Policy—Iris Freeman gave an update on the Financial Exploitation Protocol Project—The Center has a 9 month grant to develop a protocol for identifying and responding to financial exploitation of residents in facilities. Ashley Helgason and Sara Blessing are the is students working on this. Their first focus group meeting was conducted on Wednesday, December 8 at Care Providers of MN. There were 8 people present. They discussed what the red flags are, what are case examples, what are case problems, and what is are the processes and systems that do work. The next focus groups—January 15th at William Mitchell will involve investigators and prosecutors. How do we get non-metro input? January 22nd also at William Mitchell will be a focus group of attorneys who practice Elder Law and represent long-term care facilities. Another focus group is being organized for county APS. Individual interviews will be done with people who represent banks and other interested persons.

Kim Dayton reported on the Elder Justice Keystone course: Next semesters there will be six students in the class. Their placements are at the Vulnerable Adult Justice

Project, Compassion & Choices, Assisted Living Consumer Alliance, the Long-Term Care and Mental Health Ombudsman Offices and Legal Aid. There may be other students who are available as research assistants. If you would like a student to work for you, you only need one attorney to oversee. If interested please contact Kim Dayton at Kimberley.dayton@wmitchell.edu.

Next Meeting

January 15th, 2009 from 3 to 5pm at William Mitchell College of Law-in Room 123.

2010 Meetings

After January, meetings will be the 2nd Friday of the month from 3 – 5 p.m. in Room 123. We will reevaluate dates and times in June. The first six meetings of 2010 are:

January 15

February 12

March 12

April 9

May 14

June 11