

Legislative Workgroup Meeting
William Mitchell College of Law, Room 125
November 10th from 1-3pm

Members Present: Iris Freeman (Wm. Mitchell), Jane Ochrymowycz (Alzheimer's Association), Jennifer Kirchen (DHS – AAPS), Deb Holtz (Ombudsman – LTC), Jason Flint (DHS – DSD), Kim Dayton (Wm. Mitchell), Larry Johnson (Care Providers – filling in for Jon Lips), Britt Lindsay (Disability Law Project), Darrell Shreve (Aging Services of MN), Maura McNellis-Kubat (DHS – Licensing), Kevin Hansen (ECRA)

- Introductions

- Goals: Centralized CEP and Financial Exploitation/Fiduciary Obligation

- Silver Alert update/new information from Arizona's new system

- Centralized CEP

- QA Stakeholder Group Update from DHS – Disability Services Division (Jason Flint)

- 2006: Group of stakeholders convened to discuss development of Quality Management Assurance and Improvement System (in Disability Services)

- 5 recommendations to the legislature (comprehensive quality management system to meet Federal mandates for waiver requirements)

- 2 of the 5 passed into law, one of which is a recommendation to the incident reporting, investigation, and analysis system

- DHS – DSD charged with reporting back to the legislature

- totality of getting at critical incidents (maltreatment and critical injuries) and less severe incidents ('garden variety') that may not reach the CEP/MDH online system

- 4 items in their report to the legislature

- annual public report about the state of quality in HCBS programs

- formal data sharing agreements between state agencies for data pertinent to disability programs and waiver requirements (DHS Licensing, DHS – APS, DHS – DSD, MDH - OHFC, Ombudsman – MH/DD, etc.)

- centralized CEP for VA maltreatment reports (incident reporting in this too)

- statewide uniformity to the gathering and entering of this data

- uniformity in the access to this data as well
- centralized CEP would ensure the quality of calls coming in (less staff members taking calls = more uniformity in the approach/entry of data)
- technology usage to capture critical incident data; sharing of the data with HCBS “quality partners” (tribes, county APS, etc.)
- database remediation and other intervention measures which would also allow for reporting to the Feds, state legislature, and the public
- keep the funding from the Federal level for waiver programs (meet their requirements for reporting)
- CMS’ expectations to demonstrate compliance has been steadily increasing (meeting minimums and also discovering new data relevant to all areas of services, including critical incidents, and fixing problems as they arise; incorporating that information into improvement strategies to be implemented)
- DSD getting DD waiver information pretty readily/easily
 - CAC, CADI, and TBI waiver information, however, is lacking in going to DSD
 - this information is staying at the county CEP level
- major focus in the technological components linked to the entry of data
- training the call center individuals (or whomever) in how to collect data in a reliable manner that’s easily able to be confirmed
- capability for a “warm hand-off” = ensuring the ability to immediately respond to a situation that warrants an emergency/prompt response (3-way calling, etc.)
- Questions/Response
 - counties’ objection: what is the basis for their perspective?
 - upset/concerned with ability to provide emergency responses in a timely manner and referrals to law enforcement in a timely manner
 - potential reduction in responsibility at the county level, er go, less funding for the counties
 - concern about waiver reporting obligations to CMS: risk to lose MA funding?
 - EW approved for another 5 years
 - however, CMS wanted MN to demonstrate that we were undertaking measures to PREVENT maltreatment (recurring theme from CMS)

- CAC waiver hasn't been approved again, yet
 - restructuring will need to occur to meet Fed. Assurances
- Fed. Gov't is not happy with our state-supervised system
 - if they ask one "wrong" question, we may not be able to answer satisfactorily
 - crack-down on the state of Pennsylvania as an example
- who else might be opposed to this?
 - Jason Flint: really only this group, from his experience
- NHs interested in one entry point
 - would there still be dual reporting? "warm hand-off" accompanied by an instantaneous electronic transmission?
 - "warm hand-off": try to put two or three parties together, rather than having someone call back at some point
 - DHS currently working on instantaneous electronic data transfers (potentially in a few weeks/months)
- Maura McNellis-Kubat (DHS – Licensing)
 - unlikely that this would make it through DHS in the budget (putting it forward in the coming session)
 - if coming from outside DHS, DHS wouldn't necessarily oppose it (??)
 - putting forth a developmental proposal (potential in finances)
 - some counties don't like taking the other Lead Agency reports
 - DHS – Licensing willing to explore their facilities directly reporting into DHS – Licensing (like with OHFC currently)
- matching up of proposals with the VAA Stakeholders and the QA Stakeholders
 - moving forward without DHS official approval
 - aligning of motivating factors with each of the two groups
 - potential opposition from law enforcement

- even among the counties, the counties that are the most supportive are complex, and those that are overwhelmed (and especially those short on personnel to investigate)
- cost estimates
 - technology to get us to a Centralized CEP (well-functioning) including Emergency Response ability
 - preliminary proposal: states have developed technology with a full-fledged system (getting Federal financial participation) from about \$3.2-\$5 million
 - developed even with partial Federal funding
 - states' systems already developed are in the "public domain"
 - taking the code and getting the IT support to implement within MN
 - potentially lower cost than what "inventing the wheel" might be
- not universal consensus, but there is a great deal of support to move forward
- how do we proceed
 - realistic proposal with a timeline for developmental stages and when funding should be ascertained to develop/implement
 - we're going for it
- research needed
 - comparable costs for implementing around the country
 - comparison of start-up costs and savings/efficiencies from a later date
 - analysis of what the problems are with the current system (thorough assessment)
 - evidence to show what the new system would resolve in the old system
 - DHS – AAPS has an intern working with them to examine this factor
 - systematic evaluation
- Financial Exploitation and Fiduciary Obligation
 - joint tenancy implying/creating a fiduciary obligation
 - Elder Law Bar, Probate Bar, Real Estate Bar

- Kim Dayton writing a memo to address this issue
 - there are other statutes/cases that provide a standard for fiduciary duty
 - six statutes has been found to potentially refer to which create this needed standard
 - Utah, California, Arizona, Vermont, Florida: good examples of statutes to look at
- many states use a more “behavioral” approach for defining undue influence
- making changes in the Criminal Code vs. the VAA
- removing the “detriment to the VA” language within 626.5572 Subd. 9 (Fin. Exploit.)
- CCS has brought up the speedy trial issue and expanding the statute of limitations for financial exploitation cases since the years that can pass might be fairly extensive
 - Florida has a provision for expediting cases that involve elderly victims (perhaps 90 days for civil suits)
 - expedited trial calendar when having a case that involves an elderly victim
- issue of manpower to proceed forward with VA cases
 - not having enough resources to prosecute felonies as it is
 - can refer to the AG’s office IF there is the MA hook (Medicaid Fraud Unit)
 - the Ramsey County case, the likelihood that MA eligibility would be established upon proving the financial exploitation exists (anecdotal evidence), helps get others involved
 - potentially avoiding the usage of the hardship waiver or increasing the uniformity of its application across the counties
 - creating linkage and uniform policy with a finding of exploitation and the need for emergency/hardship waiver funds
- something to move forward with (??)
 - no exact wording yet, no overall consensus behind wording yet
 - something we would like to pursue
- delaying this issue for full discussion until the December 4, 2008 meeting
 - potentially have an update from the CCS at that meeting for our consideration

- Silver Alert (Vulnerable Persons Alert)
 - model from Arizona which has been recently implemented
 - from now on, the way to reference this initiative (new term of branding)
 - Endangered Person Alert?
 - Julie Alert? Webster Alert?
 - Julie Webster scenario
 - had to resign as a teacher because of early-onset Alzheimer's
 - drove into Wyoming and didn't survive
 - risk of using a name or term that certain cultures wouldn't identify with
 - Endangered Person Alert (EPA): more inclusive term/name?
 - least offensive name that's possible to be as inclusive as possible
 - age for the VAA is 18+ so how to recognize that with this specific alert
 - EP: someone with a diagnosed health problem AND who's gone missing
 - no additional cost to anyone
 - person:
 - 18+
 - missing under suspicious circumstances
 - reported to law enforcement to qualify
 - information:
 - goes to radio/TV broadcasters
 - information tailored as to how the person goes missing (walking vs. car)
 - strictly broadcaster information (no roadside signs activated)
- currently, 12 states are using such a system (Arizona now the most recent to implement)
- student research
 - cost issue (Ohio and Arizona both stating that there were no new costs)

- get more concrete information regarding this
- look at the Federal bills and the 12 laws that are in place
 - put together the best list of criteria (not an alert system for every hiker and skier in America, but for someone who has ties to MN in some way or another)
 - watching out for violations of HIPAA
 - North Carolina has provisions to address this issue
- who else is needed to get on board with this issue:
 - Law Enforcement
 - Broadcasters/Media Sources
 - Warren Wolff (Star Tribune)
 - OHFC (Sue Jackson, or another delegate)
- Meeting with Senator Moua (11/20 at the Capitol)
 - visitor delegation at this point:
 - Mark Wandersee (ECRA)
 - Carmen Castaneda (Hennepin Co. APS)
 - Kari Thurlow or Darrell Shreve (Aging Services)
 - Iris Freeman (Wm. Mitchell)
 - she may have a full plate currently, but we're discussing with her nonetheless
 - distribution of topic speaking points sheet (table of contents)
 - delegation bringing along "The Pitch" of what we're looking at
 - any others who wish to come should please contact Iris Freeman to express interest
 - there will be several meetings to come for speaking with senators/representatives
 - alerting Sen. Moua/others to the coming report from DHS – DSD (QA Stakeholders group)
 - list of members who've participated in this to present to Sen. Moua and others
 - over 100 persons getting the emails/updates

- roughly 50-60 participating at each meeting and in subcommittees
- more than 40 participating groups/organizations/agencies/offices
- over 1100 visits/hits on the Wiki website
- increase in the amounts of cases from Ombudsman Office, ECRA, Disability Law Center
 - those specifically relating to financial exploitation
- Additional Proposals: What do we do with each one?
 - not excluding other items that didn't make the "top priority" list
 - new issues being brought up/addressed at a Large Group VAA Stakeholder meeting and then moving forward as is appropriate from there
 - attendance has been somewhat sporadic in previous Large Group meetings
 - email sent out to capture people's attention (??)
 - let the majority know what's going on that could spark enthusiasm/participation
 - one page, brief PITHY CONCISE summary ☺ (major alert headline in the subject)
 - making sure to ask the group if Friday afternoon meetings are still the best option