

Legislative Workgroup Meeting

VAA Stakeholders

Friday, October 10th from 1:30-4:30pm

Members Present: Iris Freeman (Mitchell – CEJP), Jon Lips (Care Providers), Kevin Hansen (ECRA), Arlene Wegener (Ombudsman – MH/DD), Barb Doherty (MNALL), Maura McNellis-Kubat (DHS – Licensing), Carmen Castaneda (Hennepin County APS), Stella French (OHFC), Darrell Shreve (Aging Services), JJ Hasbargen (AG’s Office), Deb Holtz (State Ombudsman – LTC), Jane Ochrymowycz (Alzheimer’s Association), Deb Siebenaler (DHS – APS)

- POA = fiduciary relationship (Ct. of Appeals opinion in State v. Campbell)
 - jumping off point for guardianship/conservatorship
 - other responsible parties
 - opens the door for joint account holders in other situations
 - opportunity for other criteria to be used in determining whether a fiduciary obligation exists (who contributed funds, in what ratio, parties’ understanding of roles, etc.)
 - State v. Campbell could be appealed to the State Supreme Court (for a few days still)

Criminal Code Subcommittee Update

- extending statute of limitations for financial exploitation (3 years to 5-6 years)
- gross misdemeanor (over \$500), misdemeanor, felony (over \$1000), major felony (over \$2500)
 - other theft offenses (limit of \$35K) not financial exploitation
 - raising theft statute for financial exploitation for offenses that are over \$35K
- creating an offense for a gross misdemeanor, in absence of legal authority, where a person acquires a legal authority by force, coercion, duress, etc.

Legislative Priority Worksheet

- Financial Exploitation
 - linked to fiduciary obligation language a bit
- Functional Definition of Vulnerable Adult
 - Rationale
 - increase clarity for the wide range of interpretations
 - put more concrete terminology that people can agree on
 - definition should be expansive, but not too all-encompassing
 - Functional Portion of Subd. 21 (Vulnerable Adult)

- (4)(ii): protecting from maltreatment
- Other Stakeholders
 - Disability Advocates, expansive definitions involve them too
- More Research
 - other definitions of “functional” in other states’ laws
 - ABA Commission website: Kevin Hansen and Barb Doherty (function and ability to protect oneself)
 - states with recent amendments to law
 - age definition vs. other choices
 - California, Texas, Massachusetts, New Hampshire, Illinois
 - Iris Freeman checking with Disability Community
 - what other category of person would be reached with the vulnerable adult definition as is, and what category would not be reached
- Other Changes to Definitions
 - Caregiver
 - adding “services” in will potentially bring up many personnel issues (taking on another responsibility that could be an unfunded mandate)
 - who else would be pulled in? Ombudsman? Case Managers?
 - one more piece of evidence that one’s autonomy could be taken away
 - family caregivers
 - perhaps using the term “delivery” of services instead of just “services” alone to limit how broad its scope is
 - connected with the “informal agreement” under the Caregiver definition
 - should the definition be left as it was?
 - should the “and” remain at the end of (4)(i) vs. the proposed change to “or” from Definitions
 - Abuse
 - addition in of “Alford Plea” language: leave it?
 - too specific; would have to list all other pleas
 - omit this language
 - removal of “as defined in section 609.341”
 - this should be left in
- Standardization of Investigations
 - Rationale

- county level investigations (minimum standards that you would do in an investigation as a lead agency (OHFC, DHS too))
- local county level, having people look at some standard expectations (child protection has an enormously elaborate structure in place)
- baseline for counties to work from
- administrative clarification, consensus across the counties
- fairness involved
- greater chance of justice and consumer protection
- standardization across the 87 counties
- this is something that could serve as the foundation for a more centralized system (consistency in protocol measures)
 - this could help accomplish some of the benefits for centralized reporting systems
- add to Definitions what “investigation” is
 - see proposal from Investigation Subcommittee in September:
 - “Investigation means fact gathering related to the current safety of a vulnerable adult and the risk of subsequent maltreatment that determines if regulatory or protective services are needed.”
- licensing agencies vs. county agencies
- add language to make it seem like minimal elements, like: “Including but not limited to”
 - put this in the body of the VAA
 - have a definition in 626.5572 that just references back to where it’s put in 626.557
- Cost Item
 - once the new language is out there, there could be changes from what’s suggested, to what we’re responsible for
 - no real cost implications included
- Consensus Reached
 - pretty much across the board, no big arguments
- More Research
 - Deb Siebenaler checking with county level for approval (county APS, MACSSA, etc.)
- Financial Institution Reporting (Comfort Language)
 - Rationale

- having financial institutions cooperate more with investigations of VA maltreatment and reporting
- Cost Item
 - numbers might go up as far as reports and adding to numbers the counties are already seeing
 - some investigations might get further along in the process
 - savings come in from preventing waiver monies going out to victims
- Other Stakeholders
 - Sandra Anderson, retired (Wells Fargo)
 - Vice Chair of Board on Aging
 - Deb Siebenaler contacting her
 - Financial Fraud Enforcement Team (Alcohol and Gambling Division of the Dept. of Public Safety)
- More Research
 - education of the financial institutions
 - Wachovia Bank in Pennsylvania: report as to why there's a cost saving measure in making financial exploitations mandated reporters
 - Carmen Castaneda looking into this
 - consistency on the national level (i.e. what Wells Fargo is initiating across the board with internal policies for its employees)
 - referencing 13A.02 subd. 1(4) and 13A.04 subd. 1
 - clarify immunity language in the VAA and the MBA recommendation that the immunity be reflected in Chapter 13A (13A.04 or 13A.02 subd. 1(4))
- Educational Task Force
 - Rationale
 - ongoing changes in the personnel within all three of the agencies so ongoing training is necessary to enable the protections that exist currently to be maintained
 - cross-training across agencies
 - consistency
 - Cost Item
 - most likely
 - pooling funds? specific department funds this?
 - some costs for coordinated educational curricula
 - cost savings by spreading funds out from three departments rather than one department taking on only its own individuals
 - looking at previous funds that existed that we could potentially pull back to use again

- Consensus Reached
 - yes indeed
 - getting the key stakeholders in regard to education together to focus on what to amend
- More Research
 - brainstorm/strategize with the Guardianship and Conservatorship task force that's assembled
 - adds in to the fiduciary obligations
 - lots of overlap in these areas
 - periodic report to the legislature on what's been accomplished or is being worked on (every few years or a set amount of time)

- Establishing a Silver Alert (Tabled until 10/31/08 meeting)
 - Rationale
 - Cost Item
 - Consensus Reached
 - Other Stakeholders
 - Other Implications
 - More Research

- Other Notes

- Criminal Code Subcommittee examining how to use the Revenue Recapture Act somehow
 - reference it within the VAA's provisions
- how does the MA system respond regarding hardship waivers for victims of maltreatment
 - we need more research in this area
 - application for hardship waivers inconsistent across the board

- Next Meetings

- VAA Stakeholder meeting on Friday, October 31st
 - Tentative Agenda

12:30-1:30pm	Legislative Workgroup
1:30-2:00pm	BREAK
2:00-4:30pm	VAA Large Group