

## Legislative Workgroup Meeting

Friday, September 26th from 12:30-3:30pm

William Mitchell College of Law, Room 125

Members Present: Iris Freeman (William Mitchell), Stella French (OHFC), Arlene Wegener (Ombudsman – MH/DD), Carmen Castaneda (Hennepin County APS), Darrell Shreve (Aging Services of MN), Jane Ochrymowycz (Alzheimer’s Association), Maura McNellis-Kubat (DHS Licensing), Kim Dayton (William Mitchell), Lisa Godon (Minneapolis City Atty.), Deb Siebenaler (DHS Adult Protection), Deb Peterson (AG’s Office), Jerry Kerber (DHS Licensing), Deb Holtz (Ombudsman – LTC), Kevin Hansen (ECRA)

### Notes

- Welcome from Prof. Kim Dayton, explanation of Iris’ role with CEJP at Mitchell
- Structure of meeting
- Introductions

### Purpose of Legislative Workgroup

- proposed charge worksheet from Iris
- develop the real proposal (Sept-Oct 2008)
  - go for those items where we can have impact in 2009
  - ferret out the hot prospects (cultivation)
  - examine the validity of the consensus for proposed items
  - determine where we may need more information to proceed
  - identify “missing” stakeholders to get their views on proposed items
    - Medical Association, Nurses Association, Disability Community, etc.
  - overall troubleshooting
  - cost items for uphill battles in proposed items (justification for new funding)
  - report back to the Large Group VAA stakeholders at Oct. 31 meeting

- prepare for the 2009 session (Nov-Dec 2008)

- meeting with state senators to ensure a chief legislative author
- previous VAA provision-drafters from earlier sessions
  - Kathy Pontius and Ken Backhus
- acquiring approval from sponsoring agencies/organizations/etc.
- identifying opposition in the community as we approach the 2009 session
  - members in the VA community, lawmakers, etc.
- preparation of talking points and handouts (speaking with legislators/groups)
  - speaker's bureau members, lobby for support with other groups
- identifying legislation proposed by other organizations
  - does it conflict with ours? does it coincide with our proposals/purpose?
  - Deb Holtz on Guardian/Conservator movement
  - Jason Flint/Tom Skarohlid on QA Stakeholder movement

- legislative action (2009 and beyond)

- face of what's presented to legislature
- working with chief legislative authors
- clarifying, potentially, even when consensus might exist (lawmakers' needs)
- preparing the large group for interaction with public officials
  - consumers as compelling witnesses for hearings
  - membership of large group serving as witnesses, too
- deal with stuff. Amen.
  - Minnesota Medical Association striking down a proposal in 1995
- lead the evaluation of the process (3 years' worth of work to do for the VAA)
  - then we celebrate ... cake, balloons, martinis, hors d'oeuvres, etc.

- support from public agencies/organizations ... maybe not possible, but get to neutrality grounds (provide background research, statistics, etc.)
  - potentials for professional lobbyists, as appropriate
- keeping cost considerations at the forefront of our considerations

### Priorities for Further Analysis

- Reporting: Single, centralized CEP/Hotline, statewide phone number

- Rationale

- 87 different CEPs, 87 different ways to handle incoming calls
- 87 ways to determine what needs to be done/how it's done
- one call center/system, consistency
- ensuring compliance with Federal requirements for NH's
- reduction in CEP intake workers (437 PTE's to 40 FTE's)
- cost savings? Reallocation of funds and duties?
- administrative simplification (more investigative resources)
- standardization of the training and performance
  - improvements in practice
- more clear for those in the state as to whom to call (consumers/reporters)
- freeing up social worker time to investigate in the community rather than data entry and phone call staffing (removing a "hat" they wear)
- ease of information delivery to have one number statewide to call
- difference between incident reports and maltreatment reports
  - PA and MA online system for incidents/maltreatment
- counties won't be saving any money (emergency response)
- if it takes new state money, it won't succeed, same with county money
- new money would need to come from the Feds?
- cost, cost, cost, cost ... where do new dollars come from, if needed?
  - swap of duties vs. funding vs. \_\_\_\_\_ vs. \_\_\_\_\_

- waiver renewal money (Federal money) = CADI/CAC/TBI
  - assurances about protection
  - CMS checking up on data they should have
  - could lose billions of dollars if not in compliance
  - QA Stakeholder group examining this (incident reporting)
- existing system works well as is
- waiver monies: number of ways to look at the issue
  - what happened AND what's being done about it
  - what is CMS looking for?
- Cost Item
  - technology system used to get information out...could be a big cost
  - large costs in the first few years (efficiencies come later in the process)
    - are the efficiencies really guaranteed? Puffery?
    - how to demonstrate the efficiencies will occur?
    - \$989K in Hennepin County in 1995 (going to 24/7)
  - training for how the new system works
    - ultimately, would it be less money? Front-loaded proposal?
    - long-term cost savings overall?
  - dual reporting: CMS dictating that people taking a report must go through or have CMS' form of training
  - proposal from Carmen to the MACSSA
    - legislative group saying no support for regionalization
  - RFP's to contract out with another group to manage the call center?
    - keep it within government agencies?
- More research?
  - look into other models (examples from specific states)
  - effective advocacy arguments used elsewhere
- Consensus? Missing Stakeholders? Other implications?

- should we change what's already working?
  - trading one set of problems for another
  - still keeping the 24/7 response
- satisfactory experiences saying "it's not broken"
- unsatisfactory experiences prompting change
- regionalization
- lost budgets
- Stakeholders potentially against this proposal
  - Unions (contracting out)?
  - County Employees who may potentially lose a job?
- Stakeholders missing who may have strong opinions
  - Tribes (movement in the Children's area)
    - Deb Siebenaler discussing with Jackie Dionne
  - Minnesota Medical Association
  - MN Sheriffs Association
    - James Franklin previously contacted
  - Law Enforcement
    - Ann Bebeau (St. Paul PD)
    - Val Wurster (Mpls PD)
    - Bill Gottwaldt (Hennepin County Sheriff)
  - Dept. of Public Safety: Alcohol and Gambling Enforcement Division
    - financial fraud and exploitation investigators
  - Out-state county representation
- Reporting: Temporary fix to the dual reporting requirement for NH's
  - Rationale
    - permit NH's to report electronically to the CEP
    - print out the MDH online form and fax to the local CEP
    - CEP can call and ask questions if necessary

- eliminates repetition of information from what's entered online
- requires MDH to alter their online form to add fields that are needed by the CEP/SSIS/etc. so that the form could be faxed to the CEP
- MDH potentially agreeable to this
  - overtaxed as is with the number of reports coming in
  - increased amounts of reports
- not adding prohibited information fields
- OHFC anticipated this from the beginning
- CEP as the "third leg" of the stool
- counties would feasibly support this
  - only certified licensed nursing homes, boarding care homes, swing beds in hospitals using the fax system of MDH form
  - these three entities file report with OHFC, then call CEP
  - certified nursing facilities and skilled nursing facilities
- benefit to the counties to not have staff tied up on phones all the time
- this wouldn't include ICFMRs, or would it?
  - don't use the MDH online form
- intermediate fix vs. temporary fix
  - one report instantaneously distributed to proper recipients
- administrative simplification on part of the facilities
- compliance for facilities and OHFC to ensure this is resolved
- regulatory relief (burden of compliance alleviated)
- keep it for the three groups required to "dual report"
- Right Fax → going to a computer (Microsoft Word function) instead of a paper copy that falls onto the floor at 3am
- Cost Item
  - immediately: programming on the reporting form online
    - modification of form: adding fields to what currently exists
    - previous form made in about 10 days?

- no complaint from users of online form of functionality
- important compromise: NH's still in the VAA this way
- pretty close to a slam dunk to give relief to all involved
- More research?
  - ICFMR clarification: report taken by someone with Federal training
    - Stella French investigating this
- Consensus? Missing Stakeholders? Other implications?
  - County APS okay
  - Provider organizations okay
  - AG's Office okay
  - Ombudsman okay
  - ECRA okay
  - Missing stakeholders
    - Minnesota Hospital Association (Swing Beds)
      - Darrell Shreve following up on this
- Definitions: Fiduciary obligation
  - Rationale
    - State v. Campbell → AG's office waiting for a decision on Tues 9/30
      - Court of Appeals decision
      - Judge declaring the statute unconstitutionally vague
      - AG's office proposing language for this phrase/term
      - Judges having issues:
        - once you do a POA for someone, that gives the person a claim of right to ALL of the individual's money (State v. Violet Columbus)
      - "intentionally fails to use financial resources"
    - "VA places confidence in person and/or the person assumes a position of superiority/influence"
    - "defined elsewhere in law" → it isn't defined elsewhere in law

- Previous legislature introduction of language
  - Senate File 3196: Judiciary Committee
  - House File 3514: Public Safety and Civil Justice
- cases not brought or are struck down by a court (not successfully resolved because of current definitions)
- independence for elderly persons
- financial exploitation just as critical as physical illness/injury in taking away someone's independence

- Cost Item

- saving money in not having a bigger burden on taxpayers
- cases will be the same, able to get somewhere in court
  - pre-trial appeal
  - have to pay the defense attorney costs sometimes
- could save Medicaid a lot of money
  - county makes a determination that someone's been exploited, and then Medicaid has to pay for costs (if you can charge it, you can get restitution)
- NH bills will be more certain to be paid

- More research?

- some documentation to present to the Large Group?
  - social/human cost of this, potential benefit to public benefits
  - Deb Holtz & Deb Siebenaler checking on any fiscal implications
  - Darrell Shreve doing research in this area, too
  - University of Delaware system: public cost savings research
    - prevention of financial exploitation
- tracking hardship waivers as a result of financial exploitation
  - Ramsey County: MA Application for a victim
    - hardship waiver: there shouldn't need to be a hardship waiver, a victim is a victim, hardship waiver should be if you give money away and need more money for necessary services (??)



- Consensus? Missing Stakeholders? Other implications?
  - Elder Law Bar
    - Kim Dayton exploring/investigating this perspective
    - definitions for fiduciary obligation and financial exploitation
  - Professional Guardians/Conservators
  - County Attorneys Association
    - Kevin Hansen contacting John Kingrey
  - MN Bankers Association/Independent Community Bankers of MN

Iris' contact information: [advocacystrategy@aol.com](mailto:advocacystrategy@aol.com)

(612) 834-4747 or 1-800-HEY-IRIS

(just kidding, the 1-800 number won't get you to Iris 😊 )

#### Next meeting on October 10<sup>th</sup>

- scheduled for 1:30-4:30pm
- Kevin Hansen has reserved Room 229 at William Mitchell
- we'll have the ability to teleconference for those who can't drive down

#### For Next Meeting:

- Definitions: Financial exploitation
  - Rationale
  - Cost Item
  - More research?
  - Consensus? Missing Stakeholders? Other implications?
- Definitions: Amend functional definition of VA
  - Rationale
  - Cost Item
  - More research?

- Consensus? Missing Stakeholders? Other implications?
- Definitions: Other changes
  - Rationale
  - Cost Item
  - More research?
  - Consensus? Missing Stakeholders? Other implications?
- Investigations: Standardize components of an investigation
  - Rationale
  - Cost Item
  - More research?
  - Consensus? Missing Stakeholders? Other implications?
- Investigations: Comfort language to encourage financial institutions to cooperate with FE cases
  - Rationale
  - Cost Item
  - More research?
  - Consensus? Missing Stakeholders? Other implications?
- Education: Creation of a MDH/DHS/DPS Task Force for coordinated educational curriculum
  - Rationale
  - Cost Item
  - More research?
  - Consensus? Missing Stakeholders? Other implications?
- Protection: Silver Alert, similar to Amber Alert
  - Rationale
  - Cost Item
  - More research?
  - Consensus? Missing Stakeholders? Other implications?