

Minnesota Gerontological Society

2018 ANNUAL CONFERENCE

APRIL 27, 2018

REPORT ON THE GOVERNOR'S CONSUMER WORK GROUP COMBATting ELDER ABUSE



Presenters

Mary Jo George, Associate State Director for Advocacy, AARP

Suzanne M. Scheller, Esq., Scheller Legal Solutions LLC

Jean Peters, Vice President, Elder Voice Family Advocates



Background

Background

- OHFC
- Consumer experiences of our most vulnerable

Giving Voice to Those Affected



November 12, 2017 –
 5 part Star Tribune series by Chris Serres
 “Left to Suffer”

This series spotlighted elder abuse problems in MN.

LED GOVERNOR TO APPOINT CONSUMER DRIVEN TASK FORCE ON
 ELDER ABUSE ON 11/30/2017.

AARP ASKED TO BE CONVENER AND 4 OTHER GROUPS APPOINTED
 WERE: ELDER VOICE FAMILY ADVOCATES, ELDER JUSTICE CENTER,
 MID-MINNESOTA LEGAL AID, AND ALZHEIMER’S ASSOCIATION OF
 MINNESOTA AND NORTH DAKOTA

Direction for the Work Group: Focus on the needs of seniors
 who are cared for in nursing home and assisted living settings.

PROTECTING THE RIGHTS OF RESIDENTS AND
 FAMILIES AND CONNECT THEM TO RESOURCES:

Review the current state and federal regulatory, licensing, compliance and enforcement requirements, and recommend changes if these requirements are insufficient to deter potential abuse and protect seniors from retaliation from providers.

Clarify and strengthen the statutory definitions of memory care, assisted living, and housing with services so consumers and families can make informed decisions...

Recommend changes to current law to ensure that family members are informed about how to report suspected abuse and neglect...

IMPROVING COMMUNICATION WITH FAMILY
 MEMBERS AND LAW ENFORCEMENT ABOUT
 ALLEGATIONS OF ABUSE

Recommend changes to current law to remove barriers and improve communication with family members when there is alleged abuse, including complaints within the OHFV and self-reports from providers.

Recommend changes to current law to ensure proper reporting to law enforcement about potential abuse.

Time line of Governor's Consumer Task Force on Elder Abuse:



Addressing Elder Abuse in Minnesota Long-Term Care Settings

Public Policy Actions Necessary to Prevent and Deter Abuse

January 29, 2018

AARP® Real Possibilities
Minnesota



MINNESOTA
ELDER JUSTICE
CENTER

elder voice alzheimer's association®
FAMILY ADVOCATES

Summary of Key Recommendations:

Strengthen and Expand rights of Older and Vulnerable Adults:

1. Allow access to reports of allegations of abuse.
2. Establish stronger anti-retaliation laws for vulnerable adults and their families.
3. Enact new laws that give victims the same rights to appeal a maltreatment finding as a perpetrator
4. Clarify a resident's right to place a camera in their room.
5. Provide better access to information to assist consumers.

Enhance Criminal and Civil Enforcement:

1. Enable prosecutors to charge perpetrators of abuse with a gross misdemeanor for terrorizing assaults that do not result in physical injuries.
2. Establish a private right of action for violations of rights.

Develop New Licensure Framework for Assisted Living and Dementia Care Settings:

1. To address the complexity and confusion in the market today, the State must develop an AL license designed to create clear standards for providers and vulnerable adults alike. Develop standards for staffing, training, admission and discharge criteria, as well as standards for certification of dementia care and protections to preserve those who rely on Elderly Waiver.
2. Recommend immediate protections and appeal rights for arbitrary discharge and termination of services.

Improve MDH Licensing Regulation, OHFC Enforcement and Investigation processes and MAARC reporting:

1. Restore confidence by using existing authority to investigate.
2. More frequent surveys.
3. Wide range of tools to combat violations including increased fines.

Status of Current Legislative Efforts

SF3088 – (Sen. Lourey) & HF3468 (Rep. Olson)

- Consumer recommendations from the Work Group
- Not heard in House or Senate

HF3138 (Rep. Dean)/HF3308 (Rep. Kiel)

- Amended as HF4458 (Rep. Zerwas)
- In the HHS Omnibus bill

SF3437 (Sen. Housely)

- Significant amount of language from SF3088
- Amended 4/19/2018 to be strengthened
- Not currently in an Omnibus bill



OLA Report

Released March 6, 2018

Evaluation of OHFC processes, policies, and procedures

Extensive research for 8 months

Judy Randall, OLA Manager

Link to reports: <https://www.auditor.leg.state.mn.us/ped/2018/ohfc.htm>

Key Findings – OLA Report

Between fiscal years 2012 and 2017, the number of allegation reports OHFC received increased by more than 50 percent, reaching 24,100 in Fiscal Year 2017. OHFC triaged for onsite investigation only 5 percent of the reports it received that year. (p. 7)

OHFC does not have an effective case management system, which has contributed to lost files and poor decisions regarding resource allocation. (pp. 10-12)

OHFC’s intake, triage, and investigation processes lack sufficient quality control measures. (pp. 32-33, 37-41)

OHFC does not inform vulnerable adults or their family members whether providers have reported suspected maltreatment. (pp. 64-65)

OHFC posts investigation reports on its website, but the website is incomplete and difficult to navigate. (pp. 71-72)

OHFC does a poor job managing its data, and MDH does not use available allegation and investigation data to identify trends and inform prevention efforts. (pp. 75-78)

“Housing with services” establishments—which include assisted living facilities—are not licensed by the state and do not have the same level of oversight as nursing homes or other licensed service providers. (pp. 83-88)

Key Recommendations – OLA Report

OHFC should implement an electronic case management system. (p. 12)

The MDH Commissioner’s Office should play a stronger role overseeing OHFC. (p. 21)

OHFC should incorporate quality control measures into its triage and investigation processes. (pp. 33, 41)

The Legislature should require OHFC to regularly report on its progress in meeting state and federal requirements. (p. 62)

The Legislature should amend state law to allow OHFC to inform a vulnerable adult and his or her legal representative when a provider has filed a report that involves the vulnerable adult. (p. 65)

The Legislature should require OHFC to post all investigation reports on its website, and OHFC should improve its website. (p. 72)

OHFC should better manage its data, and MDH should analyze the data to identify trends and share its findings with providers and other stakeholders. (pp. 76-77)

ISSUES ADDRESSED	Sen. Lourey/Rep. Olson (SF 3088/HF 3468)	Sen. Housley (SF 3437)	Rep. Kiel (HF 3308) Now in Rep. Dean's (HF 3138) Other bills introduced (HF 4458)
Protect Assisted Living residents from unfair and arbitrary evictions	✓	✓	No
Mandate the regulation and oversight of Assisted Living Facilities	✓	Task Force Created. Commissioner can promulgate rules if Task Force doesn't create licensure	Task Force Created. No Clear Authority to enact licensure
Enforcement of Health Care & Home Care Bill of Rights & protections against retaliation	✓	Retaliation included but no enforcement	No Enforcement
Enforcement of and protections against deceptive marketing	✓	Deceptive Marketing included but no enforcement	Deceptive Marketing for NH residents only; no enforcement
Allow families to continue with civil actions after vulnerable adult who was harmed dies	✓	No	No

ISSUES ADDRESSED	Sen. Lourey/Rep. Olson (SF 3088/HF 3468)	Sen. Housley (SF 3437)	Rep. Kiel (HF 3308)/ Rep. Dean's (HF 3138) Other bills (HF 4458)
Provide basic information to vulnerable adults and family members about maltreatment reports	✓	Allows family members access to OHFC information; but not from providers	Allows family members access to OHFC information; but not from providers
Increase penalties for assault crimes against vulnerable adults	✓	✓	Included
Right to place a camera in private room upon consent of the vulnerable adult	✓	Right to Placement of Camera but must notify facility & no enforcement	No
Increase fines against facilities where maltreatment is substantiated	✓	No	No
Increase Home Care Surveys (Inspections) from every year three years to every one year	✓	May be annual for certain providers; may increase to 4 years for others	New ownership survey required

Comparison of Bills – Electronic Monitoring

SF3437

- Consent by resident
 - If incapacity, then interested person
- Written documentation
- Notice to provider

HF3138

- No Electronic Monitoring

Comparison of Bills – Expansion of Rights

SF3437

- Expansion of Health Care Bill of Rights
 - Maltreatment information
 - Grievances/Retaliation
- Expansion of Home Care Bill of Rights (30 day)
- VA maltreatment appeal right

HF3138

- Expansion of Health Care Bill of Rights
 - Maltreatment information
 - Grievances/No Retaliation
- No real expansion of Home Care Bill of Rights (10 day)
- VA maltreatment appeal right

Comparison of Bills – Retaliation

SF3437

- Retaliation in Health Care and Home Care BOR
- Against employee, VA, or interested person
- When advocating, reporting, using own services
- Rebuttable Presumption if adverse action within 90 days

HF3138

- No retaliation in Health Care or Home Care BOR

Comparison of Bills – Deceptive Marketing

SF3437

- Deceptive Marketing for NH and AL/HWS
- Fail to inform of limitations to care
- Fail to accept EW after promised acceptance after private pay
- Failure to disclose or explain non-refundable community fee
- Represent as memory care when not meeting requirements

HF3138

- Consumer Transparency for NH
- Similar to SF3437 but does not prohibit oral promises
- No home care

Comparison of Bills – Termination

SF3437

- Termination of Service and Housing Protections
- Clarify criteria for termination (alters terms & no cure – 30; unsafe; documented significant change; non-payment – 10)
- Create appeal right to termination
- Participate in a safe transfer of care

HF3138

- No new termination rights

Comparison of Bills – Regulatory

SF3437

- Provisions for home care correction orders
- Survey frequency changes (every year)
- No increases in home care fines

HF3138

- Limited survey changes (new ownership)
- Provisions for home care correction orders
- No increases in home care fines

Comparison of Bills – Access to Information

SF3437

- Access to maltreatment information
- From MDH
- From provider (right)

HF3138

- Access to maltreatment information
 - From MDH
 - From provider (right)
-

Comparison of Bills – Criminal & Law Enforcement

SF3437

- 4th Degree Assault of VA
- Law enforcement notices

HF3138

- 4th Degree Assault of VA
 - Law enforcement notices
-

Comparison of Bills – AL License & Dementia Care

SF3437

- AL License Task Force with Rulemaking
- AL Report Card Task Force

HF3138

- AL & Dementia Care Task Force
- AL Report Card Task Force

Main Omissions in both Bills

No Private Right of enforcement for:

- Bill of Right violations
- Retaliation
- Deceptive Marketing

No survival of injury action involving vulnerable adult

No expansion of Health Care Bill of Rights to HWS/AL

No consolidation of various bills of rights

Next Steps

Stand-alone Elder Abuse bill?

SF3437

- Government Operations Committee
- HHS Finance

HF3138

- Civil Law and Data Privacy Committee

Governor Factor

- Has expressed support for consumer bill
- MDH/DHS Agency input



Thank you

We appreciate all the efforts to combat elder abuse from dedicated caregivers, professionals, management, owners, state agencies, legislators, advocacy organizations, and consumers.

Together we can create system change on behalf of Minnesota's older and vulnerable adults.