

Minnesota Elder Justice Center



Center Partner' Meeting

Dec. 14, 2018

Agenda

- › Introductions and Announcements
- › Current Policy Issues
 - › Update from Vulnerable Adults in Long Term Care Facilities Working Groups
 - › Vulnerable Adult Act Sub-Committee
- › BREAK
- › Issues in Financial Exploitation
 - › Barring Inheritance from Persons Convicted of Financial Exploitation
 - › More tools to quickly stop financial exploitation

Announcements

- MEJC
 - WEAAD Key Note!
 - [Amicus Curia for *Engstrom v. Whitebirch, Inc.*](#)
 - Consumer remedies for violations of deceptive acts and fraud
 - Is “defending” against aggressive and potentially deceptive/fraudulent activities enough to be an “injury”

OTHER?

Vulnerable Adults in Long Term Care Facilities

- Overview of the Process
- Six working groups met
 - Assisted Living Licensure
 - Dementia Care Standards
 - Electronic Monitoring
 - Consumer Rights
 - Quality and Safety in LTC Settings
 - Assisted Living Report Card

Assisted Living Licensure

- › [Basic Framework](#)
 - › Convert the Housing with Services registration into a full license with specific criteria for various key areas.
 - › Physical plant, evaluation and admission criteria, discharge criteria/protections, staffing issues
 - › Four “levels” of regulation
 - › Housing with Support Services
 - › Housing with Basic Health Services
 - › Housing with Comprehensive Health Services
 - › Dementia Care
- › Key Point: Designation of ONE licensed entity responsible for ALL services (even if subcontracted to other organizations)

Electronic Monitoring

- Definitions (monitoring device, resident representative)
- Consent to electronic monitoring
- Withdrawal of consent
- Roommate refusal to consent | Reasonable accommodations
- Notice of consent to others
- Content of Notification/Consent form
- Costs associated with electronic monitoring
- Notice to visitors
- Dissemination of data
- Facility liability
- Obstruction of electronic monitoring
- Resident rights and protections

Dementia Care Standards

- › There should be some general standards that apply across settings (People with dementia can and often do live in non-dementia care settings)
- › **In Certified Units**
 - › Basic standards that care units must follow (physical environment, activity programming, behavior plan support, etc.)
 - › Basic Disclosures that must be made to prospective tenants/consumers
- › **In All Assisted Living Settings**
 - › Required Dementia Training

Consumer Rights

- › Stronger Consumer Protections
- › Enforcement Issues
- › Consumer Education

- › Key Topics Discussed:
 - › Anti-Retaliation: Whose burden to “prove” retaliation
 - › Enforcement: Regulators only or private enforcement also?
 - › Discharge Protections
 - › Funding for Ombudsman
 - › Who can enforce the rights
 - › Resident and/or Family Councils

Quality and Safety

- › Long term study of key issues in long term care
 - › Identify key areas of inquiry – i.e. What can we learn by studying reports/complaints other data compiled by MDH about care delivery in LTC?
- › Big discussion about data
 - › Make current data more accessible
 - › Work on collecting new data
- › Create a sustainable/ongoing infrastructure (group) to discuss these issues long term

AL Report Card

- › AL report card will move forward, but not on current legislative agenda
- › Build on work already happening though DHS
- › Report cards sound like good tools...but present numerous challenges and time to implement
 - › Funding
 - › Developing domains is a challenge – difference between input from providers/advocates/policy experts/academics/families/elder consumers

VAA Subcommittee

- › Meeting since September
- › Looking at four general changes to the VAA this session
 - › Caregiver Neglect
 - › Define Self Neglect
 - › Remove requirement to show harm in definition of Financial Exploitation
 - › Change data requirements:
 - › Allow sharing with Vulnerable Adult and support person in some circumstances
 - › Protect integrity of investigations

Where's the Harm?

- › Scenario:

- › An attorney in fact (John Doe) uses the principal's checking account to pay for a new winter coat for a John Doe's significant other.
- › Jane Doe has a joint checking account with Mom. Jane Doe has not made a deposit of her own money in over a year. She uses the account to pay for her Costco membership.

Where's the Harm?

› Current Definition...

› A fiduciary...

- (1) engages in unauthorized expenditure of funds entrusted to the actor by the vulnerable adult which results or is likely to result in detriment to the vulnerable adult; or
- (2) fails to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct or supervision for the vulnerable adult, and the failure results or is likely to result in detriment to the vulnerable adult.

› Possible Change(s)

- (1) engages in unauthorized expenditure of funds entrusted to the actor by the vulnerable adult ~~which results or is likely to result in detriment to the vulnerable adult;~~ or
- (2) fails to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct or supervision for the vulnerable adult, ~~and the failure results or is likely to result in detriment to the vulnerable adult.~~

Where's the Harm?

› Scenarios: Mom and Dad are both Vulnerable Adults

- › An attorney in fact (John Doe) uses dad's checking account to pay for a new winter coat for a John Doe's significant other. The document is silent as to gifting.
 - › The coat cost \$300.00 and the checking account has over \$150,000.00
 - › The coat cost \$300.00 and the checking account only has \$1,000.00.
- › Jane Doe has a joint checking account with Mom. Jane Doe has not made a deposit of her own money in over a year. She uses the account to pay for her Costco membership.
 - › Mom lives with Jane and they both use things purchased at Costco
 - › Mom lives with Jane, but Jane only uses the Costco membership for herself
 - › Mom lives in nursing home, Jane is the responsible party and but for the Costco membership, generally ensures bills are paid and Mom receives monthly spending money
 - › Mom lives in nursing home, Jane is the responsible party and bills are paid but mom never gets her monthly spending money

BREAK

(a) A surviving spouse, heir or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this article, including an intestate share, an elective share, an omitted spouse's or child's share, homestead, exempt property, and a family allowance, and the estate of decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

Barring the Inheritance?

- › The Scenario:
 - › Brother A, as power of attorney, financially exploits mom – taking \$25,000 from a savings account.
 - › Investigation begins once bills are unpaid and county/AG prosecutors bring a case.
 - › Brother A is convicted or pleads guilty and is sentenced to probation, no fine, and \$25,000.00 restitution.
 - › During the course of the case, mom dies. The estate is worth \$200,000 at her death.
 - › During the probate proceedings – it is determined there are only 2 heirs – Brother A and Brother B. – both are in line to inherit \$100,000.00
 - › The probate court listens to arguments from Brother B about the financial exploitation, and agrees to account for the 25,000 in the splitting of the estate.
 - › Brother B inherits between \$75,000 – \$85,000 after the restitution is accounted for.

- › Should a probate judge, based on the conviction, have the power to bar the convicted person from receiving some/all of the \$75,000?

Barring the Inheritance?

- › Current Status Quo:
 - › A few dozen of these cases are prosecuted every year
 - › Several will end up with a restitution order, where the defend will nonetheless be set to inherit from the estate
 - › Parties in probate court can “agree” to settle for a certain amount
 - › Judge has no statutory power to “bar” the convicted person from what they are entitled to in the estate
 - › A handful (how many?) of convicted persons will inherit from estates in which the financially exploited the decedent

Crux of the Proposal

Yes

- › Give the Power to Probate Court
- › Only allow for cases where there was a conviction for Financial Exploitation (or related crimes like Theft by swindle)
- › Give the court the option (“may” bar from inheritance)

Court may bar weighing the following factors:

- 1) Seriousness of the crime
- 2) Use of force, coercion, etc.
- 3) Relationship between decedent and the convicted person
- 4) Wishes of the decedent and/or other heirs
- 5) Wishes of other heirs
- 6) Cognitive capacity of decedent
- 7) Other?

Need a Change?

Yes

- › Deterrence: Stop the “phenomenon” of accessing my inheritance early
- › Current mechanism (fines) is inadequate to deter and civil remedy is cumbersome
- › Actions have consequences beyond criminal punishment
- › Basic Fairness

No

- › Gives the court too much authority to disrupt the “will” of the decedent
- › Use current mechanisms
 - › Improve the use of fines
 - › Clarify civil statute
- › Cases are complex, hard to quantify just how much Brother B should be barred

Other Considerations

Yes

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- › Current mechanism (fines) is inadequate to deter
- › Actions have consequences beyond criminal punishment
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No

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- › Improve the use of fines
- › Cases are complex, no

Need a Change?

- Cost Benefit Analysis – is it worth it? Priorities?
- Who would:
 - Strongly Support
 - Support
 - Neutral
 - Oppose
 - Strongly Oppose

Florida Law

- Who
 - Vulnerable Adult or Guardian
- Ex Parte Process
 - Free process for petitioner
 - Immediate “protection”
- What Power?
 - Freezing of accounts
 - Temporary Help to get control of accounts
 - Protective order against the perpetrator

What Does Minnesota Need?

- Who should this protect?
 - Vulnerable adults only
 - Others (age? Anyone exploited?)
- Who can bring
 - Only Vulnerable adult and/or guardian
 - Any “interested person” (as in probate)...how broad?
- What?
 - Expedited *ex parte* process just focused on financial exploitation
 - Respects autonomy of individual to make financial decisions but allows for swift and appropriate protection/intervention if necessary
- Why?
 - Individuals and interested persons need more tools
 - Law enforcement and APS need more tools?

Injunction? What's Your Function?

- The Problem(s)
 - Individuals do not have a quick legal mechanism to order/stop exploitation
 - Law Enforcement and APS can not get legal remedies in every case
 - Current restraining order tools are not enough
 - HRO
 - Restraining Order
 - Emergency Conservatorship

Emergency Conservatorship?

- The action comes in the form of a petition for conservatorship (even if capacity is not determined)
- Time limits not as fast (60 days)
- Power to make any other order – not clear legal authority for freezing accounts or other protections
- Access – how does someone do this without an attorney?
- What needs to be changed?
- What practices need to change?