



Community of Vermont Elders

4/19/2023

H.171 Testimony before Senate Committee on Health and Welfare

Ruby Baker, Executive Director of Community of Vermont Elders (COVE)

COVE was established over 40 years ago to be the voice of older adults. We operate independent of service providers or state systems as a grassroots organization representing more than 100,000 older and aging adults in our state. We are also the federally designated entity that handles cases of Medicare fraud. Our work with victims of crime goes beyond Medicare to general scams and fraud and other supports, including assistance navigating the justice system. COVE employs the only victim advocate for older adults in the state of Vermont. In this role, we work closely with partners in state govt (including aps) as well as with other npo's, financial institutions, fbi, state prosecutors, advocates, and more.

COVE has a long history of advocating on behalf of vulnerable adults. COVE, Vermont Legal Aid (VLA), Disability Rights Vermont (DRVT), and other interested parties, brought the lawsuit against APS for failing to adequately protect vulnerable adults in 2011. Since that time, we have actively participated on the APS Advisory Committee, including conducting file reviews, and working with the Department of Disabilities, Aging and Independent Living (DAIL) and Adult Protective Services (APS) on this reform proposal. The process has been inclusive and collaborative in so many ways and we are grateful for the changes within the system that have allowed this work to come before you.

H.171 represents significant improvements to the law, including many significant changes to the current protective system. We generally support this reform effort and agree that modernizing the laws governing our system for protecting vulnerable adults is timely and important. In the last two decades, Vermont has made significant investments to ensure that Vermonters of all ages and abilities can continue to live within their communities. Updates to the definitions address the changing landscape and the evolution of how we deliver services in Vermont. As more services are delivered outside of institutional settings, the types of cases and range of needed interventions has changed. The introduction of an assessment track is an attempt to address the growing need for social rather than punitive interventions in many of these cases. The reform in this proposed bill is to create two tracks for an alleged report, one for an "assessment" and one for a full investigation. Lastly, the inclusion of victim rights was one of the primary drivers for this update initially. The bill before you now includes rights for the victim to appeal decisions, to receive updates and information, to refuse protections or interventions, and to protect their privacy. These are rights of all adults and it is long past time that we extend those same rights to vulnerable adults who have been the victim of abuse, neglect, or exploitation under this statute.

DEFINITIONS: Vulnerable adult definition pgs 12-13

-In order for a person to be determined clinically eligible for Long-Term Care Medicaid Waiver services, they must be evaluated by a professional within the Department of Vermont Health Access (DVHA) and be found to "meet the clinical criteria for nursing home level of care." A large part of the intent of this bill is to update the APS statute to recognize the changing landscape of care for vulnerable adults. Many more people choose to live at home or within the community than in institutional settings, and the state makes

significant investments each year to ensure that that is possible. It is very much in alignment with this prioritization of home- and community-based care to ensure protections within that system for the people it serves. Currently, recipients of Long Term Care Medicaid Waiver services still have to pass the APS functional test and are not infrequently found to be ineligible for protective services, despite meeting “the criteria for nursing home level of care.” This is confusing and an unnecessary waste of APS resources. The DVHA determination should be adequate and as such we advocate that clinical eligibility within Long Term Care Medicaid Waiver services count as automatic eligibility for APS.

-COVE strongly opposes the department’s request to add “the” to the functional test 34(C)(ii). In fact we cannot support the bill if the definition of vulnerable adult includes a requirement that the abuse and the disability be linked. We have looked through the statutes of other states and haven’t located any other state that requires such a linkage. To add this would be to change current law, which does not require this linkage. The bill as it stands does not require a linkage and was supported by the House of Representatives and the stakeholders. To parse out times when a person is or isn’t vulnerable fails to consider the person as a whole and the totality of circumstances that surround their living circumstances. It is our belief that to include such a linkage boils down to victim blaming, putting the victim on trial to prove that they couldn’t have protected themselves in the alleged incident. Essentially the bulk of the investigation needs to be conducted up front, before a case is even opened simply to determine if the abuse is linked in any way to the disability. This will create a bottleneck in an already slow system. COVE does not support an update to this statute that changes current law to include this change, worsening rather than improving protections and narrowing rather than broadening eligibility. We want APS to do a better job of protecting more people, not the other way around.

Proposed language §6902:

(34) “Vulnerable adult” means any person 18 years of age or older who:

(A)(i) is a resident of a facility required to be licensed under chapter 71 of this title;

(ii) is a resident of a psychiatric hospital or a psychiatric unit of a hospital;

(B) was receiving assistance with personal care services for more than one month from a designated home health agency or from a person or organization that offers, provides, or arranges for personal care; or is determined to be clinically eligible to receive Long-Term Care Medicaid waiver services; or

(C) regardless of residence or whether any type of service is received, has a physical, mental, or developmental disability; infirmities as a result of brain damage or a mental condition; or infirmities of aging; resulting in:

(i) impairment of the individual’s ability to independently engage in activities of daily living or instrumental activities of daily living or to provide for some aspect of the adult’s own personal care without assistance; or

(ii) some impairment of the adult’s ability to provide for the adult’s self-protection and is therefore at risk of the adult from abuse, neglect, or exploitation.

RULEMAKING

-Since there are significant reforms to the current practices of APS, which COVE is generally in support of, we feel that more specificity within the rulemaking section will ensure appropriate input and

processes. The boundary line between when an assessment is appropriate and when an investigation should be required needs to be clearly articulated. In current law, there is no allowance for “screening out” of a case, meaning to dismiss the case based on an intake screening rather than by conducting an investigation. The screening of reports, including what determinations can be made, should be included in the rulemaking section.

Proposed Language § 6918:

(2) conducting assessments, including:

- (A) the components of an assessment;
- (B) the determinations of an assessment;
- (C) timelines required for the assessment; **and**
- (D) standards and best practices for conducting assessments; and**

(3) conducting investigations, including:

- (A) the components of an investigation;
- (B) the determinations of an investigation;
- (C) timelines required for the investigation; **and**
- (D) standards and best practices for conducting investigations;**
- (E) scope of investigation; and**

(4) screening of reports, including:

- (A) Determination to screen out a report;**
- (B) Determination of vulnerability; and**
- (C) Determination of whether to pursue assessment or investigation.**

Section 4. Financial Protections

-The issue of financial protections is very important to COVE. We employ the only victim advocate for older adults in the state of Vermont and her work primarily falls within the realm of scam and fraud. We assist the Financial Abuse Specialist Team (FAST) to organize within the state. COVE operates seven support groups across the state for victims of these crimes. We host a referral portal and conduct trainings statewide to providers, law enforcement, and many others who are assisting older adults. We receive calls from the postmaster inspectors, FBI, and others to support older adults who have been victimized in this way. Our partners at VLA and DRVT are also on the front lines of victim supports. We ask that Community of Vermont Elders, Vermont Legal Aid, Disability Rights Vermont, and Financial Abuse Specialist Team are included in this vital working group.