



Elder Law Project

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To: Senate Committee on Health and Welfare
From: Michael Benvenuto, Director, Elder Law Project
Vermont Legal Aid, Inc.
Re: Testimony re: H.171

Thank you for your important work on this Bill and for the opportunity to testify and provide comments. We support this significant reform of the system to protect Vulnerable Adults in Vermont. However, DAIL is proposing to change the definition of a “vulnerable adult” specifically to add a “the” before “abuse, neglect, or exploitation”. This seemingly minor change is of critical importance and Vermont Legal Aid is opposed to that revision.

Linkage or Nexus between Vulnerability and the Allegation

The current statute does not have a “the” before “abuse, neglect, or exploitation” so DAIL’s proposal is a change to the current law. By adding a “the” before that phrase, DAIL’s intent is to require a linkage between the alleged abuse and the person’s ability to protect themselves from abuse. Although DAIL argues that the Vermont Supreme Court has interpreted the statute to require a linkage, that is not true and the Vermont Supreme Court has not ruled on that legal question. Our position at Vermont Legal Aid is that if that issue was presented to the Vermont Supreme Court, the Court would interpret that statute as written, and not add this additional requirement.

Requiring a linkage between the person’s ability to protect and the alleged abuse puts the victim on trial and requires the victim to demonstrate that they could not have prevented or protected themselves from the abuse. We are not aware of any other state that requires a linkage between the abuse and the person’s vulnerability, and we would ask the Committee not to add that requirement to the law. The House considered this same request by DAIL and rejected it.

Although DAIL believes that this would be a change to their practice and would require additional resources, we are not convinced that is true, and a core purpose

of adding the Assessment track to the statute is to give APS the flexibility to manage their case load. To properly evaluate a nexus between the allegation and the person's vulnerability requires a full investigation.

If the Committee intends to revise the definition, we are open to expanding on the concept of the "ability to protect" in order to provide more clarity about the meaning of that phrase. Specifically, that the intention is to capture the individual's general "ability to self-protect" and as a result of their impairment, they are "at-risk" for abuse, neglect or exploitation. Proposed Language included below.

Reference to Long Term Care Medicaid in Definition of Vulnerable Adult

We support the suggestion from Ruby Baker, Community of Vermont Elders to move the reference to clinical eligibility for long term care Medicaid as a basis for the determination that the individual is a vulnerable adult into subsection (B). As a practical matter, clinical eligibility decisions are made by DAIL and include a determination that the individual requires extensive personal care. Those individuals should therefore be considered vulnerable by definition. Clinical eligibility for long term care Medicaid is similar to receiving personal care from Home Health agency, and often there is direct overlap in this essential care, which is why it makes sense to move it into subsection (B). This change is included in the revised definition proposed below.

Include Stakeholders in Developing Recommendations for Financial Reform

Sec. 4 of H.171 provides that DAIL will work in collaboration with the Department of Financial Regulation and representatives of financial institutions to develop a report for the Legislature on further reforms. That process should include representation by key stakeholders including the Community of Vermont Elders, Vermont Legal Aid, and Disability Rights Vermont.

Proposed Revision to Definition of Vulnerable Adult:

(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; ~~or is determined to be clinically eligible to receive Long-Term Care Medicaid waiver services~~ 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.