

The Ombudsman, Sean Londergan shared a PSA announcement that is accessible on the Vermont Legal Aid website. You can follow this link: <https://www.vtlegalaid.org/vermont-long-term-care-ombudsman-project>, it is also on YouTube. This PSA speaks to the work that an Ombudsman does in a short 2-minute video.

Each county in Vermont has a local Ombudsman. The work of an Ombudsman is to follow up on complaints and to protect the rights of residents whether in a LTC facility or homebased LTC through Choices for Care. The Ombudsman is not a mandated reporter so anything a resident says stays confidential and the Ombudsman will address situations strictly through the resident's direction. If a resident chooses not to file a formal complaint, the Ombudsman is obligated to respect that decision. The reason for this is so residents and family of the residents can speak freely and not worry about information being disclosed without permission. Staff that work in the facilities; however, are mandated reporters. If they see something that is reportable, it is their legal obligation to do so.

When situations occur that require a legal solution or guidance, the Ombudsman works well with Vermont Legal Aid since an Ombudsman does not handle the legalities of situations. Ombudsman only serves as advocates. A guardian of the resident can also seek out assistance but the direction in every possible way is from the resident. A resident can also identify a person as their representative and this does not have to be a legal guardian.

Residents of LTC facilities and people who receive homebased LTC are made aware of the Ombudsman program through brochures and outreach to community partners. This method is not adequate for reaching all of the potential residents who could benefit from this program. A suggestion was made to provide CFC consumers with a packet with the Ombudsman information, so it would reach a larger population of people. DAIL will verify if the Adult Services Division is including the brochure in their CFC packet.

Division of Licensing and Protection (DLP): Adult Protective Services

Clayton Clark, Director of DLP

In 2015, the Vermont Legislature required APS to report on or before January of each year until the year 2018. APS was also mandated to create the Adult Protective Services (APS) Subcommittee that would help guide APS, the DLP Director and the DAIL Commissioner. This was a temporary condition to monitor the division's improvement in services and case decisions. This January that obligation ceased, but the APS Subcommittee has decided to continue to meet because the guidance from the committee has been valuable.

The committee shall have no fewer than three members and is made up of APS employees, two DAIL Advisory Board members (with one acting as Chair- currently that is Steve Pouliot) and the Commissioner selects other members from organizations like Disability Rights Vermont, COVE and Legal Aid and. Once a month, this group convenes, and the meeting is open to the public. When cases are discussed in this forum, personal details are left out to protect confidentiality.

The subcommittee is a great resource that has provided solid advice. Recently, the committee has created an APS Policy and Procedure Manual that describes the purpose of the committee which includes advising the Commissioner, Director of DLP and the APS Director; make-up of the committee and term limits.

The manual also includes the File Review process. At the discretion of the Commissioner, APS will have some of its screening decisions and investigations reviewed as part of APS's continuous quality improvement plan. This group is different from the APS Subcommittee group and is made up of individuals who are willing to volunteer to do the reviews and they are appointed by the Commissioner. The reviewers are required to sign a confidentiality agreement and will receive guidelines for conducting reviews from the DLP Director, APS Committee Chair and the DAIL Commissioner.

The National APS Association was happy to hear that Vermont had the file review process, most states do not have anything like that. DLP Director, Clayton Clark also stated that the APS policy document was not a static document and when there is public feedback, or something is identified as not working, the document will be updated.

Mandatory reporting – A specific question arose related to mandatory reporting by employees working in long term care facilities: When a facility employee fails to report any incident of abuse, neglect or exploitation of a vulnerable adult, they can be charged and fined for such negligence. However, most times it is difficult to prove a facility employee is *willfully disregarding* their obligation to report. Most times, the initial result of an investigation that finds an employee to have neglected to report is to take the opportunity to educate the facilities staff member of their obligation and to make them aware that there was a report made to the state. The goal is not necessarily to penalize, but educate.

The statute describing who are Mandated Reporters is unclear in some areas. Also, State and Federal Statutes in defining abuse, are different. It would be beneficial for the APS state statutory requirements to be looked at and revised to better reflect the work and expectations of Licensing and Protection.

When a complaint is filed, the process is as follows: Individuals contact the division either by phone, fax, letter, e-mail or in person to make the complaint. The complaint is investigated and then a letter of substantiation or substantiation, goes to the accused. If the if the accused disagrees, they can ask for an appeal and the case is then heard by the DAIL Commissioner or Deputy Commissioner with support from the legal department. If the decisions of the Commissioner/Deputy Commissioner are disputed, the case can be appealed to the Vermont Human Services Board and eventually on to the Vermont Supreme Court.

Adult Protective Services' policies are written to meet statutory requirements. If there is a call to overhaul APS policies, the changes will need to be made in the State statute first. An example of where there could be improvement in the statute is that with the Department for Families and Children child abuse registry when there are investigations that substantiate a complaint, the person is immediately put on the DCF registry while going through the appeals process. In APS, if a complaint is substantiated, the accused is not placed on the registry until the appeal process has been exhausted. This is a concern for equality amongst vulnerable populations. One potential improvement is that the federal government is looking at the issues that cross state lines and are wanting to create consistency and share registries to avoid the hiring of people who are on other state registries.

Advisory Board Member Perspective

Joe Greenwald, Advisory Board Member

Joe is the father of a young woman who was born with developmental disabilities. This inspired Joe to pursue advocating for all people with disabilities through working with the ARC, the education system, the DS State Program Standing Committee and now the DAIL Advisory Board.

There is some concern for what is next for his daughter now that he and his wife are getting older and will not always be able to help their daughter through life. There is an opportunity for DAIL to put more in place with the work the department is already doing. It would be helpful to aging parents to know that there are places their children can go and live a full and productive life. Ideally it would be a place that accommodates people with low income and both physical and developmental disabilities.

Sometimes the Commissioner is not the best voice to make the changes that are needed, but advocacy groups and boards like the DAIL Advisory Board, should take the lead and use the unfiltered, true voice of the people they advocate for.

The pendulum needs to swing wide both ways before it sets in the middle. When we once worked diligently to dismantle the facilities and "homes" for people with DD, it is now time to see that setting does have a place. There should be options with both home-based living and facility living that is created with the values and expectations of providing a place to live that is person centered and dignified.

It is comforting for a parent to know that at the state level there are people who are trying to do what is best for people with disabilities. Vermont has great staff and partners who all have a part to play. The approaches may differ some but the philosophy between the State and its partners are very similar.

Ethics Acknowledgment, New Conference Call Information and Winter Weather Planning

Camille George, DAIL Deputy Commissioner

Ethics Acknowledgement: All boards and commissions have been asked to read and sign an acknowledgement of the Governor's Executive Order (Executive Code of Ethics). The advisory board members had many questions as to which parts pertained to volunteer board members and State Employees. It was decided that Deputy Commissioner George would follow up with Jason Maulucci, in the Governor's Office, with the advisory board's questions. We will hold off sending in the acknowledgements until they answer the questions.

Conference Calls: The state is moving to Skype for Business with conference calling but we are still using the old Open Voice system. Once we move to Skype, the process will be similar, and we will alert you to the change as soon as we know.

Winter Weather: DAIL Advisory Board winter weather procedure will work as follows:

- Decision to cancel the meeting will be made by DAIL by noon the previous day.
- Once a decision is made, an e-mail will go to the advisory board.
- The DAIL main line (802.241.2401) will have a recording indicating the status of the board meeting.
- Occasionally we will have everyone who can, call into a conference call to convey any pressing information.

If at any time we have a scheduled meeting and you aren't comfortable driving in the conditions, please do not feel obligated to come. Sometimes weather is unpredictable, and you need to make the choices that are right for you.

Conversation with the Commissioner

Monica Hutt, DAIL Commissioner

APS: Questions arose around the earlier presentation from DLP Director, Clayton Clark about mandated reporting and the effectiveness of the Vermont APS statutes. It is recognized that the statutes could use some rewriting; however, they do provide some solid direction. It would be beneficial to bring forth some additional language, but it is a large body of work and it would take two years of negotiating to bring it to passing in the legislature. For this reason, it won't be anything that is brought to the legislature until it is not the in the middle of the biennium. Also, the proposal of legislation has to be approved by the Agency and then find a legislator that is willing to sponsor the legislation and bring it to the state house.

SFY 18 Budget Adjustment: DAIL is scheduled to testify in front of the House of Appropriations and House of Human Services on the Budget Adjustment Act (BAA) for SFY 18 budget adjustments, which is our current budget year. The committees want to be sure that the money aligns with the departments goals. DAIL doesn't have much for adjustments so it should be straight forward. DAIL is still waiting to hear the Governor's recommend for the upcoming budget year, SFY 19. That will come in January.

Legislation: The Agency of Human Services has a day when commissioners meet briefly with legislators to present the initiatives that are being brought forth. Commissioner Hutt met with Representative Pugh and Senator Ayer and shared the document titled “2018 DAIL Challenges and Goals” which was given to the advisory board.

There are two things we are putting forth this session; the Older Vermonters Act Working Group (OVAWG) to parallel the Federal Older Americans Act (OAA) and revisions to Receivership legislation. DAIL is in the process of securing sponsors for these pieces of legislation and will be able to provide additional details upon introduction.

All Payer Model: DAIL has programs that provide Long Term Services and Supports (LTSS) and there has to be a plan in place to roll those services into an All Payer Model by 2020. DAIL has been meeting with the Accountable Care Organization (ACO), OneCare, frequently to help them understand DAIL and the services we provide and clarifying that DAIL’s approach is more about quality of life than just addressing medical needs.

We have discussed with OneCare our struggles with workforce issues and how community providers are impacted. We have providers unable to meet plans and care needs when the workforce is unavailable. We are forced to look at other models and potentially look at less individualized models to serve the people receiving services. It is important that we look at all angles, even ones that are less than ideal.

Performance improvement is always considered and DAIL continues to look at accountability for dollars spent through outcomes. DAIL is aware that the department could do better to stay accountable and welcomes any changes that can create a better accountability process.

CMS HCBS Rules: Home and Community Based Services (HCBS) was designed for states that were still heavily utilizing facilities and not including home and community based settings as an option for people with developmental disabilities. Vermont has been transitioning away from facilities for quite some time so what we had to do to comply with the HCBS plan was fairly minimal. However, DDSD has made changes and will use the new rules to guide future decisions.

Electronic Visit Verification: An Electronic Visit Verification (EVV) system is required by CMS for personal care services as of 2019 – 2020. This system will be used for personal care services that are provided in a person’s home. This system may use a GPS locator as part of the visit verification. There does need to be some clarification in the term “personal care”. DAIL has asked for clarification and hopes to have a less vague description of the term in order to know who needs to use the EVV system. DAIL will invite staff from Home Health to come and speak to the board about these changes in the next couple of months.

Board Member Updates

Jeanne Hutchins

On January 1, Dr. Pendlebury will be retiring from the UVM Medical Center.

Laura McDonald

Heartbeet received a letter from Governor Scott commending the organization for all of its good work. Laura reported they framed and hung the letter in a prominent place in the office.

Beth Stern

While at the National Association of Area Agencies on Aging (N4A) Beth met with Senator Sanders' staff, and then with Patrick Leahy and his staff, and talked about funding for Older American's Act programs. Beth also met with Mary Lazare, the Principal Deputy Administration of ACL (Administration for Community Living) where the OAA funding comes from. Ms. Lazare was very interested in Vermont's focus on Results Based Accountability.

Kim Fitzgerald

Cathedral Square's Memory Care Unit has received its certificate of occupancy and will house its first resident by the end of December. There are enough applicants to fill all of the available apartments.

Kenneth Gagne

Kenneth shared that he has been on the Board of Directors at NCSS in St. Albans for three years. Kenneth also suggested a future agenda item, physical and electronic accessibility and invite David Sagi to speak about that at a future meeting. (side note: DAIL has been working with IT to address the electronic accessibility concerns).

In January some agenda items will be; talking about supported decision making, children services and better integration across departments and community.

Meeting was adjourned – 1:55