

***Adult Protection
Coordinating Council***

Annual Report

2012

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I. Foreword

Pursuant to action by the South Carolina Adult Protection Coordinating Council and Act 239 passed by the General Assembly and signed by Governor Nikki Haley June 18, 2012, an Annual Report for the calendar year 2012 is submitted to the Council, Chairman of the Medical Affairs Committee of the Senate, Chairman of the Medical, Military and Municipal Affairs Committee of the House of Representatives, and other interested parties. This report serves as a written summary of the Council's accomplishments and plans for future activities and serves as a public record of compliance with the Council's statutory duties as written in the South Carolina Code of Laws, Section 43-35-310.

II. History

In 1990, a group of concerned individuals presented testimony at the Joint Legislative Committee on Aging Public Hearing regarding the depth of concern about the adult protection system in our state. As a result of this testimony, a Joint Resolution was sponsored by the Joint Legislative Committee on Aging mandating the South Carolina Long Term Care Council to convene an Advisory Committee on Adult Abuse, Neglect and Exploitation. On April 24, 1991, Governor Carroll A. Campbell, Jr., signed the Joint Resolution into law.

The former Long Term Care Council convened the required Advisory Committee which identified the problem areas in the adult protection system and made comprehensive recommendations to improve the system in the areas of training, employment issues, advocacy, public awareness, care issues, coordination and legal issues. The Advisory Committee then completed the development of the Omnibus Adult Protection Act. It was signed into law by Governor Campbell on June 11, 1993, with an effective date of September 11, 1993.

Generally, the Omnibus Adult Protection Act:

- Created an effective system for reporting, investigating and prosecuting adult abuse, neglect and exploitation and included role clarification for the entities involved.
- Clearly defined the protected class of individuals. Vulnerable adult means a person age 18 years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental or emotional dysfunction. A resident of a facility is a vulnerable adult.
- Repealed several Sections of the Code of Laws of South Carolina, 1976, and placed all applicable Sections in one area of the Code.

- Addressed overlapping jurisdictions.
- Addressed confusing and duplicate reporting requirements.
- Clarified and set out identical statutory definitions of abuse, neglect and exploitation for instances that occur in the community and in facilities. Previously, the Department of Social Services and the Long Term Care Ombudsman program operated under different definitions.
- Set out the circumstances under which law enforcement can take an adult into protective custody (See Section 43-35-45).

Amendments to the Act since 1993 expanded the investigative entities to include the Attorney General's Office and SLED. There was further clarification of the investigative jurisdictions to provide for SLED investigations of allegations in facilities operated or contracted for operation by the Department of Mental Health and the Department of Disabilities and Special Needs. Additionally, Article 5 was added to the Act to create a Vulnerable Adult Fatalities Review Committee.

III. Legislative Intent

The General Assembly found it necessary to create the Omnibus Adult Protection Act: 1) To provide a system of adult protection in South Carolina; 2) To clarify the roles and responsibilities of agencies involved in the system; 3) To provide a mechanism for problem resolution and interagency coordination; 4) To address continuing needs of vulnerable adults; 5) To uniformly define abuse, neglect and exploitation for vulnerable adults in all settings; 6) To clarify reporting procedures for allegations of abuse, neglect and exploitation; 7) To provide procedures for emergency protective custody; 8) To define the role of the court in the adult protection system; and, 9) To provide services in the least restrictive setting possible.

IV. Adult Protection Coordinating Council

Article Three of the Act created an Adult Protection Coordinating Council under the auspices of the State Department of Health and Human Services (SCDHHS). The Council was created because of the depth of concern about the need for frequent, continued coordination and cooperation among the entities involved specifically in the adult protection system. Pursuant to amendments to the Act in 2012, the Council is composed of twenty-one public and private organizations and two consumers or family member of a consumer, one from the institutional care service provision system and one from the home and community-based service provision system. (See Appendix A.)

The Council is thought to be the first council of its type in the United States. Staffing for the

Council is provided by the Office of Long Term Care and Behavioral Health of the SCDHHS.

V. Summary of Activities

Members of the Council continue to make every effort to coordinate activities in the adult protection system. The Council consists not only of members from traditional health and human services agencies, but from a variety of public and private entities and law enforcement organizations. There is coordination among various state level agencies and departments. The public and private sectors are working together through this Council to develop resources and coordinate services.

The Council is committed to accountability for the accomplishment of its statutory duties as it relates to the adult protection system and as outlined in the Act. (See Appendix B.) Activities to address statutory duties sometimes overlap. Activities undertaken by the Council over the past year to address its mandates are discussed below.

Training

The Council remains committed to training and education for law enforcement, human services and other professionals who serve vulnerable adults who may be at risk of abuse, neglect and exploitation. In addition to providing general, basic training for a diverse audience, training has been provided for specific professional groups.

Pursuant to new reporting requirements in the Federal Elder Justice Act, four regional training events were held in February, 2012 with a total of 364 trainees. Target audience included facility staff, hospice providers and law enforcement. The agenda included the requirements under the Elder Justice Act for reporting suspicion of crime against residents in long term care facilities and the provision for non-retaliation against staff who report suspicion of crime. Pursuant to Section 1150B of the Social Security Act, individual facility staff is required to report any reasonable suspicion of a crime against a facility resident to law enforcement and to the state survey agency. Facilities include nursing homes, ICF/MRs, and hospices that provide services in long-term care facilities. The current mandatory posters were revised to reflect the new reporting requirements and a new non-retaliation, Notice of Rights, poster was developed. These were reviewed and provided to facilities at the training events.

With leadership from SLED and the Sheriffs' Association, the Council co-sponsored law enforcement training conducted in June, July and August 2012. Sheriffs' departments were trained in June and three regional training sessions were held for local law enforcement in July and August 2012. A fourth regional training session is planned for March 2013. Instruction was provided by SLED and DHEC with the morning session focused on investigation of allegations of vulnerable adult abuse, neglect and exploitation and the afternoon on investigation of child deaths.

The Training Committee continued to consider revisions for the training manual. Since the manual was initially written, the statute had been amended and the manual needed to be updated to reflect current law and other pertinent up-to-date information. After discussion and deliberation, the Committee recommended, and Council concurred, to adapt the existing manual for two manuals, one for investigators and another for other professionals. The manuals could be utilized for staff training and to provide information to other professionals and the general public regarding vulnerable adult abuse, neglect and exploitation. Development of the manual for other professionals was initiated and the manual for investigators will follow.

Review Committee

Council established this committee in 2010 to review the Council's mission and accomplishments and consider whether changes were needed to include any legislative changes. The Committee reviewed Article 3 of the Omnibus Adult Protection Act that established the Council and recommended changes. A compilation of the Council's accomplishments was also prepared.

During 2011, Council continued to consider the membership of the Council and potential changes. Final revisions to the membership were adopted in November 2011 and legislation was pre-filed in December 2011 to amend Article 3 of the Act. In addition to technical changes to reflect current agency names, proposed changes included eliminating gubernatorial appointments and Council filling those slots; having one representative for the Department of Labor, Licensing and Regulation instead of both the State Board of Nursing and the Board of Long Term Health Care Administrators; eliminating the Joint Legislative Committee on Aging; adding a representative of a provider association for home and community-based services; adding a representative of a residential care facility organization; and adding South Carolina Court Administration as a member.

The legislation, H.4513, passed and the changes were effective with the signature of the Governor on June 18, 2012.

By-Laws Committee

This Committee was established to develop the process and procedures and the by-laws changes needed to implement the changes to Council membership pursuant to passage of H.4513.

Home and community based services provider associations and community residential care facility (CRCF) organizations were identified and information was obtained regarding the number of members and date of establishment for these groups. While there are special interest and advocacy groups, the focus was specifically on provider associations and organizations. Council agreed to rotate membership on the Council beginning with the oldest and largest association and organization. The initial member for CRCF organizations will be the SC Association of Residential Care Homes (SCARCH), to be followed by the SC

Association for Community Residential Care Programs (SCARCP) and third, the Assisted Living Federation of America (ALFA). The initial member for home and community based services provider associations will be the Human Services Provider Association, followed by the Personal Care Association and third, the SC Adult Day Coalition.

An application used by the Developmental Disabilities Council (DD Council) to obtain information regarding its potential members provided a suggested format that was adopted by Council and will be adapted for its use to obtain information. Council members will utilize the form to provide information for a suggested member as the consumer or family member of a consumer for the home and community based services delivery system and the institutional services delivery system.

Public Awareness

Public awareness is critical to timely reporting of incidents, to intervention and prevention, and to a decrease in the incidence and prevalence of abuse, neglect and exploitation of vulnerable adults. The Council is committed to promoting education as a means of prevention and recognizes the importance of public education as a tool for the prevention of abuse, neglect and exploitation of vulnerable adults. The initial public awareness efforts of the Council were focused on the education of law enforcement personnel, human services providers and other professionals who serve vulnerable adults who may be at risk for abuse, neglect and exploitation.

In 2011, a financial exploitation brochure that had been developed previously was reviewed and revised. Additionally, a chart was developed with information on reporting abuse, neglect and exploitation that was targeted for the general public. The Department of Consumer Affairs collaborated with the Committee and assisted with enhancing the financial exploitation brochure and the reporting flyer and with making them more reader friendly.

AARP provided an initial printing of 900 copies of the financial exploitation brochure and 500 copies of the reporting flyer. In 2012, AARP printed an additional 1000 reporting flyers and 500 exploitation brochures. With this printing, additional copies were provided Council members and the Department of Consumer Affairs for dissemination. Copies were also disseminated to attendees at the CRCF forums in August 2012.

Legislative Committee

The SC Supreme Court amendment to Rule 608 was effective July 1, 2010. This amendment provided that attorneys could no longer be appointed as guardians ad litem (GAL) in Family Court for vulnerable adult cases brought by the Department of Social Services (DSS). The SC Bar spearheaded an effort with stakeholders to identify and address issues concerning the amendment. A short term plan to utilize volunteer attorneys for six months was developed with the Bar handling coordination between the courts, DSS and the volunteer attorney GALs.

In collaboration with the Bar and other stakeholders, a long range plan was developed and implemented January 1, 2011. The Department of Health and Human Services utilized an existing contract with the University of South Carolina, Office for the Study of Aging at the School of Public Health, for a statewide, three year pilot program that would end June 30, 2013. The Office for the Study of Aging would develop a statewide program, recruit and train volunteers to serve as GALs, provide GAL services for vulnerable adults in Family Court, maintain data and evaluate the pilot. Since there was no statutory authority for a guardian ad litem program, Council reconvened the Legislative Committee to draft enabling legislation to establish a program and address the issues of funding and where to house a program. Legislation was drafted to amend the Omnibus Adult Protection Act with the addition of Article 2 to create a GAL program for vulnerable adults.

During 2012, funding and where to house a GAL program continued to be issues with no resolution. It is anticipated enabling legislation can be pursued in the upcoming 2013 legislative session. The Silver Haired Legislature and AARP are supportive of the legislative initiative and have included it in their list of legislative priorities.

Sexual Offender Investigations Committee

This Committee was convened in 2011 to address an issue regarding investigation of complaints at the Department of Mental Health (DMH) facility that houses sexual offenders. Although located on the grounds of the Department of Corrections (DOC), residents are no longer in the custody of the DOC, but are unable to return to the community. The facility is contracted for operation by DMH and therefore, the Long Term Care Ombudsman is required to investigate non-criminal complaints. SLED investigates criminal complaints and vets the non-criminal complaints to the Ombudsman. The DMH Advocate also investigates complaints.

The Committee considered the issue and drafted an amendment to the Omnibus Adult Protection Act to remove the Ombudsman from responsibility for these investigations. H.4516 was introduced and passed during the 2012 legislative session. It was effective upon signature of the Governor on June 7, 2012. The DMH Office of Client Advocacy will investigate the non-criminal complaints vetted by SLED.

Data

Data from the investigative entities is found in Appendix C. The investigative entities include the Department of Social Services (DSS), Adult Protective Services; the Lieutenant Governor's Office on Aging, State Long Term Care Ombudsman; SLED; and the Attorney General's Office. Data reports are received from the investigative entities at the quarterly Council meetings. In 2012, the investigative entities reported historical data and that data is also included in Appendix C.

Other Activities

Ms. Carol Cornman and Ms. Maria Patton with the Office for the Study of Aging provided Council quarterly progress reports from the GAL pilot project.

Mr. Sam Waldrep kept Council abreast of activities involving community residential care facilities (CRCF.) There have been meetings among the agencies involved to discuss issues regarding poor performing facilities and possible solutions. With leadership from DHHS, DMH and Council co-sponsored a series of CRCF forums across the state in August 2012. Approximately 400 CRCF providers attended the forums. DHHS established a group to follow-up regarding recommendations from the forums, particularly for the Optional State Supplementation (OSS) program.

Ms. Nicole Threatt provided a power point presentation and handout with an overview of the complex care program with DHHS. This program provides financial incentives to nursing facilities for admission of Medicaid beneficiaries with complex care needs. For facilities that admit these individuals, there is an enhanced rate of \$150.00 per day for six months during which time the individual's care needs could stabilize. There has been a pilot program for approximately a year and nursing homes are contracting with DHHS for this program. The funds for the program are limited and facilities must have the staff and capacity to meet the complex care needs of the individual.

The nursing home bed locator program was a joint effort with the Lt. Governor's Office on Aging. Ms. Threatt provided a handout with the internet address and demonstrated the website www.nfbl.sc.gov where nursing home bed availability statewide for Medicaid, Medicare and private pay facilities can be searched. There is a link to the Medicare website that provides nursing home rating information. Facilities are required to keep the bed availability information updated and funding is withheld from facilities that do not.

Ms. Carrie Lybarker, Department of Consumer Affairs, discussed identity theft. She distributed and discussed flyers, "Minimizing the Effects of a Security Breach" and "How to Place, Thaw or Lift a Security Freeze" and a booklet from the Federal Trade Commission, "Taking Charge, What to do If Your Identity is Stolen."

The Honorable Glenn McConnell, Lieutenant Governor, met with Council at its August 2012 meeting. Members provided input regarding concerns and issues from their respective agency perspective. There was overlap among Council members for the issues identified. Issues included the following:

- Lack of available nursing home and community care homes for vulnerable adults taken into emergency protective custody
- Need for a guardian ad litem program for vulnerable adults
- Impact on services of in-migration and the increasing aging population
- Need for a statewide, public guardianship program
- Substandard CRCFs
- Need for increased funding for the Optional State Supplement program
- Impact for in-home services and appropriate placements due to the focus by the Center for Medicare and Medicaid Services on hospital readmissions and the

increased emphasis for better transition of patients from the hospital to the community

- Need for a certificate of need (CON) process for hospice providers
- Need for development and payment for health technological systems such as remote medical monitoring
- Need to address abuses of powers of attorney with an accounting requirement
- Aging of persons served by DDSN and the potential need for placement due to the aging of their caregivers
- Need for increased funding for adequate DHEC and LLR regulatory staff in CRCFs to provide adequate monitoring and corrective action when necessary
- Need for an adult abuse registry
- Need for an adequately funded and available continuum of care from nursing homes to a variety of options in the community
- Impact of combining Medicare and Medicaid money for persons over age 65 who are eligible for both
- Lack of a mechanism for facilities to resolve issues with the Long Term Care Ombudsman program
- Placement needs of aged persons being released from the correctional system
- Need for continued coordination, collaboration and cooperation among Council member agencies
- Need for a uniform process for individual's to express their end of life wishes and the development of a portable form that can transition from one care location to another
- Need for increased funding for senior services
- Need to educate young people and legislators regarding issues for the future
- Need to address problems systemically
- Need for adequate resources such that individuals have a choice of where they will live and for their residence of choice to be supported with adequate funding and programs
- Need to protect the rights of residents of CRCFs to voluntarily relocate to another facility without financial penalty
- Need to determine what constitutes an adequate amount of funding for a CRCF to operate and provide services
- Need to address transportation issues which is a major issue for persons capacity to access services
- Fragmentation in state government services and oversight that results in confusion, duplication, unmet needs and inefficient use of funds
- Need training and increased collaboration and working relationships between agencies to resolve vulnerable adult situations

VI. Future Directions

The Training Committee will continue efforts to revise and update the training manual. It will be adapted for two manuals, one for investigators and another for other professionals. The Committee will also consider training needs and develop a plan to address those needs.

The process, procedures, and by-laws pertaining to new Council membership will be completed to provide the mechanism to implement the new membership provisions. New members will be identified and added to Council.

Efforts will continue to pursue legislation to create a GAL program for vulnerable adults.

Appendix A 2011 Members/Designees

Chair:

Mr. Sam Waldrep, Deputy Director
S. C. Department of Health and Human Services

Vice-Chair:

Mr. Mark Binkley, Esq., Deputy Director
S. C. Department of Mental Health

Mr. Jeff Moore, Executive Director
S. C. Sheriffs' Association

Mr. Ken Moore, Esq.
Office of the Attorney General

Dr. Kathi Lacy, Associate State Director of Policy
S. C. Department of Disabilities and Special Needs

Mr. Wilson Dillard, Administrator
Mountainview Nursing Home
S. C. Health Care Association

Mr. Mark Fallaw, Chief, North Police Department
S. C. Police Chiefs' Association

Mr. David Ross, Esq., Executive Director
S. C. Commission on Prosecution Coordination

Ms. Gloria Prevost, Director
Protection and Advocacy for People with Disabilities, Inc.

Mr. Tony Kester, Director, Office on Aging
Office of the Lieutenant Governor

Mr. Brian Bennett, Instructor
S. C. Criminal Justice Academy

Major Patsy Lightle
SLED, Special Victims Unit and Adult Fatality Review Committee

Ms. Alice Hughes
S. C. Association for Home and Hospice Care

Ms. Dale Watson, State Long Term Care Ombudsman
Lieutenant Governor's Office on Aging

Ms. Mildred Washington, Director
Adult Protective Services
S. C. Department of Social Services

Mr. Dennis Gibbs, Bureau Chief
Department of Health and Environmental Control

Mr. Scott Hultstrand, Esq.
Director of Legislative Affairs
S. C. Medical Association

Mr. Dean Grigg
Deputy Director, Professional and Occupational Licensing
SC Department of Labor, Licensing and Regulation

Ms. Rosalyn Frierson, Esq. Director
State Court Administration

New Members Vacant:

Consumer or Family Member of a Consumer of the Institutional Care Service Delivery System

Consumer or Family Member of a Consumer of the Home and Community-Based Service Delivery System

Executive Director or President of a Provider Association for Home and Community-Based Services

Executive Director or President of a Residential Care Facility Organization

Appendix B

Duties of the Council

Omnibus Adult Protection Act, Section 43-35-330, Duties of Council.

1. Provide and promote coordination and communication among groups and associations which may be affected by the council's actions and recommended changes in the system;
2. Identify and promote training on critical issues in adult protection, facilitate arrangements for continuing education seminars and credits, when appropriate, and determine and target problem areas for training based on analysis of the data;
3. Coordinate data collection and conduct analyses including periodic monitoring and evaluation of the incidence and prevalence of adult abuse, neglect and exploitation.
4. Assist with problem resolution and facilitate interagency coordination of efforts to address unmet needs and gaps in the system;
5. Promote and enhance public awareness.
6. Promote prevention and intervention activities to ensure quality of care for vulnerable adults and their families.
7. Annually prepare a report of the council's activities and accomplishments for the calendar year and distribute the report to council members, the Chairman of the Medical Affairs Committee of the Senate, the Chairman of the Medical, Military and Municipal Affairs Committee of the House of Representatives, directors or chairs of member agencies or entities who have a designee serving on the council, and other interested parties as well as publishing the report on the department's website.

Appendix C Data

The data below represents the total number of reports for the investigative entities for the calendar year 2012.

ADULT PROTECTIVE SERVICES - Total reports: 2,456

For further information, call the Division of Adult Services, State Department of Social Services at 803-898-7318.

LONG TERM CARE OMBUDSMAN - Total reports: 1,823

For further information, call the State Long Term Care Ombudsman, Lieutenant Governor's Office on Aging at 803-734-9898.

MEDICAID FRAUD CONTROL UNIT – Total reports: 133

For further information, call the Medicaid Fraud Control Unit, South Carolina Attorney General's Office, at 803-734-3660.

VULNERABLE ADULT INVESTIGATIONS UNIT – Total reports: 908

For further information, call the Vulnerable Adult Investigations Unit, SLED, at 803-896-7654.

The data below is a compilation of historic data reported by the investigative entities for the periods indicated:

SLED: for the period January 2007 through December 2011, SLED received a total of 4,009 referrals.

DSS: state fiscal year data on reports received as follows: FY 05-06, 5,758; FY 06-07, 4,983; FY 07-08, 4,552; FY 08-09, 4,634; and FY 09-10, 4,574.

Long Term Care Ombudsman: calendar year data on reports received as follows: 2007, 1,356; 2008, 1,229; 2009, 1,502; 2010, 1,708.

Attorney General's Office: 2010, 265 referrals; 2011, 201 referrals