

***Adult Protection
Coordinating Council***

Annual Report

2011

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I. Foreword

Pursuant to action by the South Carolina Adult Protection Coordinating Council, an Annual Report for the calendar year 2011 is submitted to the Council as a written summary of the Council's accomplishments and plans for future activities. This report 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- Repealed several Sections of the Code of Laws of South Carolina, 1976, and placed all applicable Sections in one area of the Code.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).

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. The twenty-two member Council is composed of twenty public and private organizations and two gubernatorial appointees. (See Appendix A.) It 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.

The Committee initiated revisions to the training manual. Since the manual was initially written, there have been amendments to the statute and the manual needs to be updated to reflect current law. Plans were made to conduct training sessions statewide in the winter of 2012.

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.

Public Awareness

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. Initial 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. 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 Public Awareness Committee reconvened 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. The Committee also developed and presented to Council suggested methods for dissemination of these public awareness documents. AARP provided an initial printing of 900 copies of the financial exploitation brochure and 500 copies of the reporting flyer.

Reporting to Law Enforcement Committee

This Committee was established to address compliance with the new Federal Elder Justice Act provisions for reporting suspicion of crime against residents in long term care facilities. Pursuant to Section 1150B of the Social Security Act, individual facility staff was required to report any reasonable suspicion of a crime against a facility resident to law enforcement and to the state survey agency. Facilities included nursing homes, ICF/MRs and hospices that provided services in long-term care facilities. There was an additional provision for non-retaliation against staff who reported.

Facility posters pursuant to the Omnibus Adult Protection Act were revised to reflect the new requirements. A sample poster was also developed that facilities could use as a model to inform their staff regarding non-retaliation for reporting.

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, School of Public Health, Office for the Study of Aging, 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 to add Article 2 creating a GAL program for vulnerable

adults. The SC Guardian ad Litem Program that provides GAL services for children agreed to house the program as a division specifically to provide GAL services for vulnerable adults.

Data from the pilot project will be helpful in determining cost. The enabling legislation will be pursued in the upcoming 2012 session with the anticipation that there will be legislative authority for a permanent program when the pilot ends. The Silver Haired Legislature has supported the legislative initiative in their list of legislative priorities.

Sexual Offender Investigations Committee

This Committee was convened 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 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. 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 from SLED had been received at the quarterly Council meetings and quarterly reports from DSS and the Ombudsman were added in August 2011.

Other Activities

Ms. Carol Cornman and Ms. Maria Patton from the Office for the Study of Aging provided Council quarterly progress reports from the GAL pilot project. A part-time project coordinator was employed and an Advisory Board was established. Basic program development activities were conducted and a training module was developed. An issue for the pilot regarding volunteer liability coverage was resolved. Licensed social workers were initially targeted for volunteer recruitment and training was initiated in July 2011. GAL services for vulnerable adults began in August 2011.

Mr. Roger Jellenik, private attorney, informed Council of a computerized data base for a public, non-profit organization established to oversee a pilot project in Greenville, Spartanburg, and Kershaw counties for volunteer guardians and guardians ad litem in Probate Court. The courts and a few volunteers had been trained. However, since courts approach issues differently, it had been decided the individual courts would conduct training for their respective volunteers. The program had been designed so that it could be used in other courts and not restricted to the probate courts.

Mr. Randy Thomas, former member of Council, discussed provisions of the federal Elder Justice Act that had passed with health care reform, the Patient Protection and Affordable Care Act. For the first time, there was dedicated funding for adult protective services and the ombudsman program that included training, demonstration programs, nurse aide registry at the national level, and forensic centers. However, no funds had been appropriated. There will be an Elder Justice Coordinating Council, an Advisory Board and a Citizens Advisory Committee.

Mr. Thomas also reported on several funding resources/opportunities from the National Institute of Justice. Additionally, the Government Accountability Office (GAO) would release a report March 2, 2011 on the status of adult protective services in the nation that had been requested by the U. S. Senate. Further, Mr. Thomas reported on a concept mapping project funded by the National Institute of Justice that would include vulnerable adults. He advised Ms. Dale Watson and Ms. Mildred Washington would participate and represent South Carolina. Other national projects of interest included a law enforcement pocket guide being developed by Ms. Lori Stiegel at the American Bar Association. Materials were also being developed by the Stetson University College of Law concerning consumer protection for the elderly.

Mr. Randy Lee, Executive Director of the SC Healthcare Association, advised Council of an issue regarding coroner investigations of deaths in private facilities and issuance of burial removal forms. SLED Major Patsy Lightle facilitated discussion between the parties involved and the issue regarding removal of bodies from nursing homes was resolved.

Ms. Sara Granger, Director of the Bureau of Certification at DHEC, provided information regarding new federal Elder Justice Act requirements for individual staff responsibility for reporting suspicion of a crime against a resident in a long term care facility to local law enforcement and to the state survey agency. Incidents involving serious bodily injury have to be reported in two hours and other incidents within 24 hours. DHEC has a 24 hour report line. Facility policies and procedures will need to address documentation, annual notification of the reporting requirement and staff training. It will be the responsibility of facilities to coordinate with local law enforcement for reporting and determining what is a crime. Resident on resident incidents were not reportable crimes and “first-hand knowledge” was not a requirement for reporting an incident.

Mr. Dennis Gibbs, Director for the Bureau of Health Licensing, DHEC, advised Council that DHEC would convene a stakeholders meeting regarding H.3012, the bill to license in-home care provider agencies that passed and was signed by the Governor May 11, 2011. The legislation would not go into effect until regulations were developed and approved which would likely take two years. The establishment of licensing fees could be an issue. Legislation that would change Medicaid nursing home permit days and staffing standards was also discussed with Council.

Ms. Melanie Snipes discussed programs and services of Sexual Trauma Services of the Midlands. A one-time grant had been received from the Office of Violence Against Women

to serve survivors age 50 and above of sexual abuse, physical abuse, neglect and exploitation. More than 20 training events will be held over the three year grant period targeting law enforcement, investigators, direct service providers, judges and prosecutors in Lexington County. The grantee will receive train the trainer training in January 2012 and subsequently will conduct training events for Lexington County. Space available at the training events will be offered to others.

Mr. Sam Waldrep advised Council an ad hoc group had convened under the leadership of Protection and Advocacy for People with Disabilities to discuss concerns regarding recent issues with community residential care (CRCF) facilities and to address systemic issues. The ad hoc group had convened a meeting of agency attorneys to consider what could be done when immediate action was needed. The matter was presented for information and no Council action was needed.

VI. Future Directions

The Training Committee will continue efforts to revise and update the training manual. Training will be planned and conducted to target facility and hospice staff impacted by the Elder Justice Act requirements. Plans will be made for statewide training sessions in the winter of 2012.

Legislation to amend the membership and duties of the Council, change the responsibility for Ombudsman investigations in a DMH contracted facility, and establish a GAL program will be monitored as the legislation moves through the process. Council members will provide any assistance as requested from the Legislative Committee Chair and the General Assembly.

Dissemination of the financial exploitation brochure and reporting flyer will continue. Council input for future public awareness activities will be requested.

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

Honorable Denny W. Neilson, Chair
Joint Legislative Committee on Aging

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.

Ms. Stephanie Calhoun
Board of Long Term Health Care Administrators
S. C. Department of Labor, Licensing and Regulation

Ms. Joan Bainer, RN, Administrator
State Board of Nursing
S. C. Department of Labor, Licensing and Regulation

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

Vacant
S. C. Medical Association

Appendix B
Duties of the Council

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

(A) Duties of the council are to:

- (1) Provide oversight in adult protection and to recommend changes in the system;
- (2) Identify and promote training on critical issues in adult protection;
- (3) Facilitate arrangements for continuing education seminars and credits, when appropriate;
- (4) Coordinate agency training when possible to avoid duplication;
- (5) Coordinate data collection and conduct analyses including periodic monitoring and evaluation of the incidence and prevalence of adult abuse, neglect, and exploitation;
- (6) Determine and target problem areas for training based on the analysis of the data;
- (7) Promote resource development;
- (8) Assist with problem resolution and facilitate interagency coordination of efforts;
- (9) Promote and enhance public awareness;
- (10) Promote prevention and intervention activities to ensure quality of care for vulnerable adults and their families;
- (11) Provide technical assistance for developing memoranda of agreement among involved entities;
- (12) Promote coordination and communication among groups and associations which may be affected by the Adult Protection Coordinating Council's actions through the use of memoranda of agreement.

Appendix C Data

The data below represents the total number of reports for the investigative entities for the calendar year 2011.

ADULT PROTECTIVE SERVICES - Total reports: 3680

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

LONG TERM CARE OMBUDSMAN - Total reports: 1882

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: 201

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: 913

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