

Testimony Regarding Settlement of Adult Protective Services Lawsuit
September 12, 2013, Barbara Prine, Vermont Legal Aid, bprine@vtlegalaid.org , 863-5620

The lawsuit brought by the Community of Vermont Elders, Disability Rights Vermont, Senior Solutions, and Southwestern Vermont Council on Aging settled on August 27, 2013. This is a very positive settlement. We commend the Administration this agreement.

The settlement has **four basic parts**:

- policy changes in the APS policy Manual,
- quarterly file review by a mutually agreed upon panel,
- representatives of DRVT, COVE, Senior Solutions and Southwestern Vermont Council on Aging becoming members of the APS Sub-committee of the DAIL Advisory Board [and](#) the DAIL Advisory Board, and
- a year and a half of court enforcement of the agreement if needed.

By way of background, as part of the litigation, the Washington Superior Court ordered APS to release three months of case files for review, from August through October 2012. We hired consultants from New Hampshire to conduct an impartial review of those files. The consultants found major ongoing problems with the State's administration of its APS program, including:

- Substantial delays in initiating and conducting investigations prejudicing the process;
- Erroneous screening out of valid reports of abuse;
- A high percentage of cases improperly found to be unsubstantiated;
- Failure to provide needed protective services to victims; and,
- Inadequate file keeping and documentation by investigators.

Ultimately, the consultant's conclusion was that Vermont's APS program is not substantially fulfilling its obligations under Vermont law.

The Settlement includes specific **Policy Manual changes**:

- Intake completed and determination made whether to investigate within 48 hours of receipt of report, within 4 biz days if report info incomplete;
- Voice mail messages left for APS Intake generally returned within 8 business hours;
- If report incomplete call reporter twice within two biz days after receipt of report;
- In cases with incomplete reports: agrees to inform reporter in closing letters that should more info be provided, decision to investigate may be revisited;
- If information provided by a reporter is inconclusive, or insufficient to determine if abuse occurred or victim vulnerability, then case assigned for a field screen;
- Incorporate the new policies on abuse in facilities;
- improvements to investigation protocols:
 - i. all available relevant witnesses interviewed;

- ii. victim interviewed without perpetrator present; and
 - iii. victim generally interviewed in person;
- Written coordinated treatment plan as a field in Harmony, including certain documentation; and,
- Staff training on the policy changes within 60 days.

The Settlement also includes **quarterly file review**. The file review panelists are a mutually agreed upon group of 3, who will review a representative sample of files:

- 10-15 fully investigated substantiated files;
- 15-20 fully investigated unsubstantiated files; and
- 10% of closed contacts.

The Panel has the discretion to request additional information to be provided in the file review. The file review panel writes a report with findings and recommendations, including if APS is meeting benchmarks. This continues for 4-6 quarters.

The Settlement includes **specific Benchmarks** to be met:

- 90% for trying to call the reporter twice before closing contacts when there is enough info;
- 90% for trying to call the reporter twice when there is an incomplete report
- 80% for getting letters out to reporter in a timely way;
- 80% for assigning reports to investigator within 48 hours of receipt of report;
- 80% for Triage Level 1 contact with the reporter or victim within two business days, and in person interview with victim within five business days of assignment;
- 70% of Triage Level 2 or 3 gets direct contact with the victim within five business days of assignment;
- 90% of cases that are not financial exploitation closed within 60 days of assignment or get supervisory extension; and,
- 90% of cases that are financial exploitation closed within 90 days of assignment or get supervisory extension.

The File review panel can request a **remedial plan** if APS fails to meet benchmarks. If after three quarters in a row of benchmarks not being met, the file review panel can present a letter of complaint to Commissioner who has 30 days to respond. The Plaintiffs may the seek redress in Washington Superior Court to review the Commissioner's response.

It is our hope that this settlement represents a turning point. We have had serious problems with the program. However, AHS Secretary Doug Racine and DAIL Commissioner Susan Wehry should be commended for their willingness to make the changes and have the robust ongoing public oversight. By agreeing to file review, Secretary Racine and Commissioner Wehry are striving for accountability and to regain the public trust in the APS program.