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Membership:

Rep. Val Hoyle, Co-chair
Rep. Vic Gilliam, Co-chair

Sen. Tim Knopp
Sen. Arnie Roblan
Jeff Akin
Michelle Bassi
Jeffry Brandon
Jerry Cohen
Joe Greenman
Mary Jaeger
Lara Johnson
Ellen Klem
John Lamborn
Meghan Moyer
Grover Simmons
Matthew Smith
Fred Steele
Betsy Steinberg
Sonji Young

Staff:

Channa Newell
Committee Administrator

Nick Herrera
Committee Assistant

Oregon Elder Abuse
Work Group
2014
Report to the
Legislative Assembly

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Summary

In 2011, the Department of Human Services received over 28,000 reports of abuse or neglect of vulnerable adults, of which 11,600 were investigated and over 1,600 were substantiated as some form of abuse. Elder abuse can include financial exploitation, physical abuse, neglect, abandonment, and sexual abuse. Over 20 percent of Oregon's population is over the age of 60, with that number projected to grown to 23 percent by 2030¹. According to 2012 figures from the Bureau of Labor Statistics, home health aides and personal care aides have among the largest projected demand of all occupations, with a 48% percent increase in demand by 2022.² Formal and informal long term care of the elderly currently composes 1.3 percent of the national GDP. That number is projected to increase to up to 3.3 percent of GDP by 2050.³ As our population ages, it is imperative that Oregon addresses the challenges presented by an aging vulnerable population and rising demand for care providers.

The Oregon Elder Abuse Work Group (Work Group) was created in 2011 to address the growing elder abuse problem. House Bill 2325 (2011) created a formal work group to define elder abuse and rethink the process for prevention, investigation, and appropriate reporting of elder abuse. In the following session, House Bill 4084 (2012) extended the statute of limitations from 3 to 6 years for crimes of forgery, robbery, theft and identification theft committed against people 65 and older, eliminated expungement of convictions for elder abuse, allowed law enforcement conducting an investigation into potential abuse of an elderly person to review medical records and discuss potential abuse with victim's doctor and to review financial records with a subpoena. Additionally, the measure created the Resident Safety Review Council. The efforts to combat elder abuse continued in 2015 with House Bill 2205, which reauthorized this Work Group. Additionally, the measure narrowed the Work Group charge to alignment and refinement of the definition of abuse when applied to the elderly. To accomplish its charge, the Work Group split into two sub-groups. The first group looked at alignment of the definition of abuse. The second group looked into plans and strategies for public outreach. The work of the sub-groups and full Work Group resulted in the House Bill 4151.

The Elder Abuse Work Group strongly recommends the passage of HB 4151 to protect the elderly from exploitation while providing consistent standards across the available care-giving environments. The Work Group will continue to meet in the 2014 Interim to develop its recommendations on standardization of the definition of abuse.

¹ US Census Projections, 2009. See link:
http://www.aoa.gov/AoARoot/AoA_Programs/HPW/Behavioral/docs2/Oregon.pdf

² Link: <http://www.bls.gov/news.release/ecopro.t04.htm>

³ Link: <http://www.cbo.gov/publication/44363>

Recommended Legislation

House Bill 4151 and the (-3) amendments are the recommended legislation of the Oregon Elder Abuse Work Group.

Section 1, 2, and 3

Elder abuse is not a new problem. In 1981, the Legislative Assembly made a finding that for the purpose of preventing abuse, safeguarding and enhancing the welfare of elderly persons, it is necessary and in the public interest to require mandatory reports and investigations of allegedly abused elderly persons. Currently, the Department of Human Services (DHS) is required to investigate any reports of elder abuse and prepare a report of its findings. The length of time for how long an investigation can take is, however, inconsistently addressed in statute depending on the setting. For example, if the alleged abuse happened in a long term care facility as defined by ORS 442.015 or adult foster home, DHS is allowed 60 days to complete an investigation and required to issue a written letter of determination within 60 days of receiving investigation documents and a written report. Investigations in residential care facilities, assisted living facilities, and in non-facility, community settings do not have a statutory requirement for length of investigation. The Work Group determined that an inconsistent period of time in which to complete an abuse investigation creates confusion and uncertainty for care providers and may prolong the pain felt by a victim after an incident of abuse.

The Work Group strongly recommends a consistent time frame be implemented in which DHS must complete its abuse investigations and issue a report. Section 2 and 3 of House Bill 4151 require DHS or law enforcement to complete an investigation within 120 days of receiving a report of abuse. Section 2 also requires DHS to standardize the content of reports. DHS is given rulemaking authority to determine additional report standardization measures.

Section 4 and 5

The current electronic repository of reports issued by DHS on abuse findings is more than two decades old and does not meet the needs for using the data in investigations reports to provide appropriate protections and systemic quality of care improvements based on that data. The Work Group strongly recommends that uniformity in investigation and reporting practices be developed and that all reports be retained in a uniform manner. Section 4 requires DHS to adopt policies and guidelines for the development of an electronic database of abuse reports. The Department will also be required to standardize procedures and protocols for responding to and investigating reports of abuse, as well as promoting and coordinating communication and effort sharing with law enforcement agencies. Section 5 requires DHS to report on these efforts no later than January 1, 2015.

Section 6

Oregon currently maintains a registry of home care workers, identifying workers that have been approved to provide care. Stakeholders proposed creation of a registry for all persons who are working or seeking work within an elder care setting. The Work Group felt this would assist

facilities, adult foster homes, and home health agencies in finding suitable care providers. Section 6 creates this registry within DHS and requires regular updates be made to the registry from information provided by the facilities. The measure gives DHS rule making authority to determine what information should be included in the report.

Section 7 and 8

ORS 441.679 requires a long term care facility to make an inquiry with the Oregon State Board of Nursing before hiring prospective registered nurses, licensed nurse practitioners or nursing assistants to find out if the prospective hire is currently licensed and whether any disciplinary actions were taken or abuse reports substantiated. The statute also prohibits a facility from employing any person found by a court of law to have abused, neglected, or mistreated a person receiving services. The Work Group felt that all facilities caring for the elderly should be required to perform the inquiry, not just long-term care facilities. Section 7 repeals current ORS 441.679 and replaces it with Section 8 of the bill. Section 8 requires long term care facilities, residential care facilities, adult foster homes, and home health agencies to perform the background inquiry with the Oregon Nursing Board. It further clarifies that the inquiry applies to certified nursing assistants as well as registered nurses and licensed practical nurses. The measure removes the prohibition on employing persons with findings against them.

Section 9

Under current Oregon law, a sex offender, or DHS, must inform long term care facilities and residential care facilities of the person's status as a sex offender prior to admission to the facility. The facility may refuse to admit the person based on conviction of a sex crime. The Work Group recommends extending this protection to adult foster homes. Section 9 requires notification of sex offender status to an adult foster home and allows a home to refuse to admit the person. The adult foster home may also evict or discharge the person if the home was not given notification of the person's status prior to admittance.

Section 10

The Work Group found its name to be at odds with the mission of the group. Additionally, it felt constrained in its efforts to protect seniors by the charge found in HB 2205 (2013). Section 10 changes the name of the Work Group to "Oregon Elder Abuse Prevention Work Group" and expands the scope of the charge to include recommendations on criminal background checks and its role in prevention and investigation of abuse, the process involved in conducting investigations, the abuse reporting systems, and information available to the public on abuse reports and investigations.

Proposed (-3) Amendments

The Work Group proposes to change the sub-definition of "neglect" as it applies to elder abuse to broaden the actions that may result in a finding of neglect. The current definition of neglect requires a failure to provide care, supervision, or services necessary to maintain the health of an elderly person that may result in physical harm or significant emotional harm. The proposed changes would define neglect as, "failure to provide basic care or services that are necessary to maintain the health or safety of an elderly person." The Work Group felt it was important to

recognize that certain behaviors may lead to neglect, even if physical or emotional harm has not yet happened.

The proposed amendments also address the definition of sexual abuse. The Work Group approached this change with a focus on protecting vulnerable elders while respecting their autonomy. The amendments remove language that may over-reach into the personal lives of the elderly while clarifying what sexual contact is considered abuse. With this amendment, ORS 124.050 would consider sexual contact with a non-consenting or incapacitated elderly person, verbal or physical harassment of a sexual nature, sexual exploitation, any nonconsensual sexual contact between a paid caregiver and an elderly person, and any sexual contact achieved through force, trickery, threat or coercion to be abuse. Additionally, it clarifies that consensual sexual contact between an elderly person and a paid caregiver is not sexual abuse. The proposed (-3) amendments also align the abuse definitions that apply to facilities, found in ORS 443.455 and ORS 441.715, so that any sexual conduct between a facility employee and a resident is considered sexual abuse.

Ongoing Work Group Efforts

House Bill 2205 charged the Work Group with aligning the various definitions of abuse that are found in Oregon laws. In the months after the 2013 Legislative Session, the Work Group came to find that aligning the definition of abuse would require the efforts and agreement of multiple stakeholder groups and should be done with care. With that in mind, the Work Group will continue its efforts at alignment through the 2014 Interim and will report on its results to the appropriate Legislative Committees in advance of the 2015 Legislative Session.

Conclusion

The Oregon Elder Abuse Work Group strongly recommends that the Legislative Assembly assist in the effort to protect our aging population through passage of House Bill 4151.