

Age-Friendly Status Check

INDIVIDUAL RIGHTS & PROTECTIONS

SEPTEMBER 2021



AGE-FRIENDLY MINNESOTA

Individual Rights & Protections

We have the right to be educated and empowered to promote our rights, and to have our rights respected.

Background

This document is one of eight briefs that explore current approaches and impact of the Minnesota Board on Aging, Minnesota's aging network¹ and Department of Human Services. A better understanding of the foundation provided by our existing work will guide us as we develop strategies for Age-Friendly Minnesota. We aim to stretch our thinking about what aging can and should mean for all Minnesotans—creating policies, communities, and services that see age in everything and empower us with what we need to live with dignity and autonomy at every stage.

The briefs are not exhaustive but aim to capture major ideas, prompt needed questions and discussions, and help us identify priority opportunities for greater impact and better outcomes. All briefs are available at the Age-Friendly Minnesota website.

Overview

Among the roles of the Minnesota Department of Human Services (DHS) and Board on Aging (MBA) is work to not only protect older Minnesotans from abuse, neglect, and exploitation, but to help respect and maximize each person's autonomy and choices about their own lives. The [Office of Ombudsmen for Long-Term Care](#) (OOLTC) and [Adult Protective Services](#) (APS) are the divisions most directly involved in this work, though the state's Area Agencies on Aging (AAAs) and Live Well at Home® grants also address these topics.

The reach of the OOLTC is extensive. It helps residents of licensed nursing homes, assisted living facilities, Minnesota Veterans Homes, adult care homes (such as adult foster care), and adults who receive licensed home-care services in their own homes. It also advocates for people on hospice and people experiencing premature discharge from hospitals. Ombudsmen handle complaints and problems from individuals related to a range of issues—from quality of care or services to rights violations to discharge or eviction. They also advocate for reform in long-term care. All services are free to residents. OOLTC advocates on behalf of recipients of long-term care services and helps to resolve resident concerns and promote resident rights.

In Federal Fiscal Year 2020, OOLTC resolved 5,830 complaints and closed 2,556 cases. OOLTC also engaged in many other activities, including consultations to residents, families, and providers on resident rights; educational sessions; and resident and family council activities, among others. Importantly, OOLTC is and must be an independent entity, according to the federal Older Americans Act.

¹ The Older Americans Act of 1965 established a national network of federal, state, and local agencies to plan and provide services that help older adults, including American Indian and Alaska Native elders, to live independently in their homes and communities. This interconnected structure of agencies is known as the aging network.

Adult Protective Services (APS) is an essential human service program administered by counties and tribes responsible for service response in appropriate cases for vulnerable adults who are reported to the Minnesota Adult Abuse Reporting Center (MAARC). APS is also responsible for investigating reported allegations when the person or agency alleged responsible is not licensed by DHS or the Minnesota Department of Health. In 2020, more than 24,500 reports of Minnesotans 65 or older being maltreated were made to the Minnesota Adult Abuse Reporting Center (MAARC), representing nearly half of the total reports made that year.

APS and OOLTC will be critical to Age-Friendly Minnesota. The scope and impact of their work related to older adults intersects with many issues—such as caregiving, the need for preventive and upstream services and support, ageism, resident rights, and social connections, among many others.

Some parts of the aging network deal with these rights and protections, as well. AAAs contract with five separate legal service providers to ensure that older Minnesotans can have basic civic legal needs met.

Impact and Examples of Current Work

The following section describes themes and impacts tied to this work, followed by examples of strategies and recent efforts that help demonstrate how it is being carried out.

We are reviewing and improving foundational policies to make them more effective and responsive to Minnesota’s aging and changing population.

MN DHS Aging and Adult Services Division is leading a multi-year project to redesign Minnesota’s Vulnerable Adult Act (VAA), which establishes the state’s response to maltreatment of vulnerable adults. The [VAA Redesign](#)² aims to develop a more person-centered approach that ensures adults who are vulnerable to abuse, neglect, and financial exploitation experience equity, dignity, and consistent outcomes from APS—regardless of which county they live in. Until the Redesign, the VAA hadn’t been substantially reviewed in 40 years. The Redesign will help the system be more responsive, effective, and inclusive given changing demographics—age, race, ethnicity, and culture—as well as address weaknesses in the current statute.

The VAA Redesign focused on APS, which receives the majority of reports about alleged maltreatment of vulnerable adults. This project will have significant implications for older adults, who tend to represent about half of all reports of maltreatment. The VAA Redesign process involved extensive stakeholder engagement, including that of older adults and people with disabilities, to identify both problems and solutions as well as policy and budget implications for the solutions.

We empower and advocate for older adults through policy changes related to assisted living and long-term care.

OOLTC worked closely on the development of legislation that mandates for the first time that assisted living facilities in the state be licensed. This new licensure program, which took effect August 1, 2021, aims to improve the safety and quality of care in assisted living facilities. It will substantially improve resident rights—including in the areas of discharge and contract termination, a focus of many complaints to

² More information on the VAA Redesign can be found [here](#).

OOLTC. Related to this, OOLTC also is looking to improve protections in HUD properties that are exempt from assisted living licensure.

OOLTC dealt first-hand with the trauma in long-term centers caused by COVID-19. It received an unprecedented number of calls regarding loneliness and isolation from residents who were confined to their rooms with no visitors allowed and residents unable to leave their facilities. As a result of this experience, OOLTC is working to improve protections to ensure people have better access to family and friends during future pandemics. It also is identifying other important lessons from the pandemic in order to capture and apply learnings.

We advance older adult autonomy, choice, and well-being through efforts to strengthen and expand Supported Decision-Making.

The MBA, Live Well at Home® grantees, and legal services providers all work to advance Supported Decision Making (SDM). SDM provides an alternative to guardianship, a court process that takes away a person’s legal ability to make decisions about their life. Instead, SDM works by empowering individuals—such as those with intellectual disabilities and some older adults—to make decisions about their lives with the help of their “supporters,” who often include family and friends along with professionals such as health care agents and attorneys. SDM is increasingly recognized as a best practice to support adults who are not able to be fully independent.

SDM has broad application and benefits. It helps older people remain at home longer because they are working with social workers or care teams comprised of a social worker, attorney, caregiver, or others who can help identify suitable alternatives to guardianship through individual assessment, development of power of attorney forms, health care directives, and SDM agreements.

A series of statutory changes in recent years have prioritized an individual’s autonomy and self-determination by requiring courts to evaluate whether less restrictive alternatives can be used as proper protections for a person, rather than the process of guardianship or conservatorship.

SDM also crosses over different areas. For example, a key takeaway from the VAA Redesign stakeholder engagement process (referenced earlier) was the need to balance a vulnerable person’s safety and protection with their right to self-determination. OOLTC highlighted the need for a similar balance between keeping long-term care residents safe from infectious diseases and recognizing the safety risks of isolation as well as resident rights, including choice and autonomy, such as during COVID-19.

A recent Live Well at Home® grant to Volunteers of America in Minneapolis is being used to promote and expand use of Supported Decision-Making in an effort to disrupt over-reliance on guardianship for older adults. This project provides professional and community education and outreach, caregiver support, direct legal and social work services, and collaboration with partners.

We help older adults access free and low-cost legal services.

AAAs and Live Well at Home® grants both help older adults access legal services, education, and protection in various ways. In general, each year civil legal service attorneys receive funding through the AAAs to provide advice and direct services to older Minnesotans to prevent homelessness, ensure access

to health care and government benefits, obtain protective orders and develop safety plans for vulnerable adults, address family law matters, and provide information about alternatives to guardianship.

Several years ago, a Live Well at Home® grant supported the creation of the first legal kiosk in the state—a remote location where older adults could go to access computers, printing, and other resources needed to deal with legal issues. This model proved so successful that there are now 278 kiosks in high-need areas throughout the state. Some include video cameras and other equipment needed to have virtual meetings with attorneys or attend court. Kiosks are available to adults of all ages, but the idea originated as a service for older people.

Federal funds available in response to COVID-19 were used to expand these services. During the pandemic, one AAA provided carryover Title III funding to Legal Aid Services to create two remote kiosks in the region where older adults can access computers and print legal paperwork.

Gaps, Opportunities and Considerations

This section identifies considerations and opportunities for how Individual Rights & Protections might be woven into planning for Age-Friendly Minnesota. It focuses on issues related to APS and OOLTC and while not comprehensive, it is an important starting point.

Adult Protective Services

While the VAA Redesign is addressing critical issues, additional concerns exist that are beyond the scope of the Redesign but still warrant attention. It should also be noted that catching people farther upstream can help prevent or mitigate some of these issues.

- The current APS system is not culturally appropriate or responsive. Instead, it is one standardized process—similar to a criminal justice model—imposed on vulnerable adult services. (This concern is being addressed as part of the VAA Redesign.)
- *Time-limited services:* People who receive adult protective services do get help—but only for so long. The program is time-limited. Many individuals need ongoing or indefinite support, but no resources are available that allow for monitoring on a long-term basis.
- *Unmet need for case management:* Individuals in Medical Assistance (MA)³ or who receive Elderly Waiver services⁴ have case managers who help prevent maltreatment. However, many older adults who are not eligible for MA or Waiver programs also may need case management services, but they don't qualify. Families—if available, willing, and able—are then left to handle various issues. Most people are not willing or able to pay for services themselves, and may not even know that is an option.

³ Medical Assistance is Minnesota's Medicaid program for people with low income.

⁴ The Elderly Waiver program provides home and community-based services for people who need the level of care provided in a nursing home but who choose to live in the community. A person must qualify for Medical Assistance to be eligible for Elderly Waiver services.

- *Cracks in the system:* Eighty percent of people who are reported through MAARC as being maltreated are screened out of receiving services because they or their situations do not meet the statutory definitions of vulnerable adults or maltreatment. However, many of those people still need help. In the current system, APS has no way to serve or support those individuals.
- *Dementia and cognitive impairment:* In some cases, older adults have dementia or age-related cognitive impairment and may end up in the APS system because of diminished judgement and reasoning. In the current system, there is no good way to support individuals in this situation.
- *Is the front door in the right place?* There may be a gap in services for people who need help navigating more complicated situations. Senior LinkAge Line provides connections to resources, but it is not designed to help talk people through the practical ways they could support an older family member—how to create a balance between respect for the person’s autonomy along with the help they require. In situations involving long-term care, OOLTC provides consultation services as well as full service supports to people who are struggling with certain issues, which include helping an older family member.
- *Financial management:* Vulnerable older adults sometimes have trouble paying their bills and may end up in the courts system or guardianship unnecessarily. Rather, they simply need assistance to manage their finances. Counties once provided such services but have largely stopped doing so.

As part of the outcomes of the VAA Redesign, APS is pursuing policy and legislative changes related to:

- Improvements for family caregivers, by connecting individuals to services rather than investigations
 - Balancing privacy rights of vulnerable adults with need for information-sharing for protection during an investigation
 - Improving person-centered practices by the Lead Investigative Agency (LIA) by requiring that information on the VAA process be provided as well as that the vulnerable adult themselves be interviewed by the LIA during the investigation
 - Alignment of state policy supporting family caregivers and unpaid informal supports for vulnerable adults.
- The initial report⁵ produced as part of the VAA Redesign noted several evidence-based and emerging models being used to prevent and counter abuse of vulnerable adults. APS is working towards the following:
 - Balancing the need to protect vulnerable adults with respect to their right to self-determination
 - Promoting a culture of safety: improving safety through systems reform and root cause analysis as opposed to individual blame
 - Multidisciplinary teams: providing additional resources for coordination and community involvement

⁵ [*The Vulnerable Adult Act and Adult Protective Services in Minnesota: A Review of National Models, Best Practices, and Stakeholder Insights*](#) (June 2019)

- Structured Decision Making® Model: improving equity and outcomes for vulnerable adults by helping them remain autonomous with support from key people, rather than other tactics, such as guardianship, that limits a person’s control of their life and future
- Community engagement: engaging social supports in prevention and response to maltreatment of vulnerable adults.

Office of Ombudsmen for Long-Term Care

- The right of older people to live in the least restrictive environment often is barely acknowledged. Most people want to remain living in their own home, yet this can be very difficult to actually achieve.
- Ongoing barriers that prevent older adults from remaining at home include:
 - *Lack of proper care coordination* as people try to navigate a complex system.
 - *Inefficient systems.* Siloed government agencies and health care entities, as well as inadequate communication among providers, result in health care delays to vulnerable people that diminish the chance for a positive outcome.
 - *Limitations to available services.* Some communities have few or no services available, and home care agencies cannot pay to cover employees’ mileage to and from work locations. Low wages and mileage reimbursement are two workforce-related gaps that could be addressed to make services more widely and consistently available.
- Expanded opportunities for patient and family engagement in health care planning at the earliest point is essential for improving people’s ability to manage their conditions and adhere to treatment plans following a medical event—with the goal of getting back home.
 - OOLTC works to properly inform people at the point of entry into the health care system, and increase individual and family engagement and participation in care planning. Consistent use of transitional care coordination (often by a nurse or social worker, but potentially by OOLTC staff) that uses a holistic, person-centered approach, with a goal of returning a person home, is critical to achieving this.
- Better public education is needed related to:
 - *Our rights in older age.* We have the right to remain in our homes and to access home care services and formal and informal supports that can help us do so.

In most circumstances, we get to choose where we live. There are common misunderstandings, for example, related to what authority is conferred to someone with Power of Attorney. More readily available information is needed about supported decision making, especially as an alternative to surrogate decision making.

People, including adults who live in LTC facilities, have the right to take risks. Law enforcement and the broader community have limited understanding of LTC residents’ rights and often believe

that LTC facilities are responsible for removing all risks—such as, for example, a LTC resident driving a motorized wheelchair to the store. There is an opportunity to educate LTC residents about their rights as well as the general public.

- *How long-term care is paid for.* Misinformation and misperceptions are widespread. Many people have no idea how expensive care is and believe that Medicare pays for services and that Medicaid will pay for care, regardless of assets or income. Own Your Future is a public awareness initiative, supported by MBA, DHS, and other state agencies, that helps provide information about their risk for long-term needs, how to hold conversations with family members and others about who will care for you, how to decide where to live, and how to pay for long-term care costs. The work of Own Your Future should be incorporated and coordinated with the work of Age-Friendly Minnesota.
- Legislative opportunities:
 - *More notice upon termination of home care services.* Under current statute, home care providers are required to give only 10-days' notice to an individual prior to terminating services. This is inadequate and insufficient to arrange for a new provider to conduct a screening at home and assess and schedule care. Legislative reforms are needed to require more advance notice—a minimum of 30 days, and ideally 60 days. Contact information for the OOLTC also should be provided at the time of termination.
 - *Back-up plans when staff are absent.* Home care services are required to develop a back-up plan for care in the absence of staff (due to sick days, snowstorms, etc.). The responsibility for back-up care is almost always assigned to family or neighbors, who may not be reasonably accessible and who often aren't aware that they are written into the plan. OOLTC could help push for legislative changes in requirements related to how these plans are developed.
- People entering or living in long-term care facilities need more information and knowledge about their rights related to:
 - What questions to ask and information to gather when seeking services—especially related to limitations of services. Up-front conversations about what happens if the facility can no longer meet a person's needs can prevent rights violations later.
 - Resident and family councils, and how they can help to resolve issues
 - Access to information about staffing levels and the skill sets of staff caring for them
 - Voting in long-term care facilities and access to information—such as from TV and printed materials—to make informed decisions
 - Grievance policies, which every facility or provider of home care services is required to have.