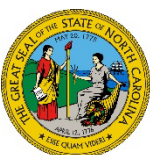


ADULT PROTECTIVE SERVICES MANUAL

North Carolina Division of Social Services

Adult Services Section

Revised: September 2025



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**
Division of Social Services

[NCDHHS DSS](#)

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APS MANUAL

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ADULT PROTECTIVE SERVICES MANUAL

I. Introduction

I. Introduction

A. Structure of Manual

A systematic process has been established which county departments shall follow when providing Adult Protective Services. The process begins with establishing an effective procedure for receiving and screening referrals and continues through closure of the Adult Protective Services (APS) case. This manual is arranged accordingly and contains detailed descriptions of the law, administrative code, and recommended social work practice that Departments of Social Services shall use in carrying out their responsibilities. Statutory requirements, administrative codes and recommended social work practices are given for each step in the APS process, as well as for other relevant topics.

Recommended social work practice provides interpretation and guidance to departments in carrying out Adult Protective Services per statutory requirements and administrative code. Each section of the APS process is divided into three main subsections including the General Statute in bold, Administrative Code (State Policy) in bold, and then Recommended Social Work Practice in regular font. Links to appendices and recommended forms are located within each section and are evidenced by hyperlinks.

B. Statement of Philosophy and Purpose

Protective Services for Adults is a critical and multifaceted service. It is based on an acute awareness of the vulnerability of adults with disabilities to various forms of maltreatment. Maltreatment can present as abuse, neglect, or exploitation. Adult Protective Services includes provisions in General Statutes for reporting maltreatment, evaluation of maltreatment and intervention when services are necessary to protect the adult.

The Adult Protective Services statute was developed to provide assistance to adults with disabilities when they are unable to take care of themselves, and if they have no one able, willing, or responsible to seek their essential services. These adults may live alone, live with a family member acting as caregiver, or live with someone unrelated and acting as their caregiver. They may live in private homes, residential care facilities, hospitals, state institutions, or be homeless. Adult Protective Services is diverse by nature and deals with persons of varying cultural, ethnic, religious, and economic backgrounds. At its core, Adult Protective Services shall preserve the rights of the adult to make choices, therefore consideration of that ethical responsibility is essential.

C. Basic Principles

The following basic principles, as outlined in Appendix A shall serve as a foundation in the practice of Adult Protective Services (hereafter referred to as APS):

- The right to self-determination is a basic principle of APS
- Disabled adults should be treated with honesty, care and respect
- The least restrictive alternative shall be used whenever possible
- Give highest priority to the family and other support systems as resources when appropriate
- Inadequate or inappropriate intervention can be more harmful than no intervention
- Protection of disabled adults is a shared community responsibility
- The emphasis in APS is always on the need for protective services rather than evaluation of Incidents
- The disabled adult's confidentiality and right to privacy should always be respected

Protective services for disabled adults encompass a wide array of services and activities which are intended to remedy abuse, neglect and exploitation. This manual presents the various aspects of adult protective services, including the protective services general statute, alternatives to adult protective services, and administration of the service.

General statute, administrative code, and recommended social work practice assist supervisors and social workers in carrying out an adult protective services program which is beneficial to its disabled adults and is consistent with the requirements governing its provision.



ADULT PROTECTIVE SERVICES MANUAL

II. Legal Base

II. Legal Base

A. North Carolina General Statutes Related to APS Practice (Chapter 108A)

§ 108A-14. Duties and responsibilities

(a) The director of social services shall have the following duties and responsibilities:

(3) To administer the programs of public assistance and social services established by this Chapter under pertinent rules and regulations;

(14) To receive and evaluate reports of abuse, neglect, or exploitation of disabled adults and to take appropriate action as required by the Protection of the Abused, Neglected, or Exploited Disabled Adults Act, Article 6 of this Chapter, to protect these adults.

(15) To receive and evaluate reports of financial exploitation of disabled adults, to investigate credible reports of financial exploitation under Article 6A of this Chapter, and to take appropriate action to protect these adults.

(b) The director may delegate to one or more members of his staff the authority to act as his representative. The director may limit the delegated authority of his representative to specific tasks or areas of expertise. The director may designate, subject to the approval of the Commissioner of Labor, additional personnel outside his staff to issue youth employment certificates.

§ 108A-15. Social services officials and employees as public guardians

The director and assistant directors of social services of each county may serve as guardians for adults adjudicated incompetent under the provisions of Chapter 35A, and they shall do so if ordered to serve in that capacity by the clerk of superior court having jurisdiction of a guardianship proceeding brought under either Article.

§ 108A-99. Short title: Article 6A

This Article may be cited as the "Protection of the Abused, Neglected, or Exploited Disabled Adult Act." (1973, c. 1378; s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-100. Legislative intent and purpose

Determined to protect the increasing number of disabled adults in North Carolina who are abused, neglected, or exploited, the General Assembly enacts this Article to provide protective services for such persons. (1973, c.

1378, s. 1; 1975, c. 797; 1981, c. 275, s.1.)

§ 108A-101. Definitions

- (a) The word "abuse" means the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health.
- (b) The word "caretaker" shall mean an individual who has the responsibility for the care of the disabled adult as a result of family relationship or who has assumed the responsibility for the care of the disabled adult voluntarily or by contract.
- (c) The word "director" shall mean the director of the county department of social services in the county in which the person resides or is present, or his representative as authorized in G.S. 108A-14.
- (d) The words "disabled adult" shall mean any person 18 years of age or over or any lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated due to mental retardation, cerebral palsy, epilepsy or autism; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances.
- (e) A "disabled adult" shall be "in need of protective services" if that person, due to his physical or mental incapacity, is unable to perform or obtain for himself essential services and if that person is without able, responsible, and willing persons to perform or obtain for his essential services.
- (f) The words "district court" shall mean the judge of that court.
- (g) The word "emergency" refers to a situation where (i) the disabled adult is in substantial danger of death or irreparable harm if protective services are not provided immediately, (ii) the disabled adult is unable to consent to services, (iii) no responsible, able, or willing caretaker is available to consent to emergency services, and (iv) there is insufficient time to utilize procedure provided in G.S. 108A-105.
- (h) The words "emergency services" refer to those services necessary to maintain the person's vital functions and without which there is reasonable belief that the person would suffer irreparable harm or death. This may include taking physical custody of the disabled person.
- (i) The words "essential services" shall refer to those social, medical,

psychiatric, psychological or legal services necessary to safeguard the disabled adult's rights and resources and to maintain the physical or mental well-being of the individual. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, and protection from exploitation. The words "essential services" shall not include taking the person into physical custody without his consent except as provided for in G.S. 108A-106 and in Chapter 122C of the General Statutes.

- (j) The word "exploitation" means the illegal or improper use of a disabled adult or his resources for another's profit or advantage.**
- (k) The word "indigent" shall mean indigent as defined in G.S. 7A-450.**
- (l) The words "lacks the capacity to consent" shall mean lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including but not limited to provisions for health or mental health care, food, clothing, or shelter, because of physical or mental incapacity. This may be reasonably determined by the director or he may seek a physician's or psychologist's assistance in making this determination.**
- (m) The word "neglect" refers to a disabled adult who is either living alone and not able to provide for himself or herself the services which are necessary to maintain the person's mental or physical health or is not receiving services from the person's caretaker. A person is not receiving services from his caretaker if, among other things and not by way of limitation, the person is a resident of one of the State-owned psychiatric hospitals listed in G.S. 122C-181(a)(1), the State-owned Developmental Centers listed in G.S. 122C-181(a)(2), or the State-owned Neuro-Medical Treatment Centers listed in G.S. 122C-181(a)(3), the person is, in the opinion of the professional staff of that State-owned facility, mentally incompetent to give consent to medical treatment, the person has no legal guardian appointed pursuant to Chapter 35A, or guardian as defined in G.S. 122C- 3(15), and the person needs medical treatment.**
- (n) The words "protective services" shall mean services provided by the State or other government or private organizations or individuals which are necessary to protect the disabled adult from abuse, neglect, or exploitation. They shall consist of evaluation of the need for service and mobilization of essential services on behalf of the disabled adult. (1973, c. 1378, s. 1; 1975, c. 797; 1979, 1044, ss. 1-4; 1981, c. 275, s. 1; 1985, c. 589, s. 34; 1987, c. 550, s. 24; 1989, c. 770, s. 29; 1991, c. 258, s.**

2; 2007-177, s. 4.)

§ 108A-102. Duty to report: content of report: immunity

- (a) Any person having reasonable cause to believe that a disabled adult is in need of protective services shall report such information to the director.
- (b) The report may be made orally or in writing. The report shall include the name and address of the disabled adult; the name and address of the disabled adult's caretaker; the age of the disabled adult; the nature and extent of the disabled adult's injury or condition resulting from abuse or neglect; and other pertinent information.
- (c) Anyone who makes a report pursuant to this statute, who testifies in any judicial proceeding arising from the report, or who participates in a required evaluation shall be immune from any civil or criminal liability on account of such report or testimony or participation, unless such person acted in bad faith or with a malicious purpose. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-103. Duty of director upon receiving report

- (a) Any director receiving a report that a disabled adult is in need of protective services shall make a prompt and thorough evaluation to determine whether the disabled adult is in need of protective services and what services are needed. The evaluation shall include a visit to the person and consultation with others having knowledge of the facts of the particular case. When necessary for a complete evaluation of the report, the director shall have the authority to review and copy any and all records, or any part of such records, related to the care and treatment of the disabled adult that have been maintained by any individual, facility or agency acting as a caretaker for the disabled adult. This shall include but not be limited to records maintained by facilities licensed by the North Carolina Department of Health and Human Services. Use of information so obtained shall be subject to and governed by the provisions of G.S. 108A-80 and Article 3 of Chapter 122C of the General Statutes. The director shall have the authority to conduct an interview with the disabled adult with no other persons present. After completing the evaluation the director shall make a written report of the case indicating whether he believes protective services are needed and shall notify the individual making the report of his determination as to whether the disabled adult needs protective services.
- (b) The staff and physicians of local health departments, area mental health, developmental disabilities, and substance abuse authorities, and other public or private agencies shall cooperate fully with the director in the performance of his duties. These duties include immediate accessible evaluations and in-home evaluations where the director

deems this necessary.

- (c) The director may contract with an agency or private physician for the purpose of providing immediate accessible medical evaluations in the location that the director deems most appropriate.
- (d) The director shall initiate the evaluation described in subsection (a) of this section as follows:
 - 1) Immediately upon receipt of the complaint if the complaint alleges a danger of death in an emergency as defined in G.S. 108A-101(g).
 - 2) Within 24 hours if the complaint alleges danger of irreparable harm in an emergency as defined by G.S. 108A-101(g).
 - 3) Within 72 hours if the complaint does not allege danger of death or irreparable harm in an emergency as defined by G.S.108A-101(g).
 - 4) Repealed by Session Laws 2000, c. 131, s. 1.

The evaluation shall be completed within 30 days for allegations of abuse or neglect and within 45 days for allegations of exploitation. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1; 1985, c. 589, s. 35; c. 658, s. 1; 1985 (Reg. Sess., 1986), c. 863, s. 6; 1991, c. 636, s. 19(c); 1997-443, s. 11A.118(a); 1999-334, s.1.10; 2000-131, s. 1.

§ 108A-104. Provision of protective services with the consent of the person; withdrawal of consent; caretaker refusal.

- (a) If the director determines that a disabled adult is in need of protective services, he shall immediately provide or arrange for the provision of protective services, provided that the disabled adult consents.
- (b) When a caretaker of a disabled adult who consents to the receipt of protective services refuses to allow the provision of such services to the disabled adult, the director may petition the district court for an order enjoining the caretaker from interfering with the provision of protective services to the disabled adult. The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and consents to the receipt of protective services and that the caretaker refuses to allow the provision of such services. If the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and consents to the receipt of protective services and that the caretaker refuses to allow the provision of such services, he may issue an order enjoining the caretaker from interfering with the provision of protective services to the disabled adult.
- (c) If a disabled adult does not consent to the receipt of protective services, or if he withdraws his consent, the services shall not be provided. (1973,

c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-105. Provision of protective services to disabled adults who lack the capacity to consent: hearing, findings, etc.

- (a) If the director reasonably determines that a disabled adult is being abused, neglected, or exploited and lacks capacity to consent to protective services, then the director may petition the district court for an order authorizing the provision of protective services. The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and lacks capacity to consent to them.
- (b) The court shall set the case for hearing within 14 days after the filing of the petition. The disabled adult must receive at least five days' notice of the hearing. He has the right to be present and represented by counsel at the hearing. If the person, in the determination of the judge, lacks the capacity to waive the right to counsel, then a guardian ad litem shall be appointed pursuant to G.S. 1A-1, Rule 17, and rules adopted by the Office of Indigent Defense Services. If the person is indigent, the cost of representation shall be borne by the State.
- (c) If, at the hearing, the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and lacks capacity to consent to protective services, he may issue an order authorizing the provision of protective services. This order may include the designation of an individual or organization to be responsible for the performing or obtaining of essential services on behalf of the disabled adult or otherwise consenting to protective services in his behalf. Within 60 days from the appointment of such an individual or organization, the court will conduct a review to determine if a petition should be initiated in accordance with Chapter 35A; for good cause shown, the court may extend the 60 day period for an additional 60 days, at the end of which it shall conduct a review to determine if a petition should be initiated in accordance with Chapter 35A. No disabled adult may be committed to a mental health facility under this Article.
- (d) A determination by the court that a person lacks the capacity to consent to protective services under the provisions of this Chapter shall in no way affect incompetency proceedings as set forth in Chapters 33, 35 or 122 of the General Statutes of North Carolina, or any other proceedings, and incompetency proceedings as set forth in Chapters 33, 35, or 122 shall have no conclusive effect upon the question of capacity to consent to protective services as set forth in this Chapter. (1973, c. 1378, s. 1; 1975, c. 797; 1977, c. 725, s. 3, 1979, c.1044, s. 5; 1981, c. 275, s. 1; 1985, c. 658, s. 2; 1987, c. 550, s. 25; 2000-144, s. 36.)

§ 108A-106. Emergency intervention: findings by court; limitations; contents of petition; notice of petition; court authorized entry of premises:

immunity of petitioner.

- (a) Upon petition by the director, a court may order the provision of emergency services to a disabled adult after finding that there is reasonable cause to believe that:
- a. A disabled adult lacks capacity to consent and that he is in need of protective service;
 - b. An emergency exists; and
 - c. No other person authorized by law or order to give consent for the person is available and willing to arrange for emergency services.
- (b) The court shall order only such emergency services as are necessary to remove the conditions creating the emergency. In the event that such services will be needed for more than 14 days, the director shall petition the court in accordance with G.S. 108A-105.
- (c) The petition for emergency services shall set forth the name, address, and authority of the petitioner; the name, age and residence of the disabled adult; the nature of the emergency; the nature of the disability if determinable; the proposed emergency services; the petitioner's reasonable belief as to the existence of the conditions set forth in subsection (a) above; and facts showing petitioner's attempts to obtain the disabled adult's consent to the services.
- (d) Notice of the filing of such petition and other relevant information, including the factual basis of the belief that emergency services are needed and a description of the exact services to be rendered shall be given to the person, to his spouse, or if none, to his adult children or next of kin, to his guardian, if any. Such notice shall be given at least 24 hours prior to the hearing of the petition for emergency intervention; provided, however, that the court may issue immediate emergency order ex parte upon finding as fact (i) that the conditions specified in G.S. 108A-106(a) exist; (ii) that there is likelihood that the disabled adult may suffer irreparable injury or death if such order be delayed; and (iii) that reasonable attempts have been made to locate interested parties and secure from them such services or their consent to petitioner's provision of such service; and such order shall contain a show-cause notice to each person upon whom served directing such person to appear immediately or at any time up to and including the time for the hearing of the petition for emergency services and show cause, if any exists, for the dissolution or modification of the said order. Copies of the said order together with such other appropriate notices as the court may direct shall be issued and served upon all of the interested parties designated in the first sentence of this subsection. Unless dissolved by the court for good cause shown, the emergency order ex parte shall be in effect until the hearing is held on the petition for emergency services. At such hearing, if the court determines that the emergency continues to exist, the court may order the provision of emergency services in

accordance with subsections (a) and (b) of this section.

(e) Where it is necessary to enter a premises without the disabled adult's consent after obtaining a court order in compliance with subsection (a) above, the representative of the petitioner shall do so.

(f) (1) Upon petition by the director, a court may order that:

- a. The disabled adult's financial records be made available at a certain day and time for inspection by the director or his designated agent; and
- b. The disabled adult's financial assets be frozen and not withdrawn, spent or transferred without prior order of the court.

(2) Such an order shall not issue unless the court first finds that there is reasonable cause to believe that:

- a. A disabled adult lacks the capacity to consent and that he is in need of protective services;
- b. The disabled adult is being financially exploited by his caretaker; and
- c. No other person is able or willing to arrange for protective services.

(3) Provided, before any such inspection is done, the caretaker and every financial institution involved shall be given notice and a reasonable opportunity to appear and show good cause why this inspection should not be done. And, provided further, that any order freezing assets shall expire ten days after such inspection is completed, unless the court for good cause shown, extends it.

(g) No petitioner shall be held liable in any action brought by the disabled adult if the petitioner acted in good faith. (1975, c. 797; 1981, c. 275, s. 1; 1985, c. 658, s.

§ 108A-107. Motion in the cause

Notwithstanding any finding by the court of lack of capacity of the disabled adult to consent, the disabled adult or the individual or organization designated to be responsible for the disabled adult shall have the right to bring a motion in the cause for review of any order issued pursuant to this Article. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-108. Payment for essential services

At the time the director, in accordance with the provisions of G.S. 108A-103 makes an evaluation of the case reported, then it shall be determined, according to regulations set by the Social Services Commission, whether the individual is financially capable of paying for the essential services. If he is, he shall make reimbursement for the costs of providing the needed essential services. If it is determined that he is not financially capable of

paying for such essential services, they shall be provided at no cost to the recipient of the services. (1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-109. Reporting abuse

Upon finding evidence indicating that a person has abused, neglected, or exploited a disabled adult, the director shall notify the district attorney. (1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-110. of protective services

Any funds appropriated by counties for home health care, boarding home, nursing home, emergency assistance, medical or psychiatric evaluations, and other protective services and for the development and improvement of a system of protective services, including additional staff, may be matched by State and federal funds. Such funds shall be utilized by the county department of social services for the benefit of disabled adults in need of protective services. (1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-111. Adoption of standards

The Department and the administrative office of the court shall adopt standards and other procedures and guidelines with forms to insure the effective implementation of the provisions of this Article.

§ 108A-112. Legislative intent and purpose

Determined to fight the growing problem of fraud and financial exploitation targeting disabled and older adults in North Carolina, the General Assembly enacts this Article to facilitate the collection of records needed to investigate and prosecute such incidents. (2013-337, s. 4.)

§ 108A-113. Definitions

As used in this Article, the following definitions apply:

- 1) **Customer.** - A person who is a present or former holder of an account with a financial institution.
- 2) **Disabled adult.** - An individual 18 years of age or older or a lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated as defined in G.S. 108A-101(d).
- 3) **Financial exploitation.** - The illegal or improper use of a disabled adult's or older adult's financial resources for another's profit or pecuniary advantage.
- 4) **Financial institution.** - A banking corporation, trust company, savings and loan association, credit union, or other entity principally engaged in lending money or receiving or soliciting money on deposit.
- 5) **Financial record.** - An original of, a copy of, or information derived from a record held by a financial institution pertaining to a customer's relationship with the financial institution and identified with or identifiable with the customer.

- 6) Investigating entity. - A law enforcement agency investigating alleged financial exploitation of a disabled adult or an older adult, or a county department of social services investigating alleged financial exploitation of a disabled adult.
- 7) Law enforcement agency. - Any duly accredited State or local government agency possessing authority to enforce the criminal statutes of North Carolina.
- 8) Older adult. - An individual 65 years of age or older.
- 9) Promptly. - As soon as practicable, with reasonable allowance to be made for the time required to retrieve older data or records that are not readily or immediately retrievable due to their current storage media. (2013- 337, s. 4.)

§ 108A-114. Financial institutions encouraged to offer disabled adult and older adult customers the opportunity to submit a list of trusted persons to be contacted in case of financial exploitation.

All financial institutions are encouraged, but not required, to offer to disabled adult and older adult customers the opportunity to submit, and periodically update, a list of persons that the disabled adult or older adult customer would like the financial institution to contact in case of suspected financial exploitation of the disabled adult or older adult customer. No financial institution, or officer or employee thereof, who acts in good faith in offering to its customer the opportunity to submit and update a list of such contact persons may be held liable in any action for doing so. (2013-337, s. 4.)

§ 108A-115. Duty to report suspected fraud: content of report: immunity for reporting

- (a) Any financial institution, or officer or employee thereof, having reasonable cause to believe that a disabled adult or older adult is the victim or target of financial exploitation shall report such information to the following:
 - 1) Persons on the list provided by the customer under G.S. 108A-114, if such a list has been provided by the customer. The financial institution may choose not to contact persons on the provided list if the financial institution suspects that those persons are financially exploiting the disabled adult or older adult.
 - 2) The appropriate local law enforcement agency.
 - 3) The appropriate county department of social services, if the customer is a disabled adult.
- (b) The report may be made orally or in writing. The report shall include the name and address of the disabled adult or older adult, the nature of the suspected financial exploitation, and any other pertinent information.

(c) No financial institution, or officer or employee thereof, who acts in good faith in making a report under this section may be held liable in any action for doing so. (2013-337, s. 4.)

§ 108A-116. Production of customers' financial records in cases of suspected financial exploitation; immunity; records may not be used against account owner.

(a) An investigating entity may, under the conditions specified in this section, petition the district court to issue a subpoena directing a financial institution to provide to the investigating entity the financial records of a disabled adult or older adult customer. The petition shall be filed in the county of residence of the disabled adult or older adult customer whose financial records are being subpoenaed. The court shall hear the case within two business days after the filing of the petition. The court shall issue the subpoena upon finding that all of the following conditions are met:

- 1) The investigating entity is investigating, pursuant to the investigating entity's statutory authority, a credible report that the disabled adult or older adult is being or has been financially exploited.
- 2) The disabled adult's or older adult's financial records are needed in order to substantiate or evaluate the report.
- 3) Time is of the essence in order to prevent further exploitation of that disabled adult or older adult.

(b) Delivery of the subpoena may be effected by hand, via certified mail, return receipt requested, or through a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) and may be addressed to the financial institution's local branch or office vice president, its local branch or office manager or assistant branch or office manager, or the agent for service of process listed by the financial institution with the North Carolina Secretary of State or, if there is none, with the agent for service of process listed by the financial institution in any state in which it is domiciled. (b1) A financial institution may challenge the subpoena by filing a motion to quash or modify the subpoena within ten days after receipt of delivery of the subpoena pursuant to subsection (b) of this section. The subpoena may be challenged only for the following reasons:

- 1) There is a procedural defect with the subpoena.
- 2) The subpoena contains insufficient information to identify the records subject to the subpoena.
- 3) The financial institution is otherwise prevented from promptly complying with the subpoena. The petition was filed or subpoena requested for an improper purpose or based upon insufficient grounds.
- 4) The subpoena subjects the financial institution to an undue

burden or is otherwise unreasonable or oppressive.

Within two business days after the motion is filed, the court shall hear the motion and issue an order upholding, modifying, or quashing the subpoena.

(c) Upon receipt of a subpoena delivered pursuant to subsection (b) of this section identifying the disabled adult or older adult customer or, if the subpoena is challenged pursuant to subsection (b1) of this section, entry of a court order upholding or modifying a subpoena, a financial institution shall promptly provide to the head of an investigating entity, or his or her designated agent, the financial records of a disabled adult or older adult customer.

(d) All produced copies of the disabled adult's or older adult's financial records, as well as any information obtained pursuant to the duty to report found in G.S. 108A-115, shall be kept confidential by the investigating entity unless required by court order to be disclosed to a party to a court proceeding or introduced and admitted into evidence in an open court proceeding.

(e) No financial institution or investigating entity, or officer or employee thereof, who acts in good faith in providing, seeking, or obtaining financial records or any other information in accordance with this section, or in providing testimony in any judicial proceeding based upon the contents thereof, may be held liable in any action for doing so.

(f) No customer may be subject to indictment, criminal prosecution, criminal punishment, or criminal penalty by reason of or on account of anything disclosed by a financial institution pursuant to this section, nor may any information obtained through such disclosure be used as evidence against the customer in any criminal or civil proceeding. Notwithstanding the foregoing, information obtained may be used against a person who is a joint account owner accused of financial exploitation of a disabled adult or older adult joint account holder, but solely for criminal or civil proceedings directly related to the alleged financial exploitation of the disabled adult or older adult joint account holder.

(g) The petition and the court's entire record of the proceedings under this section is not a matter of public record. Records qualifying under this subsection shall be maintained separately from other records, shall be withheld from public inspection, and may be examined only by order of the court. (2013-337, s. 4; 2014- 115, s. 44(a).)

§ 108A-117. Notice to customer: delayed notice

(a) Upon the issuance of a subpoena pursuant to G.S. 108A-116, the

investigating entity shall immediately provide the customer with written notice of its action by first-class mail to the customer's last known address, unless an order for delayed notice is obtained pursuant to subsection (b) of this section. The notice shall be sufficient to inform the customer of the name of the investigating entity that has obtained the subpoena, the financial records subject to production pursuant to the subpoena, and the purpose of the investigation.

- (b) An investigating entity may include in its application for a subpoena pursuant to G.S. 108A-116 a request for an order delaying the customer notice required pursuant to subsection (a) of this section. The court issuing the subpoena may order a delayed notice in accordance with subsection (c) of this section if it finds, based on affidavit or oral testimony under oath or affirmation before the issuing court, that all of the following conditions are met:
- 1) The investigating entity is investigating a credible report that the adult is being or has been financially exploited.
 - 2) There is reason to believe that the notice will result in at least one of the following:
 - a. Endangering the life or physical safety of any person.
 - b. Flight from prosecution.
 - c. Destruction of or tampering with evidence.
 - d. Intimidation of potential witnesses.
 - e. Serious jeopardy to an investigation or official proceeding.
 - f. Undue delay of a trial or official proceeding.
- (c) Upon making the findings required in subsection (b) of this section, the court shall enter an ex parte order granting the requested delay for a period not to exceed 30 days. If the court finds there is reason to believe that the notice may endanger the life or physical safety of any person, the court may order that the delay be for a period not to exceed 180 days. An order delaying notice shall direct that:
- 1) The financial institution not disclose to any person the existence of the investigation, of the subpoena, or of the fact that the customer's financial records have been provided to the investigating entity for the duration of the period of delay authorized in the order;
 - 2) The investigating entity deliver a copy of the order to the financial institution along with the subpoena that is delivered pursuant to G.S. 108-116(b); and
 - 3) The order be sealed until otherwise ordered by the court.
- (d) Upon application by the investigating entity, further extensions of the delay of notice may be granted by order of a court in the county of residence of the disabled adult or older adult customer whose financial

records are being subpoenaed, upon a finding of the continued existence of the conditions set forth in subdivisions (1) and (2) of subsection (b) of this section, and subject to the requirements of subsection (c) of this section. If the initial delay was granted for a period not to exceed 30 days, the delay may be extended by additional periods of up to 30 days each and the total delay in notice granted under this section shall not exceed 90 days. If the initial delay was granted for a period not to exceed 180 days, the delay may be extended by additional periods of up to 180 days each and may continue to be extended until the court finds the notice would no longer endanger the life or physical safety of any person.

- (e) Upon the expiration of the period of delay of notice granted under this section, including any extensions thereof, the customer shall be served with a copy of the notice required by subsection (a) of this section.

B. North Carolina Administrative Code Related to APS Practice (10A NCAC)

Subchapter 71A – Protective Services for Adults SECTION - .0100 - GENERAL

10A NCAC 71A .0101 INTRODUCTORY STATEMENT

Rules in this Subchapter govern the provision of protective services for adults with funds administered by the Division of Social Services. Included are requirements which must be met by county departments of social services in carrying out their responsibilities for the protection of disabled adults under Article 6, Chapter 108A of the General Statutes.

History Note: Authority G.S. 143B-153; Eff. November 1, 1983. 10A NCAC

71A .0102 DEFINITIONS

- (a) "Immediately" as specified in G.S. 108A-103(d), shall mean responds with no delay as soon as a county department of social services receives a report that:
- 1) an adult is alleged to be disabled as defined in G.S. 108A-101(d);
 - 2) an adult is alleged to be abused, neglected, or exploited as defined in G.S. 108A-101(a), (j), or (m); and
 - 3) an adult is alleged to be in need of protective services as defined in G.S. 108A-101(e).
- (b) "A life-threatening situation" shall be considered an emergency as defined in G.S. 108A-101(g).

History Note: Authority G.S. 143B-153; S.L. 1999-334; Temporary Adoption

Eff. September 28, 1999; Eff. July 17, 2000.

SECTION .0200 - ACCEPTANCE AND EVALUATION OF PROTECTIVE SERVICES REPORTS

10A NCAC 71A .0201 ACCEPTANCE OF REPORTS

- (a) The county department of social services shall accept all reports alleging an abused, neglected, or exploited disabled adult is in need of protective services. This includes anonymous reports. If the county department determines that the address of the disabled adult given in the report is in another county, the department shall refer the person making the report to the appropriate county department. The county department receiving the original report shall follow up to make sure the appropriate county has received the report.
- (b) The department of social services shall make arrangements for 24-hour coverage to receive calls and take appropriate action.
- (c) Notwithstanding provisions in 10A NCAC 71A .0801 through .0803, the director may immediately tell the District Attorney's office and local law enforcement agencies when there is reason to believe that physical harm may occur to the disabled adult. This would include sharing evidence of abuse or neglect the agency has to date.

History Note: Authority G.S. 108A-103; 143B-153; Eff. November 1, 1983; Amended Eff. December 1, 1991; July 1, 1990; Temporary Amendment Eff.

December 12, 1995; Amended Eff. April 1, 1997.

10A NCAC 71A .0202 RECEIPT OF ORAL REPORT

The social worker receiving an oral report shall explain to the complainant (the person making the report) that the department will notify the complainant of the results of the evaluation. The social worker shall determine from the complainant whether the complainant wants the notification to be oral or written.

10A NCAC 71A .0203 REPORTS REGARDING COUNTY OFFICIALS

- (a) When a report is received alleging abuse, neglect or exploitation of a disabled adult by a social services board member, department of social services staff member, county commissioner, or the county manager, the county department shall notify the regional office immediately. The regional office will assign the report to another county department for evaluation.
- (b) In addition to specified instances in (a) of this Rule in which reports

must be assigned to another county, the county department shall consult the regional office whenever it seems that evaluation of a report may present the appearance of a conflict of interest.

- (c) If the evaluation does not substantiate the report, the department which conducted the evaluation will refer the case back to the county of residence so that alternative services may be offered. If the evaluation substantiates the report, the agency which conducted the evaluation will seek authorization for services, including petitioning the court when necessary. The petition shall be filed in the county of residence and shall include the reason for filing by an agency in another county.
- (d) The agency which conducted the evaluation will act as case manager for protective services in coordination with the agency in the county of residence. The county of residence will be responsible for paying for services in accordance with rules in Section.0400 of this Subchapter, and for any expenses for medical, psychological or other examinations and legal services incurred by the county which conducted the evaluation.

History Note: Authority G.S. 108A-103; 143B-153; Eff. November 1, 1983; Amended Eff. July 1, 1990.

10A NCAC 71A .0204 TIME FRAME TO INITIATE EVALUATION

- (a) Evaluation of reports involving an emergency as defined in G.S. 108A-101(g) shall be initiated within 24 hours of receipt of the report.
- (b) Evaluation of other reports of a need for protective services shall be initiated within 72 hours after receipt of a report.

History Note: Authority G.S. 143B-153; Eff. November 1, 1983.

10A NCAC 71A .0205 INITIATION OF EVALUATION

The evaluation is initiated by a visit to the adult about whom the report is made. If the adult cannot be located, efforts to locate the adult within the 24- or 72-hour time limit, as appropriate, shall be documented in the case record. Such efforts to locate the adult shall constitute initiation of the evaluation.

History Note: Authority G.S. 143B-153; Eff. November 1, 1983. 10A NCAC

71A .0206 STEPS IN EVALUATION

The complete evaluation shall include:

- 1) The visit to the person, which means that the person must be seen by the social worker. The social worker will make as many visits as are necessary to determine whether the adult is disabled; abused, neglected or exploited; and in need of protective services.
- 2) Consultation with others who have knowledge of the facts of the

situation. This includes individuals identified by the person making the report, as well as individuals mentioned by the disabled adult who may have information pertinent to the evaluation.

- 3) Medical, psychological or psychiatric evaluations when necessary to determine whether the adult is disabled; abused, neglected or exploited; and in need of services; and to determine what services are needed. History Note: Authority G.S. 108A-103; 143B-153; Eff. November 1, 1983; Amended Eff. July 1, 1990.

10A NCAC 71A .0207 FOCUS OF EVALUATION

The evaluation must determine:

- 1) whether or not the adult is disabled in accordance with the statutory definition in G.S. 108A-101(d);
- 2) whether or not the adult is abused, neglected or exploited as defined in G.S. 108A-101(a)(j) or (m);
- 3) whether or not the adult is in need of protective services as defined in G.S. 108A-101(e);
- 4) whether or not the adult lacks the capacity to consent to protective services.

History Note: Authority G.S. 143B-153; Eff. November 1, 1983. 10A NCAC

71A .0208 CONDUCTING A THOROUGH EVALUATION

A thorough evaluation of the protective services report shall include identifying

indicators of abuse, neglect, or exploitation and the disabled adult's strengths and limitations by assessing the following functional areas:

- 1) physical health;
- 2) mental health;
- 3) social support;
- 4) activities of daily living and instrumental activities of daily living;
- 5) financial support; and
- 6) physical environment.

History Note: Authority G.S. 108A-103; 143B-153; Eff. December 1, 1991.

10A NCAC 71A .0209 SUBSTANTIATION OF THE REPORT

(a) Following completion of the evaluation a determination shall be made as to whether the report is substantiated.

(b) A report is substantiated when:

- 1) the adult is determined to be disabled as defined in G.S. 108A-101(d);
- 2) the adult is determined to be abused, neglected or exploited as

- defined in G.S. 108A-101(a), (j), or (m); and
- 3) the adult is determined to be in need of protective services as defined in G.S. 108A-101(e).

(c) A report is unsubstantiated if any one of the three conditions in Subparagraphs (b)(1), (2), and (3) of this Rule are not met.

SECTION .0300 - UNSUBSTANTIATED REPORTS: SUBSTANTIATED REPORTS: REFUSAL OF SERVICES

10A NCAC 71A .0301 UNSUBSTANTIATED REPORT: OFFER OF SERVICES

When the evaluation of the report indicates that the allegations are not substantiated, an offer shall be made to the individual of any available and appropriate agency services. The social worker shall explain such services to the individual. In addition, the social worker shall provide information about other community services and shall offer to refer the person to such resources.

History Note: Authority G.S. 143B-153; Eff. November 1, 1983.

10A NCAC 71A .0302 SUBSTANTIATED REPORT: ADULT REFUSES SERVICES

- (a) When the evaluation of a report indicates that the allegations are substantiated and the disabled adult is capable of making responsible decisions and refuses the receipt of protective services, the social worker must respect that decision and terminate contact with the adult. Prior to doing so, the social worker shall explain the services available to the adult and that the adult may call the agency to request assistance, if needed.
- (b) Documentation shall be made of the social worker's explanation and offer of services and of the adult's refusal to accept services. The social worker shall obtain from the adult a signed statement of his refusal of services or shall document in the record the attempt to obtain such a signed statement.

History Note: Authority G.S. 143B-153; Eff. November 1, 1983.

SECTION .0400 - PAYMENT FOR ESSENTIAL SERVICES

10A NCAC 71A .0401 ESSENTIAL SOCIAL SERVICES

- (a) For essential social services that the county makes available, the individual's responsibility for payment shall be determined in accordance with rules in 10A NCAC 71R .0500.

- (b) For essential social services that the county does not make available, an individual is deemed financially incapable of paying if his income is less than 60 percent of the state's established income as codified in 10A NCAC 71R .0500.

History Note: Authority G.S. 108A-108; 143B-153; Eff. November 1, 1983; Amended Eff. July 1, 1990.

10A NCAC 71A .0402 ESSENTIAL MEDICAL SERVICES

For essential medical services, an individual is deemed financially incapable of paying if he meets the eligibility criteria for Title XIX (Medicaid). Essential medical services must be provided at no charge to a Medicaid - eligible person, whether or not the needed services are available under Medicaid.

SECTION .0500 - RESIDENTIAL CARE FACILITIES

10A NCAC 71A .0501 GENERAL REQUIREMENT

- (a) In accordance with provisions of G.S. 108A-103 and the rules in Section .0200 of this Subchapter, the department of social services in the county in which the facility is located shall evaluate reports of abused, neglected, or exploited disabled adults in need of protective services who are specifically named patients or residents of nursing, combination, and residential care facilities. This includes reports regarding patients or residents who are placed from other counties.
- (b) Complaints received by the county department of social services regarding general conditions or violations of standards in nursing and combination facilities and residential care facilities licensed under G.S. 122C shall be referred to the Division of Health Service Regulation.
- (c) Complaints received by the county department of social services regarding general conditions or violations of standards in residential care facilities licensed under G.S. 131D-2 shall be followed up by the adult home specialist in accordance with the specialist's ongoing responsibility for supervision of these facilities.

History Note: Authority G.S. 108A-103; 143B-153; Eff. November 1, 1983; Amended Eff. December 1, 1991; July 1, 1990.

10A NCAC 71A .0502 NOTICE TO ADMINISTRATOR

- (a) The county director will not inform the administrator prior to the first visit to the facility that a protective services report has been received, except in specific instances where the county director thinks the assistance of the administrator will be needed in conducting the

evaluation.

- (b) The county director shall provide the administrator of a nursing, combination, or residential care facility with a written summary of the nature of the protective services report, whether or not evidence of abuse, neglect or exploitation was found, and whether or not a need for protective services was substantiated. The written summary to the administrator shall be limited to the following:
- 1) acknowledgement that a protective services report was received on a specified patient or resident of the facility;
 - 2) the specific allegations in the report (the complainant shall not be named);
 - 3) whether or not evidence of abuse, neglect or exploitation was found;
 - 4) whether or not the need for protective services was substantiated;
 - 5) a general statement as to how the conclusion was reached (the names of persons who were contacted during the evaluation to obtain information shall not be given).

History Note: Authority G.S. 108A-103; 143B-153; Eff. November 1, 1983; Amended Eff. December 1, 1991; July 1, 1990.

10A NCAC 71A .0503 REPORT TO REGULATORY AGENCIES

- (a) A copy of the written report required by Rule .0901 of this Subchapter shall be sent to the Division of Health Service Regulation, within 30 days of completion of the evaluation. If the identity of the person making the protective services report and the names of individuals who provide information about the disabled adult are needed by the Division of Health Service Regulation in order to carry out an investigation, that information shall be shared verbally with the Division on request.
- (b) When evidence of financial exploitation is found in Medicaid - funded facilities, the county department of social services shall send a copy of the written report to the Division of Medical Assistance, as well as to the Division of Health Service Regulation.
- (c) When, in the course of an evaluation, evidence of abuse, neglect or exploitation is found, the county director shall notify the Division of Health Service Regulation immediately by telephone. In addition, the county director shall inform the Division of Health Service Regulation as to whether or not the need for protective services will be substantiated.
- (d) When, in the course of an evaluation, it appears that a report of a need for protective services will not be substantiated, but the county director finds violations of licensure standards, such violations shall be reported immediately to the appropriate supervisory agency. Reports of violations of standards in nursing and combination facilities and

residential care facilities licensed under G.S. 122C shall be made to the Division of Health Service Regulation. Reports of violations of standards in residential care facilities licensed under G.S. 131D-2 shall be made to the adult home specialist in the county department of social services.

History Note: Authority G.S. 108A-103; 143B-153; Eff. November 1, 1983; Amended Eff. December 1, 1991; July 1, 1990.

10A NCAC 71A .0504 INTER-COUNTY COORDINATION

The department in the county in which a nursing, combination, or residential care facility is located has primary responsibility for providing protective services to adults in that facility. That department shall notify the department in the adult's county of residence when a protective services report on the adult is substantiated and shall inform the department in the county of residence of the plan for protective services. The department in the county of residence shall cooperate and assist to the extent possible in the provision of protective services.

History Note: Authority G.S. 108A-103; 143B-153; Eff. November 1, 1983; Amended Eff. December 1, 1991.

SECTION .0600 - STATE MENTAL HEALTH: MENTAL RETARDATION: SUBSTANCE ABUSE SERVICES INSTITUTIONS

10A NCAC 71A .0601 EVALUATIONS OF ABUSE: NEGLECT AND EXPLOITATION

- (a) The county department of social services shall initiate its evaluation in accordance with the time frame in Rule .0204 of this Subchapter.
- (b) When the report comes from a source other than the facility administration, the county department shall inform the chief administrator of the involved facility of the report as appropriate and of applicable state law.
- (c) The county department shall notify the complainant that the department is making an evaluation.
- (d) Upon completion of the evaluation, the department shall set forth its findings and proposed actions in writing to:
 - 1) the chief administrator of the involved facility;
 - 2) the disabled adult's legal guardian, if any.

History Note: Authority G.S. 143B-153; Eff. November 1, 1983; Amended Eff. July 1, 1990.

10A NCAC 71A .0602 REPORTS OF NEED FOR MEDICAL TREATMENT FOR RESIDENTS

- (a) Rules in Section .0200 of this Subchapter shall be followed by the county department of social services in carrying out the evaluation of reports of need for medical treatment made in accordance with G.S. 108A-101(m).
- (b) After completing the evaluation, if it is reasonably determined that the person needs protective services, the county department shall petition the district court and request a hearing on the matter. The petition must present the need for specific medical treatment, as well as other circumstances substantiating neglect and request that an individual or organization be designated to consent to the medical treatment. If an emergency exists, the department shall petition the district court for an order to provide emergency services.
- (c) After the court's decision is made, the county department shall send to the institution the findings of the court.
- (d) When the county department is designated by the court, the director or his designee shall verbally communicate to the institution consent for medical treatment. This shall be done immediately after the judgment is made, to be followed by written consent.

History Note: Authority G.S. 143B-153; Eff. November 1, 1983.

SECTION .0700 - INTER-COUNTY RESPONSIBILITY

10A NCAC 71A .0701 COOPERATION IN COMPLETING EVALUATIONS

The department of social services in the county in which a disabled adult is located shall cooperate in carrying out the evaluation of a protective services report when the department of social services in the adult's county of residence has received the report and is responsible for the evaluation. Cooperation shall include prompt performance of any activities within the scope of protective services necessary to insure the protection of the disabled adult. In such cases, the department in the county in which the adult is located shall inform the department in the county of residence in advance of any medical, psychological or other examinations necessary to complete the protective services evaluation. The county of residence shall be financially responsible for such examinations and for all necessary legal expenses incurred in providing protective services.

History Note: Authority G.S. 143B-153; Eff. November 1, 1983; Amended Eff. July 1, 1990.

10A NCAC 71A .0702 MOVEMENT OF ADULT TO ANOTHER COUNTY

- (a) If a disabled adult who moves to another county has consented to the provision of protective services and no court order is involved, the county department providing protective services shall ask the disabled adult to consent for information to be shared with the department in the new county of residence. If the adult does not consent, the department providing protective services shall not share information with the department in the new county of residence. If the adult consents, the department shall notify the department in the new county of residence of the disabled adult's situation. The department in the new county of residence shall contact the disabled adult to determine whether or not protective services continue to be needed and, if so, if the disabled adult consents to their provision.
- (b) If the department in the original county of residence has been providing protective services under a court order, the department shall file a motion in the court to be relieved of responsibility because the disabled adult has moved to another county. The department shall make a protective services referral to the department in the new county of residence. The department in the new county of residence shall evaluate the adult's current situation to determine whether or not protective services are needed and, if so, shall request authority to provide services.

History Note: Authority G.S. 143B-153; Eff. November 1, 1983; Amended Eff. July 1, 1990.

SECTION .0800 - CONFIDENTIALITY

10A NCAC 71A .0801 COLLATERAL CONTACTS

Collateral contacts with persons knowledgeable about a disabled adult's situation may be made without the adult or caretaker's consent when such contacts are necessary to complete a protective services evaluation.

History Note: Authority G.S. 143B-153; Eff. November 1, 1983

10A NCAC 71A .0802 IDENTITY OF COMPLAINANT AND OF INDIVIDUALS WHO HAVE KNOWLEDGE OF THE SITUATION

The identity of the complainant and of individuals who have knowledge of the situation of the disabled adult shall be kept confidential unless the court requires that such persons' identities be revealed with the exceptions that:

- 1) the complainant's name and the names of individuals who have knowledge of the situation of the disabled adult may be given verbally to the Division of Health Service Regulation when requested by that agency in order to carry out its investigation, and

- 2) to the District Attorney's office and to law enforcement agencies which are prosecuting or conducting a criminal investigation of alleged abuse, neglect or exploitation of a disabled adult.

History Note: Authority G.S. 108A-103; 143B-153; Eff. November 1, 1983; Amended Eff. December 1, 1991; Temporary Amendment Eff. December 12, 1995; Amended

Eff. April 1, 1997.

10A NCAC 71A .0803 SPECIFIC FINDINGS

Specific findings of the evaluation shall be kept confidential and shall not be released without consent of the disabled adult or court order, except that the department of social services at its discretion may share information about the adult with other persons or agencies without the adult or caretaker's consent to the extent necessary to provide protective services. When evidence of abuse, neglect, or exploitation is found, and upon request of the district attorney or law enforcement agencies, such information shall be sent to help with a criminal investigation or prosecution of abuse, neglect or exploitation.

History Note: Authority G.S. 143B-153; 108A-80(d); Eff. November 1, 1983; Temporary Amendment Eff. December 12, 1995; Amended Eff. April 1, 1997.

10A NCAC 71A .0804 REFERRAL TO ANOTHER COUNTY

When a client who is receiving protective services under court order moves from one county to another, a protective services referral may be made by the first county to the second county without the client's consent. When the second county requests information in order to conduct its evaluation, the first county shall provide the needed information, including all information about the protective services report, results of the evaluation, and services provided to remedy the protective services problem.

History Note: Authority G.S. 143B-153; Eff. November 1, 1983.

10A NCAC 71A .0805 RELEASE OF SPECIFIC FINDINGS TO OTHER GOVERNMENTAL AGENCIES

Federal, state, and law enforcement agencies may be sent copies of the written report as specified in Rule .0901 of this Subchapter when the results of the adult protective services evaluation indicate violations of statutes, rules, or regulations enforced by these agencies.

History Note: Authority G.S. 108A-103; 143B-153; Eff. December 1, 1991.

10A NCAC 71A .0806 ADULT PROTECTIVE SERVICES REGISTER

(a) Information submitted by county departments of social services to the Adult Protective Services Register is confidential. Non-identifying statistical information and general information about the scope, nature and extent of adult abuse, neglect and exploitation in North Carolina is not subject to this Rule of confidentiality.

(b) Access to the Adult Protective Services Register is restricted to:

1) the County Department of Social Services,

(A) in order to identify whether an adult who is the subject of an Adult Protective Services evaluation has been previously reported and evaluated under G.S. 108A, Article 6 in any county in the state; or

(B) in order to share client specific information with an out-of-state protective services agency to assure that protective services will be made available to an adult previously served in North Carolina as quickly as possible for the purpose of preventing further abuse, neglect or exploitation; or

(C) in order to share client specific information with law enforcement agencies to assure that protective services will be made available to an adult as quickly as possible;

2) the Division of Social Services staff,

(A) in order to perform duties pertinent to managing and maintaining the Register and monitoring, auditing, evaluating or facilitating the administration of other state and federal programs regarding Adult Protective Services based on information in the Register, or

(B) in order to share client specific information with an out-of-state protective services agency to assure that protective services will be made available to an adult previously served in North Carolina as quickly as possible for the purpose of preventing further abuse, neglect or exploitation; and

3) individuals who receive approval to conduct studies of cases in the Adult Protective Services Register.

(A) Such approval must be requested in writing to the Director, Division of Social Services. The written request will specify and be approved on the basis of:

i. an explanation of how the findings of the study

- have potential for expanding knowledge and improving professional practices in the area of prevention, identification and treatment of adult abuse, neglect and exploitation;
- ii. a description of how the study will be conducted and how the findings will be used;
- iii. a presentation of the individual's credentials; and
- iv. a description of how the individual will safeguard the information.

(B) Access will be denied when in the judgment of the Director the study will have minimal impact on either knowledge or practice.

History Note: Authority G.S. 108A-80; 108A-103; 143B-153; Eff. March 1, 1993.

SECTION .0900 - DOCUMENTATION AND REPORTS

10A NCAC 71A .0901 WRITTEN REPORT OF THE EVALUATION

(a) Written reports shall be completed when:

- 1) the adult protective services evaluation was conducted on a patient or resident of a facility as defined in G.S. 131E-101, 131D-2(a)(3), or 122C; or
- 2) evidence of abuse, neglect or exploitation is found.

(b) After completing the evaluation, the written report shall be compiled, including the following information:

- 1) the name, address, age and condition of the adult;
- 2) the allegations (the written report shall not include the identity of the person making the complaint);
- 3) the evaluation including the agency's findings and supporting documents (e.g. psychological, medical report);
- 4) conclusions;
- 5) recommendations for action.

History Note: Authority G.S. 108A-103; 143B-153; Eff. November 1, 1983; Amended Eff. December 1, 1991.

10A NCAC 71A .0902 CARETAKER INTERFERENCE: PETITION TO COURT

In preparation for petitioning the court for an order enjoining a caretaker from interfering with the provision of protective services, the social worker shall document:

- 1) the date, time and circumstances under which the disabled adult's consent for services was given; and
- 2) the attempts which were made to obtain the caretaker's consent including:
 - a) the circumstances under which the caretaker's consent was requested; and
 - b) the information provided to the caretaker before asking for the caretaker's consent.

History Note: Authority G.S. 143B-153; Eff. November 1, 1983.

10A NCAC 71A .0903 PROTECTIVE SERVICES PETITION TO COURT

In preparation to petition the court for an order authorizing the provision of protective services, the social worker must document the facts which show that:

- 1) the disabled adult is being abused, neglected, or exploited; and
- 2) the adult lacks the capacity to consent to such services.

History Note: Authority G.S. 143B-153; Eff. November 1, 1983. 10A NCAC

71A .0904 EMERGENCY PETITION TO COURT

The information required by G.S. 108A-106(c) to be included in the petition shall be documented in the agency file.

History Note: Authority G.S. 143B-153; Eff. November 1, 1983.

10A NCAC 71A .0905 FINANCIAL EXPLOITATION: PETITION TO COURT

In preparation to petition the court under G.S. 108A-106(f), documentation must be made of specific information indicating that:

- 1) the adult lacks the capacity to consent;
- 2) the adult is in need of protective services;
- 3) the adult is being financially exploited; and
- 4) o one else is able or willing to arrange for protective services.

History Note: Authority G.S. 143B-153; Eff. November 1, 1983; Amended July 1990

10A NCAC 71A .0906 REPORT TO DISTRICT ATTORNEY

Notification to the district attorney in accordance with G.S. 108A-109 shall

be in written form and shall include the information specified in Rule .0901 of this Section.

History Note: Authority G.S. 143B-153; Eff. November 1, 1983. 10A NCAC

71A .0907 REPORT TO THE COMPLAINANT

- a) The required notice to the complainant may be oral or in writing at the discretion of the complainant and shall be made immediately on completing the evaluation. It shall include a statement of whether or not the report was substantiated and, if so, a statement that the agency is providing continued services.
- b) Documentation shall be made of when and how the notice is given.
- c) In order to protect the client's confidentiality, the notice shall not include specific findings of the evaluation.

History Note: Authority G.S. 143B-153; Eff. November 1, 1983.

10A NCAC 71A .0908 CASE RECORD

A separate record, or a separate section of an existing record, shall be established to contain information on protective services provided to an adult, including the following:

- 1) the report of a need for protective services;
- 2) the written report by the department;
- 3) any court documents about the case; and
- 4) other information relative to the evaluation of the report and the provision of protective services.

History Note: Authority G.S. 108A-103; 143B-153; Eff. November 1, 1983

C. Definitions (Guidance based on North Carolina General Statute 108A-101)

Disabled Adult

Any person 18 years of age or over or any lawfully emancipated minor who is present in the state of North Carolina and who is physically or mentally incapacitated due to an intellectual or developmental disability, cerebral palsy, epilepsy or autism; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances. A lawfully emancipated minor is a juvenile 16 or older for whom a judicial decree

of emancipation has been entered by the district court, or who is or has been married.

The adult must be alleged to be incapacitated due to a disability to be considered a disabled adult. The worker shall consider the alleged disabled adult's functional ability to meet their essential needs or to arrange for those needs to be met.

Abuse

The willful infliction, by a caretaker, of physical pain, injury or psychological harm, mental anguish, unreasonable confinement, or the willful deprivation of goods or services, that are necessary to meet essential needs or to avoid physical or psychological harm.

The reporter may not always use the term abuse when making a report. Outlined below is additional information that may help the social worker receiving the report understand what constitutes abuse:

- To be considered abuse under the statute a "caretaker" must inflict the pain, injury, mental anguish or deprivation. Physical/mental abuse by other individuals should be evaluated for possible neglect.
- The pain, injury, mental anguish and/or deprivation must be willful to be considered abuse.
- Mental anguish may be exhibited as fear, emotional pain or distress. The intent of the behavior of the perpetrator is typically to threaten, humiliate, ridicule, or change the behavior of the disabled adult.
- Pain may be exhibited as physical or emotional suffering secondary to physical evidence of the disabled adult, threats of injury, unreasonable confinement, or willful deprivation.
- Physical mistreatment or emotional suffering secondary to results of abuse varies. Results may be exhibited by observable bruises, broken bones, welts, burns, emotional distress, anxiety, fear or other changes in behavior.

Caretaker

Individual who has the comprehensive responsibility for the care of the disabled adult as a result of family relationship or who has assumed responsibility for the care of the disabled adult voluntarily or by contract.

Caretaker includes but is not limited to:

- An individual such as a family member, friend, or neighbor who has informally assumed or been given comprehensive responsibility for ensuring that the disabled adult's needs

are met, which may include making decisions for the disabled adult; or

- An operator or their representatives of a nursing, combination or residential care facility, state mental health, or substance abuse facility; or
- An individual or organization that has been appointed general guardian, guardian of the person, or guardian of the estate, or to whom the disabled adult has given a durable power of attorney.

Note: A caretaker does not include individuals or organizations that provide specific, limited services to the disabled adult voluntarily or by contract, such as an in-home aide, adult day care program, home health aide, or hospital.

Neglect

Neglect refers to a disabled adult who is either living alone and not able to provide for himself or herself the services which are necessary to maintain the person's mental or physical health or is not receiving services from his or her caretaker. Neglect is referred to as either self-neglect or caretaker neglect. It is important to consider that a failure to maintain one's physical or mental health can be a form of neglect.

Self-Neglect

A disabled adult is not (A) obtaining essential food, clothing, shelter, and medical care; (B) obtaining goods and services necessary to maintain physical health, mental health, or general safety; or (C) managing one's own financial affairs.

There are many factors that can lead to self-neglect including undiagnosed and/or untreated mental health needs, substance abuse, physical and cognitive impairments, social isolation, limited finances and lack of knowledge of available resources.

Examples of self-neglecting behaviors and characteristics can include but are not limited to improper eating habits, inadequate personal hygiene, misuse of medications or other substances, living in an unsafe environment, and wandering.

Caretaker Neglect

The failure of a caretaker, fiduciary, guardian, or power of attorney to provide the goods or services that are necessary to maintain the health or safety of a disabled adult. Caretaker neglect occurs when the person(s) responsible for the disabled adult does not (A) obtain essential food, clothing, shelter, and medical care; (B) obtain goods

and services necessary to maintain physical health, mental health, or general safety; or (C) manage financial affairs. It's important to remember that a caretaker does not have to be a family member and they do not have to reside in the same home as the disabled adult. Caretaker neglect can occur in the home or in institutional settings.

Exploitation

Exploitation is the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of a disabled adult for monetary or personal benefit, profit, or gain, or that results in depriving a disabled adult of rightful access to, or use of, benefits, resources, belongings, or assets. Exploitation does not have to be by the caretaker to meet the statutory definition.

Exploitation of the Person

The improper use of a disabled adult by another can be considered exploitation of the person. Exploitation of the person can range from sexual activity to uncompensated work.

Exploitation of Assets

Exploitation involves the improper use of a person's assets and finances by another person or entity for their profit or advantage. Financial exploitation is not based on whether the disabled adult's essential needs are met or whether their bills are paid.

Examples of a disabled adult's resources used for another's gain includes:

- Allegations of property deeded or willed improperly
- Misuse of guardianship and powers of attorney
- Signatures on documents caused by undue influence, deception or coercion
- Theft, sale or misuse of prescribed medications
- Use of the disabled adult's Electronic Benefits Transfer (EBT) card without permission.

In Need of Protective Services

A disabled adult is in need of protective services if that person, due to his or her physical or mental incapacity, is unable to perform or obtain for himself or herself essential services and if that person is without able, responsible, and willing persons to perform or obtain essential services for them.

Essential Services

All social, medical, psychiatric, psychological or legal services necessary to safeguard the disabled adult's rights and resources and to maintain the physical or mental well-being of the individual. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, and protection from exploitation.



ADULT PROTECTIVE SERVICES MANUAL

III. Confidentiality & Release Information

III. Confidentiality and Release of Information

A. Statutory Requirements Related to APS Confidentiality and Release of Information

There are no statutory requirements specific to Adult Protective Services Law. However, G.S. 108A-80 addresses confidentiality of records and authorizes the Social Services Commission to adopt rules and regulations governing access to case files for social services and public assistance programs. The rules established by the Social Services Commission are contained in the North Carolina Administrative Code, Subchapter 69, Confidentiality and Access to Client Records, and Subchapter 71A, Protective Services for Adults, Section .0800, Confidentiality.

B. Administrative Code Related to APS Confidentiality and Release of Information

10A NCAC 69 .0202 OWNERSHIP OF RECORDS

All client information is the property of the agency, and employees of the agency shall keep this information confidential, except as provided by the rules of this Chapter.

Original client records shall not be removed from the premises by individuals other than agency staff authorized to access the client's records, except by a court order.

10A NCAC 69 .0301 RIGHT OF ACCESS

(a) Confidentiality of information about himself or herself is the right of the client. Upon written or verbal request, the client shall be able to review or obtain without charge a copy of the information in his or her records with the following exceptions:

- 1) information that the agency is required to keep confidential by state or federal statutes, rules, or regulations;
- 2) confidential information originating from another agency as provided for in Rule .0102 of this Chapter; or
- 3) information that would breach another individual's right to confidentiality under State or federal statutes, rules, or regulations as determined by the agency.

(b) The agency shall provide access to the client's records within five business days after the receipt of the request.

10A NCAC 69 .0304 PROCEDURES FOR REVIEW OF RECORDS

- (a) The director or his or her delegated representative shall be present when the client reviews the record. The director or his or her delegated representative must document in the client record the review of the record by the client.
- (b) Upon written request from the client, his or her personal representative, including an attorney, may have access to review or obtain without charge, a copy of the information in his or her record. The client may permit the personal representative to have access to his or her entire record or may restrict access to certain portions of the record.

10A NCAC 69 .0401 PROCEDURE FOR OBTAINING CONSENT FOR RELEASE OF INFORMATION

- (c) No individual shall release any client information that is owned by the State Division of Social Services or the county departments of social services or request the release of information regarding the client from other agencies or individuals, without obtaining a signed consent for release of information. The procedure for disclosure without obtaining consent shall be in accordance with Section .0500 of this Subchapter.
- (d) The consent for release of information shall be on a form provided by the agency or shall contain the following:
 - 1) The name of the provider and the recipient of the information;
 - 2) The extent of information to be released;
 - 3) The name and dated signature of the client;
 - 4) A statement that the consent is subject to revocation at any time except to the extent that action has been taken in reliance on the consent; and
 - 5) The length of time the consent is valid.
- (e) The client may alter the form to contain other information, including:
 - 1) A statement specifying the date, event, or condition upon which the consent may expire even if the client does not expressly revoke the consent; or
 - 2) A specific purpose for the release.
- (f) The following persons may consent to the release of information:
 - 1) The client;
 - 2) The legal guardian if the client has been adjudicated incompetent;or
- (g) The county department of social services if the client is a minor and in the custody of the county department of social services. Prior to obtaining a consent for release of information, the director or delegated representative shall explain the meaning of informed consent. The client shall be told the following:

- 1) Contents to be released;
- 2) That the information is needed to verify eligibility;
- 3) That the client can give or withhold the consent and the consent is voluntary; and
- 4) That there are statutes, rules, and regulations protecting the confidentiality of the information.

(h) Directors and their delegated representatives shall release client information in accordance with the Rules of this Section, court orders, and any applicable State statutes or federal regulations.

(i) Whenever client information is disclosed, in accordance with rules of this Section, the director or delegated representative shall document the reason for the disclosure in the client record including placing a copy of the signed consent in the client record.

10A NCAC 69 .0501 DISCLOSURE WITHIN THE AGENCY

- b) Client information from the service record may be disclosed without client consent under the following circumstances:
- 1) to other employees of the county department of social services for purposes of making referrals, supervision, consultation or determination of eligibility;
 - 2) to another county department of social services when a different county department of social services is providing services to a client;
 - 3) to another county department of social services to the extent necessary to facilitate the provision of a service requested by a referring county department of social services; or
 - 4) between the county department of social services and the State Division of Social Services for purposes of supervision and reporting.

10A NCAC 69 .0502 DISCLOSURE FOR THE PURPOSE OF RESEARCH

Client information may be disclosed without client consent to individuals approved by the Department of Health and Human Services to conduct studies of client records. The request to conduct a study shall be in writing and be approved based upon:

- 1) an explanation of how the findings of the study may expand knowledge and improve professional practices;
- 2) a description of how the study will be conducted and how the findings will be used;
- 3) a description of the individual's credentials in the area of research;
- 4) a description of how the individual will safeguard information; and
- 5) a written assurance that no report will contain the names of

individuals or any other information that makes individuals identifiable.

10A NCAC 69 .0503 DISCLOSURE FOR PURPOSES OF ACCOUNTABILITY

Client information may be disclosed without the consent of the client to federal, State, or county employees for the purpose of monitoring, auditing, evaluating, or to facilitate the administration of other State and federal programs, provided that the need for the disclosure of confidential information is justifiable for the purpose, as determined by the agency, and that safeguards, as described in 45 CFR 205.50, which is incorporated by reference with subsequent amendments and editions and available free of charge at <http://www.ecfr.gov> are maintained to protect the information from re-disclosure.

10A NCAC 69 .0504 DISCLOSURE PURSUANT TO OTHER LAWS

- (a) Client information may be disclosed without the consent of the client for purposes of complying with the rules of this Section, court orders, and any applicable State and federal regulations.
- (b) When information is released without the client's consent, the client shall be informed of the disclosure in writing to explain what information was released, how it was released, and how to contact the privacy official. The writing informing the client of the disclosure shall be documented in the record.

10A NCAC 69 .0601 INFORMATION NEEDS OF SERVICE PROVIDERS

Agencies may disclose client information to service providers only to the extent necessary to determine the service requirements, and to provide eligibility information for reporting purposes.

10A NCAC 71A .0201 ACCEPTANCE OF REPORTS

- (c) Notwithstanding provisions in 10A NCAC 71A .0801 through .0803, the director may immediately tell the District Attorney's office and local law enforcement agencies when there is reason to believe that physical harm may occur to the disabled adult. This would include sharing evidence of abuse or neglect the agency has to date.

10A NCAC 71A .0502 NOTICE TO ADMINISTRATOR

- (a) The county director will not inform the administrator prior to the first visit to the facility that a protective services report has been received, except in specific instances where the county director thinks the assistance of the administrator will be needed in conducting the evaluation.

- 1) The county director shall provide the administrator of a nursing, combination, or residential care facility with a written summary of the nature of the protective services report, whether or not evidence of abuse, neglect or exploitation was found, and whether or not a need for protective services was substantiated. The written summary to the administrator shall be limited to the following: acknowledgement that a protective services report was received on a specified patient or resident of the facility;
- 2) the specific allegations in the report (the complainant shall not be named);
- 3) whether or not evidence of abuse, neglect or exploitation was found;
- 4) whether or not the need for protective services was substantiated;
- 5) a general statement as to how the conclusion was reached (the names of persons who were contacted during the evaluation to obtain information shall not be given).

10A NCAC 71A .0503 REPORT TO REGULATORY AGENCIES

- (a) A copy of the written report required by Rule .0901 of this Subchapter shall be sent to the Division of Health Service Regulation, within 30 days of completion of the evaluation. If the identity of the person making the protective services report and the names of individuals who provide information about the disabled adult are needed by the Division of Health Service Regulation in order to carry out an investigation, that information shall be shared verbally with the Division on request.
- (b) When evidence of financial exploitation is found in Medicaid - funded facilities, the county department of social services shall send a copy of the written report to the Division of Medical Assistance, as well as to the Division of Health Service Regulation.
- (c) When, in the course of an evaluation, evidence of abuse, neglect or exploitation is found, the county director shall notify the Division of Health Service Regulation immediately by telephone. In addition, the county director shall inform the Division of Health Service Regulation as to whether or not the need for protective services will be substantiated.
- (d) When, in the course of an evaluation, it appears that a report of a need for protective services will not be substantiated, but the county director finds violations of licensure standards, such violations shall be reported immediately to the appropriate supervisory agency. Reports of violations of standards in nursing and combination facilities and residential care facilities licensed under G.S. 122C shall be made to the Division of Health Service Regulation. Reports of violations of standards in residential care facilities licensed under G.S. 131D-2 shall

be made to the adult home specialist in the county department of social services.

10A NCAC 71A .0702 MOVEMENT OF ADULT TO ANOTHER COUNTY

- (a) If a disabled adult who moves to another county has consented to the provision of protective services and no court order is involved, the county department providing protective services shall ask the disabled adult to consent for information to be shared with the department in the new county of residence. If the adult does not consent, the department providing protective services shall not share information with the department in the new county of residence. If the adult consents, the department shall notify the department in the new county of residence of the disabled adult's situation. The department in the new county of residence shall contact the disabled adult to determine whether or not protective services continue to be needed and, if so, if the disabled adult consents to their provision.
- (b) If the department in the original county of residence has been providing protective services under a court order, the department shall file a motion in the court to be relieved of responsibility because the disabled adult has moved to another county. The department shall make a protective services referral to the department in the new county of residence. The department in the new county of residence shall evaluate the adult's current situation to determine whether or not protective services are needed and, if so, shall request authority to provide services.

10A NCAC 71A .0801 COLLATERAL CONTACTS

Collateral contacts with persons knowledgeable about a disabled adult's situation may be made without the adult or caretaker's consent when such contacts are necessary to complete a protective services evaluation.

10A NCAC 71A .0802 IDENTITY OF COMPLAINANT AND OF INDIVIDUALS WHO HAVE KNOWLEDGE OF THE SITUATION

The identity of the complainant and of individuals who have knowledge of the situation of the disabled adult shall be kept confidential unless the court requires that such persons' identities be revealed with the exceptions that:

- 1) the complainant's name and the names of individuals who have knowledge of the situation of the disabled adult may be given verbally to the Division of Health Service Regulation when requested by that agency in order to carry out its investigation, and

- 2) to the District Attorney's office and to law enforcement agencies which are prosecuting or conducting a criminal investigation of alleged abuse, neglect or exploitation of a disabled adult.

10A NCAC 71A .0803 SPECIFIC FINDINGS

Specific findings of the evaluation shall be kept confidential and shall not be released without consent of the disabled adult or court order, except that the department of social services at its discretion may share information about the adult with other persons or agencies without the adult or caretaker's consent to the extent necessary to provide protective services. When evidence of abuse, neglect, or exploitation is found, and upon request of the district attorney or law enforcement agencies, such information shall be sent to help with a criminal investigation or prosecution of abuse, neglect or exploitation.

10A NCAC 71A .0804 REFERRAL TO ANOTHER COUNTY

When a client who is receiving protective services under court order moves from one county to another, a protective services referral may be made by the first county to the second county without the client's consent. When the second county requests information in order to conduct its evaluation, the first county shall provide the needed information, including all information about the protective services report, results of the evaluation, and services provided to remedy the protective services problem.

10A NCAC 71A .0805 RELEASE OF SPECIFIC FINDINGS TO OTHER GOVERNMENTAL AGENCIES

Federal, state, and law enforcement agencies may be sent copies of the written report as specified in Rule .0901 of this Subchapter when the results of the adult protective services evaluation indicate violations of statutes, rules, or regulations enforced by these agencies.

10 NCAC 71A.0806 ADULT PROTECTIVE SERVICES REGISTER

(a) Information submitted by county department of social services to the Adult Protective Services Register is confidential. Non-identifying statistical information and general information about the scope, nature and extent of adult abuse, neglect and exploitation in North Carolina is not subject to this Rule of confidentiality.

(b) Access to the Adult Protective Services Register is restricted to:

- 1) the county department of social services, (A) in order to identify whether an adult who is the subject of an Adult Protective Services evaluation has been previously reported and evaluated under G.S. 108A, Article 6 in any county in the state; or (B) in

order to share client specific information with an out-of-state protective services agency to assure that protective services will be made available to an adult previously served in North Carolina as quickly as possible for the purpose of preventing further abuse, neglect or exploitation; or (C) in order to share client specific information with law enforcement agencies to assure that protective services will be made available to an adult as quickly as possible;

- 2) the Division of Social Services staff, (A) in order to perform duties pertinent to managing and maintaining the Register and monitoring, auditing, evaluating or facilitating the administration of other state and federal programs regarding Adult Protective Services based on information in the Register, or (B) in order to share client specific information with an out-of-state protective services agency to assure that protective services will be made available to an adult previously served in North Carolina as quickly as possible for the purpose of preventing further abuse, neglect or exploitation; and individuals who receive approval to conduct studies of cases in the Adult Protective Services Register.

(A) Such approval must be requested in writing to the Director, Division of Social Services. The written request will specify and be approved on the basis of:

- i. an explanation of how the findings of the study have potential for expanding knowledge and improving professional practices in the area of prevention, identification and treatment of adult abuse, neglect and exploitation;
- ii. a description of how the study will be conducted and how the findings will be used;
- iii. a presentation of the individual's credentials; and
- iv. a description of how the individual will safeguard the information.

(B) Access will be denied when in the judgment of the Director the study will have minimal impact on either knowledge or practice.

10A NCAC 71A .0901 WRITTEN REPORT OF THE EVALUATION

(a) Written reports shall be completed when:

- 1) the adult protective services evaluation was conducted on a patient or resident of a facility as defined in G.S. 131E-101, 131D-2(a)(3), or 122C; or
- 2) evidence of abuse, neglect or exploitation is found.

(b) After completing the evaluation, the written report shall be compiled, including the following information:

- 1) the name, address, age and condition of the adult;**
- 2) the allegations (the written report shall not include the identity of the person making the complaint);**
- 3) the evaluation including the agency's findings and supporting documents (e.g. psychological, medical report);**
- 4) conclusions;**
- 5) recommendations for action.**

10A NCAC 71A .0906 REPORT TO DISTRICT ATTORNEY

Notification to the district attorney in accordance with G.S. 108A-109 shall be in written form and shall include the information specified in Rule .0901 of this Section.

C. Social Work Practice Related to APS Confidentiality and Release of Information

Maintaining a disabled adult's confidentiality and understanding when and how to release information are important considerations for staff in county departments of social services. Individuals and families receiving services from the DSS are entitled to decide when and what information is to be shared with others about their situation. Confidentiality in Adult Protective Services has some unique issues due to the involvement of a legal mandate, possible court action, the right to self-determination and the right to privacy.

1. Information Sharing

While confidentiality is a critical component of APS, there will be opportunities when APS programs should share information with each other. Information released from APS records should be limited to only the information necessary for the provision of protective services. A county DSS should share information with another DSS regarding a disabled adult's involvement with APS. Information on a disabled adult's APS history may be shared without the disabled adult's consent when the DSS receives a call from another county or state that has current involvement with the disabled adult and requests the information because it would assist in their ability to thoroughly complete an evaluation. APS may release information to:

- APS staff who are directly involved with the disabled adult's current evaluation or service provision.
- Service providers if the information is necessary for the provision of protective services.
- Inter-departmental staff of other programs when information related to the disabled adult's situation is necessary for the provision of protective

services

- The District Attorney and Law Enforcement who are investigating abuse, neglect, or exploitation.

Specific findings of an adult protective service evaluation are confidential and are never released without consent of the disabled adult, the disabled adult's legal guardian, or a court order except as described above. If the disabled adult consents, the confidential information is released. If the disabled adult refuses to consent or is unable to consent, the confidential information is not released unless a legal guardian, legal representative, or court issues an order directing the release of the information.

A court order is any oral or written order from a judicial official (judge, clerk, or magistrate) which explicitly directs the release of a disabled adult's information. Oral orders should be documented in the disabled adult's record to reflect the date, time, and substance of the order, as well as the officer who issued the order. A subpoena is issued at the request of a party requiring a witness to appear in court, or in some cases requiring a witness to produce certain documents. A judicial official or an attorney may issue subpoenas, although a judicial official rarely issues them. While a subpoena issued by an attorney has the sanction of the court, it is not a court order as defined in the preceding paragraph.

Confidential information should not be released in response to a court order or a subpoena without first consulting the agency attorney. It is their role to determine what response should be given to either a court order or a subpoena.

Information contained within the DSS disabled adult's record such as financial statements and medical and psychiatric evaluations obtained from another agency or individual provider is disclosed according to the confidentiality rules/regulations imposed by the furnishing agency or individual provider. If a court order is received requesting this type of confidential information, and the information cannot be disclosed by the DSS due to the provisions of the other agency's or individual provider's release of information, the judicial official who issued the court order should be referred to the agency or individual provider who provided the information to the county department of social services.

The county director or his delegated representatives may disclose information from the case record with authorized agencies or individuals. This sharing of information does not require consent from the disabled adult, guardian, or legal representative. The director is to use his judgment based on administrative code to determine when an agency/individual is authorized to receive such information.

When deciding who is authorized, the county director should consider what involvement the other agency or individual has in the evaluation, intervention,

treatment, or court action phases of adult protective services. When the department involves another agency in protective services for a disabled adult, it may be necessary to share information about the disabled adult's condition or situation to facilitate the provision of appropriate services. In such cases, the department should share only the specific information needed by the other agency in order to provide appropriate services.

The identity of the reporter must not be revealed in any oral or written report except by order of a court. It may be disclosed verbally to the Division of Health Service Regulation as necessary to carry out their evaluation and to the District Attorney's office and to local law enforcement agencies when prosecuting or conducting a criminal evaluation of alleged abuse, neglect or exploitation of a disabled adult.

Agencies or individuals that may receive information while providing or facilitating the delivery of protective services would include but not be limited to:

- Local Management Entities and Providers
- Public Health Departments
- Health and Mental Health Providers
- Department of Health and Human Services Personnel responsible for licensing or approval of nursing/combination facilities, adult care homes, group homes
- Home and Community Care Block Grant Providers

The agency attorney may also have access to information in the case record when preparing for and presenting a case in court or when advising on a case.

Social workers shall not reveal specific information about the disabled adult when making collateral contacts during a protective services evaluation. The collateral contacted may be curious to know why the county department is seeking information about the disabled adult. Response to such questions should be in general terms about the agency's concern for the disabled adult and need for information to determine whether or not the agency can provide assistance. If the collateral questions the agency's authority to inquire about the disabled adult, it may be helpful to explain that the law requires that the agency evaluate any situation where a person may need assistance. Each department of social services agency should have an interagency plan outlining how information shall be shared based on Administrative Code and the Recommended Social Work practice.



ADULT PROTECTIVE SERVICE MANUAL

IV. Adult Protective Service Intake

IV. Adult Protective Services Intake

A. Statutory Requirements Related to APS Intake

§ 108A-102. Duty to report, content of report, immunity

- (a) Any person having reasonable cause to believe that a disabled adult is in need of protective services shall report such information to the director.**
- (b) The report may be made orally or in writing. The report shall include the name and address of the disabled adult; the name and address of the disabled adult's caretaker; the age of the disabled adult; the nature and extent of the disabled adult's injury or condition resulting from abuse or neglect; and other pertinent information.**
- (c) Anyone who makes a report pursuant to this statute, who testifies in any judicial proceeding arising from the report, or who participates in a required evaluation shall be immune from any civil or criminal liability on account of such report or testimony or participation, unless such person acted in bad faith or with a malicious purpose.**

§ 108A-103. Duty of director upon receiving report

- (a) Any director receiving a report that a disabled adult is in need of protective services shall make a prompt and thorough evaluation to determine whether the disabled adult is in need of protective services and what services are needed.**
- (d) The director shall initiate the evaluation described in subsection (a) of this section as follows:**
 - 1) Immediately upon receipt of the complaint if the complaint alleges a danger of death in an emergency as defined in G.S. 108A-101(g).**
 - 2) Within 24 hours if the complaint alleges danger of irreparable harm in an emergency as defined by G.S. 108A-101(g).**
 - (3) Within 72 hours if the complaint does not allege danger of death or irreparable harm in an emergency as defined by G.S. 108A-101(g)**

§ 108A-109. Reporting Abuse

Upon finding evidence indicating that a person has abused, neglected, or exploited a disabled adult the director shall notify the district attorney

§ 108A-115. Duty to report suspected fraud; content of report; immunity for

reporting

(a) Any financial institution, or officer or employee thereof, having reasonable cause to believe that a disabled adult or older adult is the victim or target of financial exploitation shall report such information to the following:

- 1) Persons on the list provided by the customer under G.S. 108A-114, if such a list has been provided by the customer. The financial institution may choose not to contact persons on the provided list if the financial institution suspects that those persons are financially exploiting the disabled adult or older adult.
- 2) The appropriate local law enforcement agency.
- 3) The appropriate county department of social services, if the customer is a disabled adult.

(b) The report may be made orally or in writing. The report shall include the name and address of the disabled adult or older adult, the nature of the suspected financial exploitation, and any other pertinent information.

(c) No financial institution, or officer or employee thereof, who acts in good faith in making a report under this section may be held liable in any action for doing so.

B. Administrative Code Related to APS Intake

10A NCAC 71A .0102 DEFINITIONS

(a) "Immediately" as specified in G.S. 108A-103(d), shall mean responds with no delay as soon as a county department of social services receives a report that:

- 1) an adult is alleged to be disabled as defined in G.S. 108A-101(d);
- 2) an adult is alleged to be abused, neglected, or exploited as defined in G.S. 108A- 101(a), (j), or (m); and
- 3) an adult is alleged to be in need of protective services as defined in G.S. 108A- 101(e).

(b) "A life-threatening situation" shall be considered an emergency as defined in G.S. 108A- 101(g).

10A NCAC 71A .0201 ACCEPTANCE OF REPORTS

(a) The county department of social services shall accept all reports

alleging an abused, neglected, or exploited disabled adult is in need of protective services. This includes anonymous reports. If the county department determines that the address of the disabled adult given in the report is in another county, the department shall refer the person making the report to the appropriate county department. The county department receiving the original report shall follow up to make sure the appropriate county has received the report.

- (b) The department of social services shall make arrangements for 24-hour coverage to receive calls and take appropriate action.
- (c) Notwithstanding provisions in 10A NCAC 71A .0801 through .0803, the director may immediately tell the District Attorney's office and local law enforcement agencies when there is reason to believe that physical harm may occur to the disabled adult. This would include sharing evidence of abuse or neglect the agency has to date.

10A NCAC 71A .0202 RECEIPT OF ORAL REPORT

The worker receiving an oral report shall explain to the complainant (the person making the report) that the department will notify the complainant of the results of the evaluation. The worker shall determine from the complainant whether the complainant wants the notification to be oral or written.

10A NCAC 71A .0203 REPORTS REGARDING COUNTY OFFICIALS

- (a) When a report is received alleging abuse, neglect or exploitation of a disabled adult by a social services board member, department of social services staff member, county commissioner, or the county manager, the county department shall notify the regional office immediately. The regional office will assign the report to another county department for evaluation.
- (b) In addition to specified instances in (a) of this Rule in which reports must be assigned to another county, the county department shall consult the regional office whenever it seems that evaluation of a report may present the appearance of a conflict of interest.
- (c) If the evaluation does not substantiate the report, the department which conducted the evaluation will refer the case back to the county of residence so that alternative services may be offered.
- (d) If the evaluation substantiates the report, the agency which conducted the evaluation will seek authorization for services, including petitioning the court when necessary. The petition shall be filed in the county of residence and shall include the reason for filing by an agency in another county.

- (e) The agency which conducted the evaluation will act as case manager for protective services in coordination with the agency in the county of residence. The county of residence will be responsible for paying for services in accordance with rules in Section .0400 of this Subchapter and for any expenses for medical, psychological, or other examinations and legal services incurred in the county which conducted the evaluation.

10A NCAC 71A .0204 TIME FRAME TO INITIATE EVALUATION

- (a) Evaluation of reports involving an emergency as defined in G.S. 108A-101(g) shall be initiated within 24 hours of receipt of the report.
- (b) Evaluation of other reports of a need for protective services shall be initiated within 72 hours after receipt of a report.

10A NCAC 71A .0503 REPORT TO REGULATORY AGENCIES

- (c) When, in the course of an evaluation, evidence of abuse, neglect or exploitation is found, the county director shall notify the Division of Health Service Regulation immediately by telephone. In addition the county director shall inform the Division of Health Service Regulation as to whether or not the need for protective services will be substantiated.
- (d) When, in the course of an evaluation, it appears that a report of a need for protective services will not be substantiated, but the county director finds violations of licensure standards, such violations shall be reported immediately to the appropriate supervisory agency. Reports of violations of standards in nursing and combination facilities and residential care facilities licensed under G.S. 122C shall be made to the Division of Health Service Regulation. Reports of violations of standards in residential care facilities licensed under G.S. 131D-2 shall be made to the adult home specialist in the county DSS.

C. Social Work Practice Related to APS Intake

1. Receiving Reports

a. Continuous Access to APS Intake

It is imperative that members of the community have access to Adult Protective Services after hours, weekends, holidays, and during periods of inclement weather. Instructions on how to reach the on-call social worker should be clear on the agency's voice mail and website. The Director should ensure coverage as these (Intake) services are provided during typical work hours, after- hours, weekends and holidays.

The DSS should have a systematic method, means, and ability to promptly

receive reports of alleged maltreatment. APS systems should establish multiple methods for receiving reports of alleged maltreatment 24 hours a day, seven days a week (e.g., toll-free telephone hotline, TTY, fax, web-based, email). Translation services as well as other methods of communication (e.g. augmentative communication devices, American Sign Language, Interpreter) shall be easily accessible to the reporter.

A report shall be taken if someone alleges maltreatment and a reporter shall not be discouraged from making an APS report.

DSS shall have a staff person on duty to receive and respond to APS reports 24 hours a day, 7 days a week. The DSS shall have capacity to respond to emergencies with trained APS personnel.

b. Documenting the Report

During APS Intake, DSS should have a standardized process for receiving and documenting the content of the report, including, but not limited to, information about:

- the alleged disabled adult and his or her circumstances and disability;
- the location of the disabled adult;
- the alleged type(s) of maltreatment;
- the alleged perpetrator, if any;
- the level of response needed to be made by APS due to the disabled adult's situation (e.g., immediate); and
- risks that may be encountered by an APS worker in responding to this report (e.g., presence of animals, weapons in the home).

Intake includes all activities necessary to receive referrals, determine if screening criteria are met and will be accepted for an Adult Protective Services evaluation. Reports can be made in person, by phone, fax, regular mail, web-based, or email. It is imperative that the screening criteria is applied to all methods of reports. When determining the date and time of the report, date stamps on incoming mail, fax time stamps, phone calls, and email dates and times shall be used to represent the actual time of receipt.

c. Guidelines for Conducting a Thorough APS Intake

The quality and thoroughness of information gathered during the intake process, has an impact on actions and decisions made by the agency. The initial contact with the DSS is critical in setting the tone and trust between the reporter and the department. Gathering sufficient information from the reporter allows the agency to:

- Identify and locate the disabled adult
- Determine if the report meets the statutory guidelines for an evaluation
- Assess the situation for emergency intervention

Use of the DHHS-AS-0001 Adult Protective Services Intake will guide the intake interview. The intake document should be used as a tool to help the social worker gather information. When the reporter does not know the information, it is important to document it on the tool as opposed to leaving sections blank or incomplete. APS intake should not be performed solely by reading the questions on the intake form to the reporter. Instead, the social worker should listen to the reporter's concerns, fill in the form as information is offered and use the form to remind him/her of additional questions to ask.

(1) Skills and Strategies for APS Intake

Use simple language. The social worker should avoid the use of professional verbiage when communicating with the reporter. For example, instead of asking if the adult is in need of protective services, the social worker could ask if the disabled adult has anyone to help him/her meet their needs. In addition, the reporter should not be expected to use terms that the General Statute and Administrative Code utilize to define Adult Protective Services.

The agency will evaluate the allegations and make a determination as to whether the APS criteria are met when screening the report.

Ask open-ended questions. For example, instead of asking whether the adult is disabled, the social worker could ask the caller to describe any disabilities the adult has and how they limit him/her.

It is the intake social worker's job to listen to the reporter's story; reporters may be experiencing all kinds of emotions and be anxious about making the report. Once the reporter has been given an opportunity to share; it may be necessary to redirect them to gather the needed information to complete the report.

It is important that the social worker not imply or communicate to the reporter that they have to "prove" the allegations they are making; the statute states that "any person having reasonable cause to believe shall report.

Explain to the reporter the basic APS process; sufficient information must be gathered to enable the agency to determine if there is an alleged need for protection. Reporters are often in a hurry, are not aware of the criteria necessary to screen a report and may be more willing to spend time providing information if they understand the APS process.

It is helpful to clarify the reporter's expectations. The social worker should try to determine why the report is being made and explain how the agency will respond. When appropriate, the social worker should explain the limits of the agency's authority and the disabled adult's right

to self-determination.

Maintain an attitude of helpfulness. Instead of focusing exclusively on whether to screen a referral in or out as APS, the social worker should focus on the concerns raised in the referral and determining the best way to address those concerns.

It is helpful to explain confidentiality of the reporter. Although the person making the report is not required by law to identify themselves, the intake social worker should encourage him/her to give their name so that they can be contacted for additional information during the evaluation if necessary. The social worker should also assure the reporter that their name will be kept confidential unless a court requires that their identity be revealed. The reporter's name may be given verbally to the Division of Health Service Regulation when requested in order to carry out its evaluation and to the District Attorney's office or local law enforcement which are prosecuting or conducting a criminal evaluation.

The social worker should explain that if the reporter provides their name and contact information, they will be notified of the agency's decision about the disabled adult's need for protective services, if they choose. The reporter should be advised that the notification can be written or verbal and document the reporter's preference. The social worker should explain that if the reporter chooses to remain anonymous, they will not be notified of the screening decision or outcome of the evaluation.

(2) Skills for Gathering Information Related to Disability

At intake, questions should be asked to gather information about the disabled adult's ability to function. The social worker must consider the alleged disabled adult's functioning to determine incapacitation. Incapacitated as used in the definition of a disabled adult should not be confused with the "capacity" to consent or refuse protective services. Capacity is not a screening criterion and should not be considered at intake.

One way to consider the meaning of incapacitated is to consider whether or not the disabled adult is alleged to be able to maintain physical and/or mental functioning. This means, for example, that while one person could be an amputee and unable to toilet or transfer independently, another person that is also an amputee has home modifications in place or resources secured to assist them in meeting their toileting and transfer needs. In the example above, the first individual would be considered incapacitated by their physical disability, while the second person would not.

As with any illness, questions should be asked about how the disabled adult is able to function, and in what ways he/she is incapacitated. Frequency, duration, and intensity of symptoms should be explored with the reporter. The social worker should inquire if there has been a change in the individual's behavior or mental status. Information related to how often the behavior/changes in mental status occurs, how the changes impact functioning and how long the symptoms last will provide insight into determining if the disabled adult is alleged to be incapacitated.

Incapacity can also occur as a result of mental illness, substance use disorder, intellectual or developmental disabilities and other behavioral or cognitive impairments.

The allegations of incompetency can come up during an APS intake. Competency is a legal determination generally made by the clerk of court. If the reporter talks about the disabled adult's competency, explore what the disabled adult is doing or not doing that makes the reporter think the disabled adult is incompetent. The social worker should inquire if there has been a change in the individual's behavior, mental status or physical functioning. For example, failure to take medications used to treat mental illness does not always result in the disabled adult being incompetent or incapacitated by disability.

2. Screening Reports

a. Screening Criteria

NC General Statute sets out three criteria for the APS program. The three criteria are: 1) alleged to be a disabled adult; (2) alleged to be abused, neglected, and/or exploited; and (3) alleged to be in need of protective services. When a report is received in the agency, an initial screening must be made immediately to determine if it is a protective service report. A report should always be considered protective services unless the allegations do not meet the three criteria. Every report must be received and screened since the county department of social services is the sole agency with authority and responsibility to provide APS. It is important to note that requests which come to the department for other services may, upon further exploration, result in an APS Report.

Screening is a process of carefully reviewing the intake information to determine if the report should be screened in for evaluation, screened out, or referred to a service or program other than APS. Risk factors are identified to determine the urgency for initiating an evaluation of screened reports. Since the purpose of the APS law is to provide protection to adults with disabilities who have been abused, neglected or exploited and are in need of protective services, it is not applicable in situations where the person has died or no longer needs protection.

For example, if a nursing home resident was allegedly abused by one of the staff members but the abuse was reported after the family had intervened and moved the disabled adult to another facility, there would no longer be a need for protection, and the report could be screened out. If a report is made about a disabled adult who is deceased and abuse or neglect is alleged as contributing to the death, the report should be referred to law enforcement, the district attorney's office and the county medical examiner for evaluation.

If an adult with a disability is unable to perform or obtain essential services for themselves, they are in need of protective services unless they have a willing, able and responsible person(s) to perform or obtain the services for them. At intake it must be clearly demonstrated that the alleged disabled adult has someone who is willing, able, and responsible. Exploratory questions should be asked to determine that a willing, able, responsible party has taken or is taking necessary steps to protect the disabled adult. Often there is a person who is responsible and willing to help but is not able due to lack of education, money, poor health etc. In such cases there is still a need for protective services. Note: Do not screen out a report just because the alleged perpetrator has a legally executed Power of Attorney or Guardianship.

In situations when limited information is received from the reporter and they cannot be reached for further information, the report should be screened using the three criteria.

Referrals should be screened with a minimum of one supervisor upon receipt of the referral. Each county DSS should have a protocol in place to ensure that reports are screened promptly and without delay.

On occasion a county may receive a report that is neither county of residence, nor county of location. This report should be forwarded immediately to the appropriate county. It is unacceptable to refuse or prolong screening a report received from another county DSS because notice by the referring county was not given. While it is best practice for the sending county DSS to contact the receiving county DSS when sending referrals, a screening decision must be made upon receipt of the information regardless of how or from whom the referral was received. Screening decisions should be made without delay. It is very important that when sending a referral to another county that direct contact is made with that county. In addition to faxing the report, contact should be made by phone. Document who was contacted, how they were contacted and the date and time they were contacted.

Adult Protective Services is available to disabled adults, who are alleged to have been mistreated and in need of protective services in both residential and facility settings including hospitals. There may be circumstances requiring collaboration between the county of residence and the county where the disabled adult previously resided or plans to return. If a DSS receives a report on a disabled adult

that is located in their county but is a resident of another county see Appendix D for further guidance.

A disabled adult may be hospitalized or in a different setting than where the alleged abuse, neglect, or exploitation occurred. Different settings may include acute care facilities, such as medical or psychiatric hospitals, and living arrangements with family, friends or neighbors. The three screening criteria shall be applied:

- the adult is alleged to be disabled;
- abused, neglected, or exploited; and
- in need of protective services

The social worker should recognize that being hospitalized or in a different setting than where the mistreatment occurred may not satisfy the disabled adult's need for protection. The disabled adult may still either be unable to perform or obtain essential services for him/herself or may be without an able, responsible, and willing person to perform or obtain essential services for him/her. The statutory time frames for initiating an evaluation are to be followed regardless of the location of a disabled adult. If all three of the screening criteria are met, the referral is appropriate as an adult protective services report and shall be accepted for evaluation.

If all three criteria are not met, the referral is not appropriate as an adult protective services report. If applicable the social worker should make appropriate referrals including but not limited to:

- Other available and appropriate inter-agency services (e.g. Food and Nutrition Services, SAIH)
- Other community agencies (e.g. Public Health, Senior Center)
- District Attorney and local law enforcement agencies if evidence of abuse, neglect or exploitation is reported utilizing the DHHS-AS-0008 Notice to the DA and/or LE: Initial Notice
- Division of Health Service Regulation and the Adult Homes Specialist if a licensure violation is suspected
- Secretary of State's office

b. APS Intake and Law Enforcement

The decision of whether to immediately contact law enforcement shall be made on a case-by-case basis. An example of an instance at intake when it may be appropriate for the agency to contact law enforcement for immediate protection of the disabled adult would be if the reporter is alleging that an assault, or any other mistreatment that would cause injury is taking place or has taken place at the time of the report.

The agency should contact law enforcement if it is believed that a crime has been committed. Social worker's safety is also an important consideration. Reported information such as the presence of firearms, mental health crisis, or

substance use and/or environmental factors may indicate the need for police assistance to promote the safety of the social worker. There may be instances when police intervention may not be warranted, is unnecessary and ultimately more harmful to the disabled adult. For instance, if the agency feels that social work staff can safely, effectively and immediately respond to the situation, police intervention may not be necessary.

c. Conflict of Interest When Screening

When a report has the appearance of a conflict of interest or a report is received alleging abuse, neglect or exploitation by a social services board member, department of social services staff member, county commissioner, or the county manager, the agency shall reference the Special Circumstances Section of this manual and Appendix C. Referrals should be screened with a minimum of one supervisor upon receipt of the referral. Each county DSS should have a protocol in place to ensure that reports are screened promptly and without delay.

d. Reports Received Regarding Individuals Under Guardianship

A role unique to DSS is the dual responsibility for acting as guardian for incompetent disabled adults and for receiving APS reports. In order to simultaneously fulfill these roles, it is necessary to understand two points. First, the DSS as legally appointed guardian is responsible for all aspects of the welfare, safety, and protection of the individual under guardianship. This includes acting responsibly to protect the individual under guardianship from abuse, neglect and/or exploitation. Second, the DSS is responsible for applying the APS screening criteria to all reports received by DSS which allege that a disabled adult needs protective services, regardless of the legal status or living situation of that disabled adult.

When a DSS receives information alleging the need for protective services for a disabled adult and that same agency has guardianship responsibility for the disabled adult, all three APS screening criteria are to be considered when deciding whether to accept the information as an APS report. Particular consideration is to be given to the third criterion (whether there is a need for protective services). The agency must decide if it can act in a manner which is able, willing, and responsible to perform or obtain essential services for the disabled adult. This decision will determine whether there is a need for protective services for the individual under guardianship. DSS, acting as guardian, should be able, willing, and responsible to perform or obtain essential services for the individual under guardianship and is legally obligated to do so. If the agency does act under its guardianship role to provide or arrange for essential services to protect the individual under guardianship, the allegations do not meet the three criteria and therefore constitute a screened-out APS report.

The legal authority and responsibility granted in state statute (G.S. 35A) empowers and requires any guardian to take actions which are necessary to

protect the individual under guardianship, whether the person under guardianship is living in a long-term care facility or in the community. This includes the guardian's ability to make reports to other agencies regarding violations of laws or regulations, to review records, to authorize treatment and, if necessary, to remove the disabled adult from a setting where abuse, neglect or exploitation may be taking place. Reports which are screened out for APS because the director is guardian and is providing protection should be handled like all other screened out reports. All applicable notices such as referrals to the District Attorney, the Adult Home Specialist, and/or the Division of Health Service Regulation's Complaints Investigation Branch, etc. should be completed in accordance with policy. The purpose of these notices is to alert agencies with applicable regulatory or legal authority of the information DSS has received, so that these agencies may take appropriate action under their authority.

Reports received on an individual under guardianship of another DSS or guardianship corporation should be screened as any other report. Contacting the guardian prior to making a screening decision should not occur. The screening criteria should be applied to the report based on the information provided at intake.

In those rare instances when DSS receives a report alleging the need for protective services on behalf of that agency director's individual under guardianship, and it is determined the director or his designee is not able, willing, or responsible to provide or arrange for essential services to protect the individual under guardianship, the allegations are to be accepted as an APS report and a thorough APS evaluation completed. Situations where the agency is not able, willing, and responsible to provide or arrange for essential services to protect the individual under guardianship include those where a director or any of the director's staff are the alleged perpetrator(s). These situations constitute a conflict of interest for the agency to conduct the APS evaluation, and the agency should follow the Conflict-of-Interest Policy outlined in this manual in Appendix C and the Special Circumstances section.

Some situations which may constitute a conflict of interest include:

- Allegations that a DSS guardian failed to authorize medical or mental health treatment in a timely manner and an individual under guardianship suffers abuse or neglect
- Allegations that a DSS guardian allowed an individual under guardianship to be exploited by performing manual labor without earning wages or receiving compensation
- Allegations that a DSS guardian allowed an individual under guardianship to reside in an unsafe environment and the individual under guardianship is being exploited by people living in that community

e. Determining Initiation Timeframe

Upon determining that allegations received from a reporter constitute an accepted APS report (i.e.– all three APS screening criteria are met), a determination of the initiation timeframe must be made. Agencies should have a system in place to assure prompt initiation of the evaluation once it has been determined that the allegations constitute an accepted APS report.

The requirement to immediately initiate an APS evaluation alleging a “danger of death in an emergency” means there must be no delay between intake and assignment of the report to the social worker that will be conducting the evaluation. Once the APS case is assigned, the social worker should immediately proceed to initiate the evaluation. It is also possible that, while a danger of death is not alleged, there may exist a danger of irreparable harm for the disabled adult. This may involve physical irreparable harm but may also include other forms of irreparable harm such as the loss of housing or the exploitation of assets which cannot be recovered. In such instances involving a danger of irreparable harm, the case must be initiated within 24 hours of the receipt of the APS report.

All non-emergency APS cases that do not allege death or irreparable harm must be initiated within 72 hours of the receipt of the APS report.

3. Notices Related to Intake

a. Initial Notice to Reporter

Although neither NC APS Statute nor NC Administrative Code require notice to the reporter of the result of the screening decision it is considered best practice, if requested by the reporter, to provide notice of the report being screened in or screened out utilizing the DHHS-AS-0002 Notice to Reporter: Initial Notice. If the reporter is anonymous no initial notice will be provided.

b. Initial Notice to the District Attorney and/or Law Enforcement

The term "evidence," as it refers to the DHHS-AS-0008 Notice to the DA and/or LE: Initial Notice or law enforcement, should be interpreted broadly during intake. Any time the agency receives information that indicates a disabled adult may have been abused, neglected by a caretaker, or exploited, and/or there is reason to believe that the disabled adult may suffer physical harm, the information may be given to the district attorney and/or law enforcement immediately. This includes referrals that are screened out at intake. Along with the notice, the social worker should attach any evidence obtained at intake, such as medical evaluations, photographs, or financial records for exploitation cases.

Note: The name of the reporter may only be shared verbally upon the request of the district attorney/law enforcement.

To establish a cooperative working relationship with the district attorney and law enforcement, it is helpful to arrange a meeting with both to discuss the agency's

responsibility under the law to notify the district attorney upon finding evidence indicating that a person has abused, neglected, or exploited a disabled adult. The district attorney may have a preference for how and when they want law enforcement to be involved in these cases.



ADULT PROTECTIVE SERVICES MANUAL

V. Adult Protective Services Evaluation

V. Adult Protective Services Evaluation

A. Statutory Requirements related to APS Evaluation

§ 108A-14. Duties and responsibilities.

(a) The director of social services shall have the following duties and responsibilities: To receive and evaluate reports of abuse, neglect, or exploitation of disabled adults and to take appropriate action as required by the Protection of the Abused, Neglected, or Exploited Disabled Adults Act, Article 6 of this Chapter, to protect these adults. (15) To receive and evaluate reports of financial exploitation of disabled adults, to investigate credible reports of financial exploitation under Article 6A of this Chapter, and to take appropriate action to protect these adults.

§ 108A-101: Definitions

(g) The word "emergency" refers to a situation where (i) the disabled adult is in substantial danger of death or irreparable harm if protective services are not provided immediately, (ii) the disabled adult is unable to consent to services, (iii) no responsible, able, or willing caretaker is available to consent to emergency services, and (iv) there is insufficient time to utilize procedure provided in G.S. 108A-105.

(h) The words "emergency services" refer to those services necessary to maintain the person's vital functions and without which there is reasonable belief that the person would suffer irreparable harm or death. This may include taking physical custody of the disabled person.

(i) The words "essential services" shall refer to those social, medical, psychiatric, psychological or legal services necessary to safeguard the disabled adult's rights and resources and to maintain the physical or mental well-being of the individual. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, and protection from exploitation. The words "essential services" shall not include taking the person into physical custody without his consent except as provided for in G.S. 108A-106 and in Chapter 122C of the General Statutes.

(j) The word "exploitation" means the illegal or improper use of a disabled adult or his resources for another's profit or advantage.

(l) The words "lacks the capacity to consent" shall mean lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including but not limited to provisions for health or mental health care, food, clothing, or shelter, because of physical or mental incapacity. This may be reasonably determined by the director or he may seek a physician's or psychologist's assistance in making this determination. The word "neglect" refers to a disabled adult who is either living alone and not able to provide for himself or herself the services which are necessary to maintain the person's mental or physical health or is not receiving services from the person's caretaker. A person is not receiving services from his caretaker if, among other things and not by way of limitation, the person is a resident of one of the State owned psychiatric hospitals listed in G.S. 122C-181(a)(1), the State-owned Developmental Centers listed in G.S. 122C-181(a)(2), or the State-owned Neuro-Medical Treatment Centers listed in G.S. 122C181(a)(3), the person is, in the opinion of the professional staff of that State-owned facility, mentally incompetent to give consent to medical treatment, the person has no legal guardian appointed pursuant to Chapter 35A, or guardian as defined in G.S. 122C-3(15), and the person needs medical treatment.

(m) The word "neglect" refers to a disabled adult who is either living alone and not able to provide for himself or herself the services which are necessary to maintain the person's mental or physical health or is not receiving services from the person's caretaker. A person is not receiving services from his caretaker if, among other things and not by way of limitation, the person is a resident of one of the State-owned psychiatric hospitals listed in G.S. 122C-181(a)(1), the State-owned Developmental Centers listed in G.S. 122C-181(a)(2), or the State-owned Neuro-Medical Treatment Centers listed in G.S. 122C-181(a)(3), the person is, in the opinion of the professional staff of that State-owned facility, mentally incompetent to give consent to medical treatment, the person has no legal guardian appointed pursuant to Chapter 35A, or guardian as defined in G.S. 122C-3(15), and the person needs medical treatment.

§ 108A-103. Duty of director upon receiving report.

(a) Any director receiving a report that a disabled adult is in need of protective services shall make a prompt and thorough evaluation to determine whether the disabled adult is in need of protective services and what services are needed. The evaluation shall include a visit to the person and consultation with others having knowledge of the facts of the particular case. When necessary for a complete evaluation of the report, the director shall have the authority to review and copy any and all records, or any part of such records, related to the care and treatment of the disabled adult that have been maintained by any individual, facility or

agency acting as a caretaker for the disabled adult. This shall include but not be limited to records maintained by facilities licensed by the North Carolina Department of Health and Human Services. Use of information so obtained shall be subject to and governed by the provisions of G.S. 108A-80 and Article 3 of Chapter 122C of the General Statutes. The director shall have the authority to conduct an interview with the disabled adult with no other persons present.

(a) The staff and physicians of local health departments, area mental health, developmental disabilities, and substance abuse authorities, and other public or private agencies shall cooperate fully with the director in the performance of his duties. These duties include immediate accessible evaluations and in-home evaluations where the director deems this necessary.

(b) The director may contract with an agency or private physician for the purpose of providing immediate accessible medical evaluations in the location that the director deems most appropriate. The director shall initiate the evaluation described in subsection (a) of this section as follows:

- (1) Immediately upon receipt of the complaint if the complaint alleges a danger of death in an emergency as defined in G.S. 108A-101(g).
- (2) Within 24 hours if the complaint alleges danger of irreparable harm in an emergency as defined by G.S. 108A-101(g).
- (3) Within 72 hours if the complaint does not allege danger of death or irreparable harm in an emergency as defined by G.S. 108A-101(g).

§ 108A-106. Emergency intervention; findings by court; limitations; contents of petition; notice of petition; court authorized entry of premises; immunity of petitioner.

(b) Where it is necessary to enter a premises without the disabled adult's consent after obtaining a court order in compliance with subsection (a) above, the representative of the petitioner shall do so.

(c)(1) Upon petition by the director, a court may order that:

- a. The disabled adult's financial records be made available at a certain day and time for inspection by the director or his designated agent; and
- b. The disabled adult's financial assets be frozen and not withdrawn, spent or transferred without prior order of the court.

(2) Such an order shall not issue unless the court first finds that there is reasonable cause to believe that:

- a. A disabled adult lacks the capacity to consent and that he is in

- need of protective services;
- b. The disabled adult is being financially exploited by his caretaker; and
- c. No other person is able or willing to arrange for protective services.

(3) Provided, before any such inspection is done, the caretaker and every financial institution involved shall be given notice and a reasonable opportunity to appear and show good cause why this inspection should not be done. And, provided further, that any order freezing assets shall expire ten days after such inspection is completed, unless the court for good cause shown, extends it.

Article 6A. § 108A- 112. Legislative intent and purpose.

Determined to fight the growing problem of fraud and financial exploitation targeting disabled and older adults in North Carolina, the General Assembly enacts this Article to facilitate the collection of records needed to investigate and prosecute such incidents. (2013-337, s. 4.)

Article 6A. § 108A-113. Definitions.

As used in this Article, the following definitions apply:

- (2) Disabled adult. - An individual 18 years of age or older or a lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated as defined in G.S. 108A-101(d).
- (3) Financial exploitation. - The illegal or improper use of a disabled adult's or older adult's financial resources for another's profit or pecuniary advantage.
- (4) Financial institution. - A banking corporation, trust company, savings and loan association, credit union, or other entity principally engaged in lending money or receiving or soliciting money on deposit.
- (5) Financial record. - An original of, a copy of, or information derived from a record held by a financial institution pertaining to a customer's relationship with the financial institution and identified with or identifiable with the customer.
- (6) Investigating entity. - A law enforcement agency investigating alleged financial exploitation of a disabled adult or an older adult, or a county department of social services investigating alleged financial exploitation of a disabled adult...

(8) Older adult. - An individual 65 years of age or older.

(9) Promptly. - As soon as practicable, with reasonable allowance to be made for the time required to retrieve older data or records that are not readily or immediately retrievable due to their current storage media. (2013-337, s. 4.)

Article 6A. § 108A-114. Financial institutions encouraged to offer disabled adult and older adult customers the opportunity to submit a list of trusted persons to be contacted in case of financial exploitation.

All financial institutions are encouraged, but not required, to offer to disabled adult and older adult customers the opportunity to submit, and periodically update, a list of persons that the disabled adult or older adult customer would like the financial institution to contact in case of suspected financial exploitation of the disabled adult or older adult customer. No financial institution, or officer or employee thereof, who acts in good faith in offering to its customer the opportunity to submit and update a list of such contact persons may be held liable in any action for doing so. (2013-337, s. 4.)

Article 6A. § 108A-115. Duty to report suspected fraud; content of report; immunity for reporting.

(a) Any financial institution, or officer or employee thereof, having reasonable cause to believe that a disabled adult or older adult is the victim or target of financial exploitation shall report such information to the following:

(1) Persons on the list provided by the customer under G.S. 108A-114, if such a list has been provided by the customer. The financial institution may choose not to contact persons on the provided list if the financial institution suspects that those persons are financially exploiting the disabled adult or older adult.

(2) The appropriate local law enforcement agency.

(3) The appropriate county department of social services, if the customer is a disabled adult.

(b) The report may be made orally or in writing. The report shall include the name and address of the disabled adult or older adult, the nature of the suspected financial exploitation, and any other pertinent information.

(c) No financial institution, or officer or employee thereof, who acts in good faith in making a report under this section may be held liable in any action for doing so. (2013- 337, s. 4.)

Article 6A. § 108A-116. Production of customers' financial records in cases of suspected financial exploitation; immunity; records may not be used against account owner.

(a) An investigating entity may, under the conditions specified in this section, petition the district court to issue a subpoena directing a financial institution to provide to the investigating entity the financial records of a disabled adult or older adult customer. The petition shall be filed in the county of residence of the disabled adult or older adult customer whose financial records are being subpoenaed. The court shall hear the case within two business days after the filing of the petition. The court shall issue the subpoena upon finding that all of the following conditions are met:

- (1) The investigating entity is investigating, pursuant to the investigating entity's statutory authority, a credible report that the disabled adult or older adult is being or has been financially exploited.**
- (2) The disabled adult's or older adult's financial records are needed in order to substantiate or evaluate the report.**
- (3) Time is of the essence in order to prevent further exploitation of that disabled adult or older adult.**

(b) Delivery of the subpoena may be effected by hand, via certified mail, return receipt requested, or through a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) and may be addressed to the financial institution's local branch or office vice president, its local branch or office manager or assistant branch or office manager, or the agent for service of process listed by the financial institution with the North Carolina Secretary of State or, if there is none, with the agent for service of process listed by the financial institution in any state in which it is domiciled.

(b1) A financial institution may challenge the subpoena by filing a motion to quash or modify the subpoena within ten days after receipt of delivery of the subpoena pursuant to subsection (b) of this section. The subpoena may be challenged only for the following reasons:

- (1) There is a procedural defect with the subpoena.**
- (2) The subpoena contains insufficient information to identify the records subject to the subpoena.**
- (3) The financial institution is otherwise prevented from promptly complying with the subpoena.**

(4) The petition was filed or subpoena requested for an improper purpose or based upon insufficient grounds.

(5) The subpoena subjects the financial institution to an undue burden or is otherwise unreasonable or oppressive.

Within two business days after the motion is filed, the court shall hear the motion and issue an order upholding, modifying, or quashing the subpoena.

(c) Upon receipt of a subpoena delivered pursuant to subsection (b) of this section identifying the disabled adult or older adult customer or, if the subpoena is challenged pursuant to subsection (b1) of this section, entry of a court order upholding or modifying a subpoena, a financial institution shall promptly provide to the head of an investigating entity, or his or her designated agent, the financial records of a disabled adult or older adult customer.

(d) All produced copies of the disabled adult's or older adult's financial records, as well as any information obtained pursuant to the duty to report found in G.S. 108A-115, shall be kept confidential by the investigating entity unless required by court order to be disclosed to a party to a court proceeding or introduced and admitted into evidence in an open court proceeding.

(e) No financial institution or investigating entity, or officer or employee thereof, who acts in good faith in providing, seeking, or obtaining financial records or any other information in accordance with this section, or in providing testimony in any judicial proceeding based upon the contents thereof, may be held liable in any action for doing so.

(f) No customer may be subject to indictment, criminal prosecution, criminal punishment, or criminal penalty by reason of or on account of anything disclosed by a financial institution pursuant to this section, nor may any information obtained through such disclosure be used as evidence against the customer in any criminal or civil proceeding. Notwithstanding the foregoing, information obtained may be used against a person who is a joint account owner accused of financial exploitation of a disabled adult or older adult joint account holder, but solely for criminal or civil proceedings directly related to the alleged financial exploitation of the disabled adult or older adult joint account holder.

(g) The petition and the court's entire record of the proceedings under this section is not a matter of public record. Records qualifying under this subsection shall be maintained separately from other records, shall be withheld from public inspection, and may be examined only by order of

the court. (2013-337, s. 4; 2014-115, s. 44(a).)

Article 6A. § 108A-117. Notice to customer; delayed notice.

- (a) Upon the issuance of a subpoena pursuant to G.S. 108A-116, the investigating entity shall immediately provide the customer with written notice of its action by first-class mail to the customer's last known address, unless an order for delayed notice is obtained pursuant to subsection (b) of this section. The notice shall be sufficient to inform the customer of the name of the investigating entity that has obtained the subpoena, the financial records subject to production pursuant to the subpoena, and the purpose of the investigation.
- (b) An investigating entity may include in its application for a subpoena pursuant to G.S. 108A-116 a request for an order delaying the customer notice required pursuant to subsection (a) of this section. The court issuing the subpoena may order a delayed notice in accordance with subsection (c) of this section if it finds, based on affidavit or oral testimony under oath or affirmation before the issuing court, that all of the following conditions are met:
- (1) The investigating entity is investigating a credible report that the adult is being or has been financially exploited.
 - (2) There is reason to believe that the notice will result in at least one of the following:
 - a. Endangering the life or physical safety of any person.
 - b. Flight from prosecution.
 - c. Destruction of or tampering with evidence.
 - d. Intimidation of potential witnesses.
 - e. Serious jeopardy to an investigation or official proceeding.
 - f. Undue delay of a trial or official proceeding.
- (c) Upon making the findings required in subsection (b) of this section, the court shall enter an ex parte order granting the requested delay for a period not to exceed 30 days. If the court finds there is reason to believe that the notice may endanger the life or physical safety of any person, the court may order that the delay be for a period not to exceed 180 days. An order delaying notice shall direct that:
- (1) The financial institution not disclose to any person the existence of the investigation, of the subpoena, or of the fact that the customer's financial records have been provided to the investigating entity for the duration of the period of delay authorized in the order;
 - (2) The investigating entity deliver a copy of the order to the financial institution along with the subpoena that is delivered pursuant to

G.S. 108-116(b); and

- (3) The order be sealed until otherwise ordered by the court.**
- (d) Upon application by the investigating entity, further extensions of the delay of notice may be granted by order of a court in the county of residence of the disabled adult or older adult customer whose financial records are being subpoenaed, upon a finding of the continued existence of the conditions set forth in subdivisions (1) and (2) of subsection (b) of this section, and subject to the requirements of 11 subsection (c) of this section. If the initial delay was granted for a period not to exceed 30 days, the delay may be extended by additional periods of up to 30 days each and the total delay in notice granted under this section shall not exceed 90 days. If the initial delay was granted for a period not to exceed 180 days, the delay may be extended by additional periods of up to 180 days each and may continue to be extended until the court finds the notice would no longer endanger the life or physical safety of any person.**
- (e) Upon the expiration of the period of delay of notice granted under this section, including any extensions thereof, the customer shall be served with a copy of the notice required by subsection (a) of this section.**

§ 122C-66: Mental Health, Substance Abuse, and Developmental Disabilities Act of 1985. Protection from abuse and exploitation; reporting. (as amended by S.L. 2015-36)

(b1) The employee of or a volunteer at a facility who witnesses a client become a victim of a violation of Article 7A or Article 26 of Chapter 14 of the General Statutes shall report the allegations within 24 hours after witnessing the violation to one of the following: (i) the department of social services in the county where the facility serves the client; (ii) the district attorney in the district where the facility serves the client; or (iii) the appropriate local law enforcement agency in the city or county where the facility serves the client. A violation of this section is a Class A1 misdemeanor. No employee making a report may be threatened or harassed by any other employee or volunteer on account of the report.

(c) The identity of an individual who makes a report under this section or who cooperates in an ensuing investigation may not be disclosed without the reporting individual's consent, except to persons authorized by the facility or by State or federal law to investigate or prosecute these incidents, or in a grievance or personnel hearing or civil or criminal action in which the reporting individual is testifying, or when disclosure is legally compelled or authorized by judicial discovery. This subsection shall not be interpreted to require the disclosure of the identity of an individual where it is otherwise prohibited by law.

(d) An employee who makes a report in good faith under this section is immune from any civil liability that might otherwise occur for the report. In any case involving liability, making of a report under this section is prima facie evidence that the maker acted in good faith.

(e) The duty imposed by this section is in addition to any duty imposed by G.S. 7B-301 or G.S. 108A-102.

(g) The county department of social services and the district attorney to whom a report is made under subsection (b1) of this section shall investigate or provide for the investigation of each such report.

B. Administrative Code Related to APS Evaluation

10A NCAC 71A .0102 DEFINITIONS

(a) "Immediately" as specified in G.S. 108A-103 shall mean responds with no delay as soon as a county department of social services receives a report that:

- (1) an adult is alleged to be disabled as defined in G.S. 108A-101(d);
- (2) an adult is alleged to be abused, neglected, or exploited as defined in G.S. 108A-101(a), (j), or (m); and
- (3) an adult is alleged to be in need of protective services as defined in G.S. 108A-101(e). (b) "A life threatening situation" shall be considered an emergency as defined in G.S. 108A-101(g).

10A NCAC 71A .0201 ACCEPTANCE OF REPORTS

(c) Notwithstanding provisions in 10A NCAC 71A .0801 through .0803, the director may immediately tell the District Attorney's office and local law enforcement agencies when there is reason to believe that physical harm may occur to the disabled adult. This would include sharing evidence of abuse or neglect the agency has to date.

10A NCAC 71A .0205 INITIATION OF EVALUATION

The evaluation is initiated by a visit to the adult about whom the report is made.

If the adult cannot be located, efforts to locate the adult within the 24- or 72-hour time limit, as appropriate, shall be documented in the case record. Such efforts to locate the adult shall constitute initiation of the evaluation.

10A NCAC 71A .0206 STEPS IN EVALUATION

The complete evaluation shall include:

- (1) The visit to the person, which means that the person must be seen by the worker. The worker will make as many visits as are necessary to determine whether the adult is disabled; abused, neglected or exploited; and in need of protective services;
- (2) Consultation with others who have knowledge of the facts of the situation. This includes individuals identified by the person making the report, as well as individuals mentioned by the disabled adult who may have information pertinent to the evaluation;
- (3) Medical, psychological or psychiatric evaluations when necessary to determine whether the adult is disabled; abused, neglected or exploited; and in need of services; and to determine what services are needed.

10A NCAC 71A .0207 FOCUS OF EVALUATION

The evaluation must determine:

- (1) whether or not the adult is disabled in accordance with the statutory definition in G.S. 108A-101(d);
- (2) whether or not the adult is abused, neglected or exploited as defined in G.S. 108A-101(a)(j) or (m);
- (3) whether or not the adult is in need of protective services as defined in G.S. 108A-101(e);
- (4) whether or not the adult lacks the capacity to consent to protective services.

10A NCAC 71A .0208 CONDUCTING A THOROUGH EVALUATION

A thorough evaluation of the protective services report shall include identifying indicators of abuse, neglect, or exploitation and the disabled adult's strengths and limitations by assessing the following functional areas:

- (1) physical health;
- (2) mental health;
- (3) social support;
- (4) activities of daily living and instrumental activities of daily living;
- (5) financial support; and
- (6) physical environment.

10A NCAC 71A .0209 SUBSTANTIATION OF THE REPORT

(a) Following completion of the evaluation a determination shall be made as to whether the report is substantiated.

(b) A report is substantiated when: (1) the adult is determined to be disabled as defined in G.S. 108A-101(d); (2) the adult is determined to be abused, neglected or exploited as defined in G.S. 108A-101(a), (j), or (m); and (3) the adult is determined to be in need of protective services as defined in G.S. 108A-101(e).

(c) A report is unsubstantiated if any one of the three conditions in Subparagraphs (b)(1), (2), and (3) of this Rule are not met. (2), and (3) of this Rule are not met.

10A NCAC 71A .0301 UNSUBSTANTIATED REPORT: OFFER OF SERVICES

When the evaluation of the report indicates that the allegations are not substantiated, an offer shall be made to the individual of any available and appropriate agency services. The worker shall explain such services to the individual. In addition, the worker shall provide information about other community services and shall offer to refer the person to such resources.

10A NCAC 71A .0302 SUBSTANTIATED REPORT: ADULT REFUSES SERVICES

(a) When the evaluation of a report indicates that the allegations are substantiated and the disabled adult is capable of making responsible decisions and refuses the receipt of protective services, the worker must respect that decision and terminate contact with the adult. Prior to doing so, the worker shall explain the services available to the adult and that the adult may call the agency to request assistance, if needed.

(b) Documentation shall be made of the worker's explanation and offer of services and of the adult's refusal to accept services. The worker shall obtain from the adult a signed statement of his refusal of services or shall document in the record the attempt to obtain such a signed statement.

10A NCAC 71A .0501 GENERAL REQUIREMENT

(a) In accordance with provisions of G.S. 108A-103 and the rules in Section.0200 of this Subchapter, the department of social services in the county in which the facility is located shall evaluate reports of abused, neglected, or exploited disabled adults in need of protective services who are specifically named patients or residents of nursing, combination, and residential care facilities. This includes reports regarding patients or residents who are placed from other counties.

(b) Complaints received by the county department of social services regarding general conditions or violations of standards in nursing and combination facilities and residential care facilities licensed under G.S. 122C shall be referred to the Division of Health Service Regulation.

- (c) Complaints received by the county department of social services regarding general conditions or violations of standards in residential care facilities licensed under G.S. 131D-2 shall be followed up by the adult home specialist in accordance with the specialist's ongoing responsibility for supervision of these facilities.

10A NCAC 71A .0502 NOTICE TO ADMINISTRATOR

- (a) The county director will not inform the administrator prior to the first visit to the facility that a protective services report has been received, except in specific instances where the county director thinks the assistance of the administrator will be needed in conducting the evaluation.
- (b) The county director shall provide the administrator of a nursing, combination, or residential care facility with a written summary of the nature of the protective services report, whether or not evidence of abuse, neglect or exploitation was found, and whether or not a need for protective services was substantiated. The written summary to the administrator shall be limited to the following:
- (1) acknowledgement that a protective services report was received on a specified patient or resident of the facility;
 - (2) the specific allegations in the report (the complainant shall not be named);
 - (3) whether or not evidence of abuse, neglect or exploitation was found;
 - (4) whether or not the need for protective services was substantiated;
 - (5) a general statement as to how the conclusion was reached (the names of persons who were contacted during the evaluation to obtain information shall not be given.)

10A NCAC 71A .0503 REPORT TO REGULATORY AGENCIES

- (a) A copy of the written report required by Rule .0901 of this Subchapter shall be sent to the Division of Health Service Regulation, within 30 days of completion of the evaluation. If the identity of the person making the protective services report and the names of individuals who provide information about the disabled adult are needed by the Division of Health Service Regulation in order to carry out an investigation, that information shall be shared verbally with the Division on request.
- (b) When evidence of financial exploitation is found in Medicaid - funded facilities, the county department of social services shall send a copy of the written report to the Division of Medical Assistance, as well as to the Division of Health Service Regulation.

- (c) When, in the course of an evaluation, evidence of abuse, neglect or exploitation is found, the county director shall notify the Division of Health Service Regulation immediately by telephone. In addition, the county director shall inform the Division of Health Service Regulation as to whether the need for protective services will be substantiated.
- (d) When, in the course of an evaluation, it appears that a report of a need for protective services will not be substantiated, but the county director finds violations of licensure standards, such violations shall be reported immediately to the appropriate supervisory agency. Reports of violations of standards in nursing and combination facilities and residential care facilities licensed under G.S. 122C shall be made to the Division of Health Service Regulation. Reports of violations of standards in residential care facilities licensed under G.S. 131D-2 shall be made to the adult home specialist in the county department of social services.

10A NCAC 71A .0504 INTER-COUNTY COORDINATION

The department in the county in which a nursing, combination, or residential care facility is located has primary responsibility for providing protective services to adults in that facility. That department shall notify the department in the adult's county of residence when a protective services report on the adult is substantiated and shall inform the department in the county of residence of the plan for protective services. The department in the county of residence shall cooperate and assist to the extent possible in the provision of protective services.

10A NCAC 71A .0601 EVALUATIONS OF ABUSE: NEGLECT AND EXPLOITATION

- (a) The county department of social services shall initiate its evaluation in accordance with the time frame in Rule .0204 of this Subchapter.
- (b) When the report comes from a source other than the facility administration, the county department shall inform the chief administrator of the involved facility of the report as appropriate and of applicable state law.
- (c) The county department shall notify the complainant that the department is making an evaluation.
 - (1) Upon completion of the evaluation, the department shall set forth its findings and proposed actions in writing to: the chief administrator of the involved facility;
 - (2) the disabled adult's legal guardian, if any.

10A NCAC 71A .0602 REPORTS OF NEED FOR MEDICAL TREATMENT FOR RESIDENTS

- (a) Rules in Section .0200 of this Subchapter shall be followed by the county department of social services in carrying out the evaluation of reports of need for medical treatment made in accordance with G.S. 108A-101(m).
- (b) After completing the evaluation, if it is reasonably determined that the person needs protective services, the county department shall petition the district court and request a hearing on the matter. The petition must present the need for specific medical treatment, as well as other circumstances substantiating neglect and request that an individual or organization be designated to consent to the medical treatment. If an emergency exists, the department shall petition the district court for an order to provide emergency services.
- (c) After the court's decision is made, the county department shall send to the institution the findings of the court.
- (d) When the county department is designated by the court, the director or his designee shall verbally communicate to the institution consent for medical treatment. This shall be done immediately after the judgment is made, to be followed by written consent.

10A NCAC 71A .0801 COLLATERAL CONTACTS

Collateral contacts with persons knowledgeable about a disabled adult's situation may be made without the adult or caretaker's consent when such contacts are necessary to complete a protective services evaluation.

10A NCAC 71A .0903 PROTECTIVE SERVICES PETITION TO COURT

In preparation to petition the court for an order authorizing the provision of protective services, the social worker must document the facts which show that:

- (1) the disabled adult is being abused, neglected, or exploited; and
- (2) the adult lacks the capacity to consent to such services.

10A NCAC 71A .0904 EMERGENCY PETITION TO COURT

The information required by G.S. 108A-106(c) to be included in the petition shall be documented in the agency file

10A NCAC 71A .0905 FINANCIAL EXPLOITATION: PETITION TO COURT

In preparation to petition the court under G.S. 108A-106(f), documentation must be made of specific information indicating that: the adult lacks the capacity to consent;

- (1) the adult is in need of protective services;
- (2) the adult is being financially exploited; and

(3) no one else is able or willing to arrange for protective services.

C. Social Work Practice Related to APS Evaluation

1. APS Initiation

a. Diligent Efforts

Attempts to locate the disabled adult to initiate the APS evaluation must be made within the initiation timeframe established during the screening process. If attempts to locate the disabled adult upon the initial visit and within the assigned statutory timeframe are unsuccessful, diligent efforts to locate them should be made throughout the evaluation period. The frequency of diligent efforts shall be based on the severity of the allegations. Continuous efforts shall be made to contact the disabled adult. Examples of continuous efforts should include multiple visits to the home, contacting all collaterals to include family members and neighbors, contacting the reporter, and phone calls to community agencies (hospital, law enforcement, home health, homeless shelters, medical personnel etc.)

If the report alleges abuse or neglect, then continual diligent efforts to locate the disabled adult should be made for 30 days and if the report alleges exploitation, then continual diligent efforts to locate the disabled adult should be made for 45 days. This information should be thoroughly documented on the DHHS-AS-0007 Diligent Efforts to Locate Adult.

*Note: The date of the initial attempt to locate the disabled adult constitutes initiation of the report if attempts to locate the disabled adult were unsuccessful and diligent efforts are documented. Under these circumstances, the worker would document the initial attempt on the DHHS-AS-5026 as the initiation date.

b. Incorrect County During Initiation

If during initiation of an APS case it is determined that the address of the disabled adult's residence is located in a different county, the responding agency shall immediately notify the county of residence. Use this process to notify the resident county of a wrong address situation:

- 1)** Telephone the resident county and document the date, time and Supervisor/designee contacted. Do not leave a voice mail message; you must speak with the Supervisor/designee.
- 2)** Send the APS intake report to the resident county by fax or e-mail as requested and confirm receipt.

Examples include:

*Social worker leaves the agency in County A to initiate a report believed to be located in county A. The social worker arrives to the residence to initiate the report and realizes they have crossed into County B. County A

would then follow the above process to alert County B of the APS report. County B is responsible for initiation and evaluation of the APS report.

*Social worker leaves the agency in county A to initiate a report where the disabled adult is believed to be located in county A. The social worker arrives to the residence and is informed that the disabled adult resides in County B. County A would then follow the above process to alert County B of the APS report. County B is responsible for initiation and evaluation of the APS report.

c. Private Interview

The evaluation is initiated when a face-to-face visit is made or attempted with the disabled adult about whom the report was made. The initial visit should be unannounced and during the visit, the social worker must see the adult. The social worker should conduct a private interview with the adult during the visit. If the adult is not seen during the initial visit, the social worker must document the reason that the adult was not seen and interviewed. Phone calls to the disabled adult should not be made prior to initiation and do not constitute initiation of the evaluation.

d. Barriers to Initiation

There may be circumstances which prevent the social worker from initiating the evaluation or may serve as barriers to aspects of the initiation. Some of these situations may include:

1) Disabled Adult Cannot be Located

To overcome this barrier the social worker should use the DHHS-AS-0007 Diligent Efforts to Locate Adult Tool to document all efforts to locate the adult.

2) Adult Has Been Involuntarily Committed (or in hospital isolation that disallows social worker's access)

The social worker should continue to monitor the status of the adult through sources of information available such as family, medical professionals and others in the adult's support network. Additionally, it is important that the social worker document those efforts and continue to gather information to be used to complete the evaluation.

3) DSS Evaluation Authority is Challenged

If DSS' authority to initiate the report is challenged by the adult, a caretaker, other people in the home, or facility staff, the social worker should do the following:

- Explain statutory responsibility to see the adult. It may be necessary to provide a copy of NC General Statute 108A.
- If necessary, a request should be made to law enforcement for assistance to gain access to the adult or ensure a social worker's safety.
- If needed, to gain access to the adult, the agency may petition the court for an Administrative Search and Inspection Warrant-AOC CR-913M.

e. Crisis Intervention at Initiation or During the Evaluation Process

By its very nature, APS is provided to adults experiencing increased vulnerability and risk. The social worker must be prepared, even during the initial visit, to provide or arrange for necessary protection of the adult if there is no one else able, willing, and responsible to do so. Upon initiation of the APS evaluation and at other times during the APS process there may be circumstances which require immediate action by the APS social worker which does not require a court order.

Immediate action can mean arranging for a life-sustaining service such as food, heat, or medically necessary prescription drugs; or assisting with an involuntary commitment.

This type of crisis intervention is normally needed to stabilize a one-time crisis and does not require that a case decision be made to provide intervention. A crisis requiring a court ordered intervention should not be confused with situations when an essential, life- sustaining need such as heat, food or medically necessary prescription drugs are required while the social worker is completing a thorough APS evaluation. Once the immediate crisis is alleviated the evaluation shall continue until enough information is gathered to make the case decision.

f. Emergency at Initiation

An Emergency Ex-Parte AOC-CV-770 APS Petition may be needed in instances when the adult with a disability is found in circumstances where there is substantial danger of irreparable harm or death and emergency services such as a medical assessment, placement or hospitalization are needed and it is reasonable to believe that the adult lacks capacity. The APS evaluation process should be compressed to meet the immediate emergency needs of the adult including making the capacity decision. In this type of situation decisions must be made quickly and the APS social worker must be reasonably sure that there is no other decision maker available such as a guardian or POA.

Even after the ex-parte order is issued and the immediate emergency addressed, it may be necessary for the social worker to continue gathering information, especially if other allegations or concerns not related to the emergency need to be addressed.

*Note: any time a protective services order or ex-parte order is obtained via signature by judicial official, evaluation services (202) are terminated, and planning and mobilization services (204) are effective beginning on that date of signature. The type of service authorization received for protective services should be documented on the DSS 5027 in the comments section.

2. Conducting a Thorough Evaluation

a. Time Frames for APS Evaluation

Though it is a statutory requirement to render a case decision within 30 or 45 days depending on type of alleged maltreatment, a thorough evaluation must be completed and concluded when there is sufficient information to make a case decision. Sufficient information shall mean that all six functional domains have been thoroughly assessed (Appendix B) and documented. Equally important is the expectation to expedite the APS process and make the case decision to protect the adult in life-threatening situations.

b. Key Elements of APS Evaluation

- (1) The adult must be seen by the social worker.
- (2) Observation of the adult in their environment is an important part of the evaluation.
- (3) Collateral contacts with persons knowledgeable about a disabled adult's situation may be made without the adult or caretaker's consent when such contacts are necessary to complete a protective service evaluation. This includes individuals identified by the person making the report, as well as individuals noted by the adult who may have information pertinent to the evaluation or any other person identified by the social worker that will assist in completing a thorough evaluation.
- (4) Obtain and review records necessary to complete a thorough evaluation including, but not limited to, medical, financial, psychological, legal (Durable Power of Attorney, Guardianship, etc.), and tax assessment(s). All information received should be summarized in the case record. Use the DHHS-AS-0014 Notice of Request for Records for APS Evaluation.
- (5) If an adult's caretaker is an individual, facility or agency that maintains records related to the care and treatment of the disabled adult, the law authorizes the review and copying of such records when necessary for a complete evaluation. If the agency's authority is challenged to access records, the agency may petition the court for an order requiring compliance with the law using the Affidavit to Obtain Administrative Inspection Warrant for Particular Condition or Activity- AOC-CR-913M.

- (6) Evidence gathered during the evaluation includes:
- Adult's statements
 - Direct observations
 - Physical evidence (e.g., injuries, cluttered home, no utility service)
 - Corroborating evidence (e.g., witness statements, physician records, documents)
 - Circumstantial evidence
 - Unobserved/third-party suspicions
 - Adult's history
- (7) A thorough evaluation of the allegations in the protective service report shall include indicators of abuse, neglect or exploitation and the disabled adult's strengths and limitations by assessing the following six functional domains:
- Social Support
 - Environment
 - Economic
 - Mental health
 - Activities of Daily Living and Instrumental Activities of Daily Living
 - Physical Health
- (8) After each domain is evaluated, a summary of findings related to strengths and identified needs should be documented.
- (9) When conducting evaluations, the APS social worker will benefit from the input and insight of various community stakeholders serving vulnerable adults.

c. Focus of the APS Evaluation

The focus of the APS evaluation is to determine if adult protective services are needed. The APS evaluation addresses not only the allegations made by the reporter but should be a comprehensive assessment of the adult's life including all factors affecting the adult and the impact of those factors upon meeting their essential needs. Gathering thorough information in all six domains is critical to understanding the individual's needs and if there are deficits in the adult's life which may lead to a need for protective services. By thoroughly assessing all six domains the social worker may discover areas of maltreatment other than those alleged in the APS report.

The APS Evaluation Tools are valuable resources for local DSS staff in conducting complete and thorough evaluations. Utilization of the APS tools:

- (1) Provide structure to the evaluation process,
- (2) Ensures coverage of many of the possible areas in which the adult may

have challenges, and

- (3) Sets the foundation for the identification of needs and strengths and assists in identifying which interventions would be least restrictive if intervention is necessary.

To document findings of the evaluation use the DHHS-AS-0005 APS Community Evaluation and the DHHS-AS-0006 APS Facility Evaluation. These are tools for individuals living in community settings and for individuals living in residential care facilities and nursing homes.

d. Six Domains of the APS Evaluation

It is important to remember that the evaluation documents information to be used to make the case decision, based upon the three statutory criteria. The use of the evaluation in assessing the six domains provides a framework for the social worker to gain an understanding of the adult's functioning as it relates to strengths and areas of need. The APS Evaluation tools provide a guide for the social worker to use in gathering information. The domains are comprised primarily of exploratory questions that the social worker should use, not as a script, but rather as prompts, to better understand the family and their strengths and needs. The more familiar a social worker becomes with these questions, the better equipped the social worker will be to thoroughly assess the adult. All functional domains should be assessed thoroughly throughout the evaluation.

The following outlines each of the six domains of the assessment, necessary to complete a thorough evaluation (commonly referenced as SEEMAP)

(1) Social Support

Information gathered regarding social support will be used to:

- Assess the strengths and needs of the adult and their support network
- Identify individuals who may serve as a caretaker
- Identify individuals, groups, or agencies who may provide essential services
- Determine if the adult has someone willing, able, and responsible to provide protection
- Determine the nature of the support relationship and their impact upon the adult

Social support isn't limited to just biological family, it may include friends, neighbors, service providers or other social groups. It is important to explore all of these because it may look very different for everyone. The social worker should focus on who is in the adult's support system, what they do for the adult, and how they are involved with the adult. There can be both formal and informal arrangements within the adult's support

system. Formal supports could include individuals who serve in such roles as the adult's caregiver, power of attorney, or guardian; informal supports could include anyone who has some type of regular contact with the adult. If the individual is identified as a formal support, it is important to obtain documentation to confirm this role (e.g. - Powers of Attorney or Letters of Appointment for a Guardian). It is important that the agency/county attorney review this documentation to clarify and/or confirm the type and scope of authority they convey.

Relationships should be assessed to determine how the individual contributes emotionally, physically, or financially. It is important to assess how the adult feels about the individual and how responsible they are in meeting the adult's needs. Gathering information in the social domain is critical in understanding the strengths and weaknesses in the adult's social network.

As part of the information gathering the social worker should obtain demographic information for all household members and determine their relationship to the adult. This should include determining who lives in the home and any help received from community agencies.

(2) Environment

Information gathered regarding the environmental situation will be used to:

- Assess the impact of the environment on the adult's health (ventilation, unsanitary conditions, animal/insect infestations, food storage)
- Assess the impact of the environment on the adult's safety (mobility, accessibility, fire hazards, hoarding, neighborhood)
- Assess the impact of the environment on the adult's ability to function (mobility, structural issues, food preparation, rural/urban, isolation)
- Determine if the environment contributes to or detracts from the adult's functioning

It is imperative that the social worker have access to the dwelling in which the adult resides to conduct a complete and thorough assessment of the environmental situation. Information gathered for the evaluation should be based upon and consistent with the observations of the social worker during visits to the home. Observation would include confirmation of the condition of various functional elements of the environment. For example, observing that the temperature in a home is "comfortable" or "appropriate" does not confirm that the HVAC is working properly. Therefore, additional activities will be necessary to validate that the heating and cooling systems are in working order.

Areas which should be included in the environmental assessment are (not an all-inclusive list):

- The type, location and ownership of the disabled adult's home
- Issues affecting the physical movement of the disabled adult
- The safety, adequacy and accessibility of systems of the disabled adult's home, such as HVAC, electrical, and plumbing
- Presence of safety devices such as fire extinguishers and smoke detectors
- The sufficiency of sleeping, bathing, toileting, and cooking or eating arrangements
- Whether the environment contributes to isolation from potential services or supports
- Whether the environment contributes to or detracts from the adult's functioning and well-being

(3) Economic Functioning

Information gathered regarding the economic situation will be used to:

- Determine sources of income (Social Security, SSI, Pension, Retirement, Employment, Child Support, SAIH, in-kind support)
- Determine financial accounts/assets (property, savings or banking accounts, stocks, bonds, CD's)
- Determine expenses (mortgage/rent, utilities, taxes, food, medications, insurance)
- Determine money management (representative payee, POA)
- Detect indicators of exploitation of assets (new management of income, unusual purchases, sudden withdrawals, unusual philanthropy or charity donations, opening new accounts/credit cards)
- Determine irregularities in spending or use of money
- Determine adequacy of resources available to meet basic needs

The social worker should perform a comprehensive assessment of the adult's economic functioning. While observation (e.g. – are utilities connected?) and verbal information (e.g. – the adult reports information about income and expenses) are important sources of information, the social worker should work diligently to gather written financial data such as bank statements and invoices. Adults, however, are often reluctant to share information regarding their budget or financial resources. There may be a variety of obstacles to obtaining financial information, but this should not prevent the social worker from gathering sufficient information about the adult's economic functioning. The social worker should clearly document all efforts made to secure financial information from the individual, collaterals, and caregivers. In situations where written documentation is needed but not willingly provided, it may be necessary for the social worker to utilize tools such as the Petition for Order to

Inspect Financial Records and to Freeze Assets (AOC-CV-776) or Petition and Order for Issuance of Subpoena Directing Release of Financial Records (AOC-SP-630) to acquire this information.

(4) Mental/Emotional Functioning

Information gathered regarding mental/emotional functioning will be used to:

- Determine if the adult has mental health diagnoses
- Determine the impact of mental health issues upon functioning
- Assist to determine if the adult is mentally incapacitated by their diagnosis
- Gather information useful for making the capacity decision (orientation, cognition, judgment, memory, and attention)
- Assess if the adult is receiving necessary mental health services
- Assess compliance with recommended mental health medications and treatment

(5) Activities of Daily Living and Instrumental Activities of Daily Living

Information gathered regarding Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADL's) will be used to:

- Assess abilities and needs regarding ADLs (bathing, dressing, eating, toileting, transferring)
- Assess abilities and needs regarding IADLs (money management, telephone, household chores)
- Identify the need for assistance and the source of assistance with ADLs/IADLs
- Provide information used to determine if the disabled adult is incapacitated by a disability

The social worker should focus on the adult's functioning to include the adult's level of independence or dependence on others to assist with needs. The social worker should explore the adult's understanding of their functional limitations, if any, and the adult's strategies to meet their essential needs. In addition to discussion with the adult and his/her support network, the social worker should observe the adult's functional ability.

Consequently, it may be appropriate to ask the adult to demonstrate their ability to perform certain tasks. The questions or observations should determine if the adult is physically and/or mentally incapacitated and how it affects the adult's ability to perform or secure basic tasks of self-care.

(6) Physical Health

Information gathered regarding physical health will be used to:

- Assess strengths and deficits related to physical health

- Identify essential needs for health and well-being
- Gather information useful for making the capacity decision
- Identify concerns regarding non-compliance with medications or medical treatment
- Determine diagnoses, disabilities, and their impact upon functioning
- Monitor for evidence of physical abuse or neglect

Information regarding physical health may be obtained from various sources including but not limited to:

- Adult's input
- Medical professionals and service providers' assessments/input
- Medical records
- Social worker observations
- Caretaker information
- Family/Friends/Support network input

It is important that the social worker gather information from a variety of sources to complete a comprehensive assessment of the adult's physical health. For example, the adult's physician may have limited knowledge of the disabled adult's health regimen in their home but may be a good source of information through physical assessments and medical tests.

Conversely, friends and family may provide insight for the social worker into the daily health-related activities of the adult but may be unaware of the victim's diagnoses and physicians' recommendations. A physical condition, disease, or diagnosis that limits one person may not limit another. For example, arthritis and heart disease in one person may not impair that individual's functioning while in another it keeps them confined to bed. Each person and situation are unique.

All information gathered during the evaluation should be documented on the evaluation tool or in the case record. It is used to inform decision-making about the nature and extent of services needed by the individual, complete the case decision and determine capacity. It can be used as evidence during legal actions brought about by the agency, and it is used to both obtain and maintain funding for APS staff. Therefore, it is critical that documentation be concise, organized, legible, and current.

e. Essential Services

Essential services are defined by G.S. 108A-101(i) as "those social, medical, psychiatric, psychological or legal services necessary to safeguard the disabled adult's rights and resources and to maintain the physical or mental wellbeing of the individual." This definition includes much more than what is commonly referred to as "meeting basic needs", giving the agency an opportunity to consider how this individual will benefit from a broader approach to services. Being able to live free from abuse, neglect and exploitation would be reasonably

included in our understanding of essential needs and would certainly be understood as necessary to maintaining one's physical or mental well-being.

f. Legal Interventions Available During Evaluation

(1) Administrative Search and Inspection Warrant

In instances where the adult or his caretaker refuses to cooperate with the social worker in gaining access to the adult or his/her surroundings, the social worker should do the following:

- Explain the agency's statutory responsibility to evaluate the report that an adult is disabled and in need of protective services and that the evaluation will continue.
- Document the efforts made to try to obtain cooperation and the reasons given for refusing to cooperate.
- Petition for an Affidavit to Obtain Administrative Inspection Warrant for Particular Condition or Activity (AOC-CR-913M), if necessary, in order to gain access to the adult.

(2) Order to Freeze Assets and Authorize Inspection of Financial Records

If, during the evaluation, it appears that the adult lacks the capacity to consent, it may be necessary to obtain a Petition for Order to Inspect Financial Records and to Freeze Assets (AOC-CV-776). Such an order serves the purpose of assisting the social worker in completing the evaluation while at the same time protecting the adult from further exploitation. (Note: The Freeze/Inspect Order can be utilized at any point in the APS case including the Planning and Mobilization phase.)

Upon petition, a court may order that:

- A disabled adult's financial records be made available at a certain day and time for inspection by the director or his designated agent; and
- A disabled adult's financial assets be frozen and not withdrawn, spent or transferred without prior order of the court.
- The order will not be issued unless the court finds there is reasonable cause to believe that:
 - A disabled adult lacks the capacity to consent and that he/she is in need of protective services;
 - The disabled adult is being financially exploited by his caretaker;
 - No other person is able, willing, or responsible to arrange for protective services.

Before any inspection is completed, the caretaker and every financial institution involved shall be given notice and a reasonable opportunity to appear and show good cause why this inspection should not be done.

Any order freezing assets shall expire ten days after the inspection is completed unless the court, for good cause shown, extends it. [G.S. 108A 106f]

The agency need not wait until the evaluation is complete to petition the court. The agency should have enough information to demonstrate reasonable belief that a disabled adult lacks the capacity to consent and that he/she is in need of protective services, he/she is being financially exploited by his/her caretaker, and no other person is able, willing, and responsible to arrange for protective services. Reasonable belief is a strong suspicion based upon the information gathered by the agency thus far and is not absolute proof that the above items are true. When considering the role of a caretaker at this point in the APS process, it is reasonable to believe a caretaker may be an individual who has responsibility for or has access to and uses the adult's finances for their own personal gain. (Note: It is still required to make the capacity decision after making the case decision.)

The possibility of petitioning the court for authority to freeze and review financial records should not be discussed with the adult or caretaker. If the adult is being exploited, advance warning to the caretaker that a petition will be filed may result in records being altered or assets being withdrawn. When preparing the petition with the agency/county attorney, be as specific as possible in describing the accounts to be frozen. The agency should assess the impact upon the adult when considering freezing assets as it could be detrimental to the adult in accessing necessary resources to meet essential needs.

(3) Subpoena Directing the Release of Financial Records

In some instances, the Freeze/Inspect Order is not the best option to obtain access to an adult's financial records. In such situations, a helpful tool enacted through NC General Statute 108A, Article 6A is the Petition and Order for Issuance of Subpoena Directing Release of Financial Records (AOC-SP-630).

General Statute 108A, Article 6A also amends the definition of older adults with regard to financial exploitation; allows local departments of social services and law enforcement agencies access to financial records under certain situations involving suspected financial exploitation against older and disabled adults; exempts entities from liability when acting in good faith to provide, seek, or obtain financial records in situations involving financial exploitation of older and disabled adults; allows financial institutions to maintain a list of contacts for customers should there be a need to report a suspected case of financial exploitation; requires financial institutions to report suspected fraud, but does not hold them liable if they acted in good faith.

Some of the advantages of this tool include:

- The subpoena allows the local DSS to inspect financial records without freezing those accounts.
- As a condition of the subpoena, it is not necessary that the alleged victim lack capacity.
- It is possible to request that the notice to the customer (of the financial institution) be delayed under conditions outlined in general statute (e.g. – when there is concern that notification may allow for the destruction of or tampering with evidence).
- Both local DSSs (for disabled adults) and law enforcement (for elder adults aged 65 and older) can utilize this subpoena.

If the APS social worker/supervisor elects to utilize the subpoena they should consult with the agency/county attorney regarding the completion and submission of a Petition and Order for Issuance of Subpoena Directing Release of Financial Records (AOC-SP-630).

3. Evaluating APS in Facilities

A document entitled the NCDHHS Working Agreement between DFS and DSS has been developed between the Division of Health Service Regulation and the Division of Aging and Adult Services which outlines, in detail, the responsibilities of each agency with respect to adult protective services in residential care facilities licensed by the Division of Health Service Regulation.

The same process used to evaluate reports on disabled adults who live in the community should be used to evaluate reports on adults who live in facilities. Special considerations for applying the guidelines to facility evaluations are explained in the following:

a. Licensure Issues vs. Protective Services

The department of social services staff member receiving a report on a person in a nursing, combination or residential care facility should determine whether the complaint relates to the treatment of (a) specified resident(s) or general conditions in the facility. If the complaint relates only to general conditions, the complainant should be referred to the appropriate licensing authority.

Complaints received on:

- Nursing and combination facilities should be referred to the Complaints Investigation Branch, Division of Health Service Regulation.
- Mental health residential facilities should be referred to the Mental Health Licensure and Certification Section, Division of Health Service Regulation.
- Adult Care or Family Care Homes should be referred to the Adult Home Specialist in the county DSS where the facility is located.

Note: Some referrals involve APS and licensure issues. These referrals should be referred to the APS unit/social worker and the appropriate supervisory agency simultaneously.

b. Screening Criteria and Decision Related to APS in Facilities

The same screening criteria presented in this manual apply to reports received on residents of facilities. To be accepted as an APS report the referral must allege that a disabled adult is abused, neglected and/or exploited and in need of protective services. The facility, and its staff, meet the definition of caretaker as they have accepted comprehensive responsibility for the adult's care. Some points to consider when applying these criteria to facility situations include:

- To meet the definition of abuse, the facility must willfully inflict pain, injury, mental anguish or deprivation. When another resident harms a facility resident, the incident is not considered abuse because the perpetrator is not the adult's caretaker. If the adult was harmed because the facility did not provide adequate protection or supervision, caretaker neglect may be alleged.
- To meet the definition of caretaker neglect, there must be a failure on the part of the facility to provide adequate care or supervision to meet the needs of the adult.
- When someone other than the resident is handling the resident's finances, exploitation may be alleged by a facility if the resident's bill has not been paid. If allegations are made that the bill has not been paid because that person is using the resident's check for his/her own benefit, the report should be screened based on the three APS criteria. If screened in, the focus of protective services should be on stopping and preventing further exploitation. It is not the DSS agency's responsibility to collect the past due bill. Another example of a possible need for protection would be if the facility is recommending discharging the resident due to the unpaid bill and alternative living arrangements have not been identified or secured.

The adult must be currently in need of protective services. If someone has stepped in to provide protection by the time the agency receives the referral, this criterion is not met. Some examples of this type of situation include:

- A facility administrator calls to report that an aide struck a resident. The administrator has removed the aide and they will no longer have any contact with the resident. The intake social worker finds the administrator's account reasonable and credible. This would not meet the definition of a need for protective services. However, if the social worker has any reason to suspect that the aide continues to have access to the adult, or that the facility staff has not acted to protect the resident, it would be determined that there is a need for protection and the report potentially screened in.
- A family member reports that her mother was severely neglected at an adult or family care home. The family has already moved her to

another facility where her needs are being met. This would not meet the definition of a need for protective services. However, if the resident had not been moved or was currently in the hospital because of the neglect, and could be returning to the facility, there would potentially be a continued need for protection and the report screened in.

- When cases involving adults residing in facilities are screened out for APS, the county DSS may still have a concern and need to involve other agencies.
- If the allegations are general (e.g. there is inadequate heat, the roof leaks), these are regulatory issues and should be reported to the Division of Health Service Regulation.
- Reporting to the District Attorney's office may also be appropriate if an incident such as an assault or patient abuse or neglect has occurred.
- A good working relationship with the Regional Long-Term Care Ombudsman is also important as residents may benefit from their advocacy. Sharing general concerns with the Ombudsman about the treatment of residents or patients in a facility does not violate confidentiality and will ensure that residents' rights are protected, and concerns addressed.

The Mental Health Licensure and Certification Section of DHSR should be notified immediately by phone if the adult is a resident of a mental health residential facility or an ICF/MR.

c. Responsibility of DSS in County of Residence Related to APS in Facilities

The DSS in the county in which the facility is located is responsible for the evaluation of a screened in APS report. Any other county DSS with responsibility to the adult (Medicaid, Guardianship etc.) shall cooperate in the evaluation and provision of protective services. The adult's needs should be the foremost consideration of both agencies in a protective service situation.

d. Receiving Reports from the Division of Health Service Regulation Related to APS in Facilities

Upon receiving reports of the mistreatment of specific residents of facilities, the Division of Health Service Regulation will inform the reporter that they may report their concerns to the local DSS as an APS referral. The reporter will be referred to the DSS in the county where the facility is located. Department of Health Service Regulation will also collect appropriate referral information and make a follow-up phone call to the DSS. These procedures are spelled out in more detail in the DAAS and DHSR Working Agreement. The county department of social services has the responsibility to screen reports that come through the Division of Health Service Regulation using the screening criteria described in APS statute. If the DSS decides that the referral is not appropriate as an APS report, the working agreement specifies that it will notify DHSR by the end of the next

working day.

e. Initiating the Evaluation Related to APS in Facilities

Prior to initiating the APS evaluation in a facility, the social worker should not inform the facility administrator (or other facility staff) that a protective services report has been received, unless the assistance of the administrator will be necessary to initiate the evaluation. When conducting the APS Evaluation initiation, the social worker's first priority should be to see the resident about whom a protective services report has been made.

Upon entering the facility, the worker should do the following:

- Inform the administrator or, if the administrator is not available, inform the staff member in charge that the visit is for the purpose of seeing a resident about whom a protective services report has been received. If the report alleges that the administrator is the perpetrator the administrator should not be told the reason for the visit.
- Obtain directions to the resident's room and proceed directly to see the resident.

If access to the facility or to the resident is denied, the social worker should explain the statutory responsibility and authority to evaluate any report that a disabled adult is in need of protective services. If necessary, an Affidavit to Obtain Administrative Inspection Warrant for Particular Condition or Activity (AOC-CR-913M) can be obtained. The social worker can return with the assistance of law enforcement, if necessary.

f. Steps in Evaluation Related to APS in Facilities

The APS evaluation process explained earlier in this manual also applies to APS evaluations for adults in a facility. The APS evaluation shall include:

- visiting the adult,
- making appropriate collateral contacts, and
- obtaining medical, psychological and/or psychiatric evaluations when necessary.

Some key points regarding evaluations of residents of facilities include:

- The adult should be interviewed before discussing the allegations with the administrator or talking to collateral contacts such as staff or other residents. The adult should be interviewed alone, and care should be taken to protect the residents' privacy.
- After visiting the adult, the social worker should talk to other residents and/or staff members who might have information about the allegations. In addition, the staff member(s) responsible for the resident's care should be asked about the allegations. The social worker should be sensitive to factors such as fear of retaliation from staff or fear of being fired which can hinder the collection of accurate

information. It should be noted that it is important to interview all persons to include other residents, housekeeping, CNAs, medication technicians, nurses, etc. who come into contact with the resident. Due to facility staff working shifts which span 24-hour coverage it may be necessary to interview those individuals at times other than DSS hours of operation or at a location other than the facility.

- If evidence of abuse, neglect, or exploitation is found during an APS Evaluation, county DSS staff must notify the Division of Health Service Regulation immediately via telephone and must follow this communication with information about the substantiation of the need for protection.
- Regardless of the outcome of the APS case decision, if the APS social worker finds violations of facility regulations, this information should be shared with the appropriate regulatory agency including maintaining contact with the agency Adult Home Specialist.

g. Review of Facility Records

Facility records are a key source of information when conducting evaluations in facilities. The APS statute gives the agency the authority to review any and all records maintained by a caretaker as it relates to the care and treatment of the disabled adult [G.S. 108A-103(a)]. The social worker should be aware that the facility maintains various records regarding its residents. Every facility is different, and every facility keeps their records in various places as well as other mediums (computer, databases, records, files, or filing cabinets). Types of records could include Nurses Notes, Medication Administration Records, Visitor Logs and others. It is important that the APS social worker obtain all records maintained by the facility applicable to the APS Evaluation. If the social worker is denied access to the resident's records the social worker's authority under

G.S. 108A-103(a) should be explained which allows for the review and copying of records maintained by facilities licensed by the N.C. Department of Health and Human Services. A court order can be obtained to require compliance with the APS statute if necessary.

h. Thorough Evaluation as it Relates to APS in Facilities

The social worker should use all the sources of information discussed above (i.e. interviews with the disabled adult and collateral contacts, expert evaluations and record reviews) to assess the disabled adult's functioning in the six functional domains. The DHHS-AS-0006 APS Facility Evaluation is a recommended tool which is used to document these areas.

Upon the completion of the APS Evaluation a written summary regarding the evaluation shall be provided to the administrator of the facility where the adult resides. The DHHS-AS-0003 Notice to Administrator: Completion of Evaluation may be used by local DSS staff to provide this summary to the facility

administrator.

The information in the summary should be limited to:

- acknowledgement that a protective services report was received on a specified patient or resident of the facility;
- the specific allegations in the report (the complainant shall not be named);
- whether or not evidence of abuse, neglect or exploitation was found;
- whether or not the need for protective services was substantiated;
- a general statement as to how the conclusion was reached (the names of persons who were contacted during the evaluation to obtain information shall not be given).

i. Written Report as it Relates to APS in Facilities

The DAAS-0009 Written Report of APS Evaluation conducted on a patient/resident of a nursing or combination facility shall be sent to the Complaint Intake Unit of the Division of Health Service Regulation within 30 days of the completed evaluation. Reports on residents of Mental Health residential facilities shall be sent to the Mental Health Licensure Section, Division of Health Service Regulation.

The Written Report of an evaluation conducted on a resident of an adult care home shall also be sent to the Adult Home Specialist at the DSS (in the county where the adult care home is located). The Adult Home Specialist shall review the report for licensure and resident rights violations. After reviewing it, the specialist shall forward any findings of licensure or residents' rights violations to the Division of Health Service Regulation in accordance with procedures outlined in the N.C. Department of Health and Human Services Adult Care Home Procedures.

If an APS Evaluation is conducted on a resident of a state-operated facility serving individuals with mental health needs, developmental disabilities, and/or substance use disorders a Written Report must be sent to the Administrator of that facility following the case decision. If applicable, the Written Report for a resident of the state facility shall also be sent to the resident's guardian.

When evidence of financial exploitation is found when conducting an APS Evaluation in a Medicaid-funded facility, the Written Report shall be sent to the Division of Health Benefits (also known as NC Medicaid) and the Division of Health Service Regulation.

The Written Report must not contain the name of the reporter nor the names of people who have knowledge of the situation. This information can be shared verbally with the Department of Health Services Regulation upon request if it is needed to carry out their investigation.

j. Dual Role as Supervisory Agency as it Relates to APS in Facilities

The county department of social services has a dual role with residential care facilities. It serves as the agency that provides Adult Protective Services and monitoring by the Adult Home Specialist of licensure rules. When possible, it is recommended a social worker other than the Adult Home Specialist conduct the APS evaluation. The social worker should understand that the potential protective needs of the resident named in the APS report is the focus of the evaluation. The agency's relationship with the facility should be maintained by:

- Advising the administrator or supervisor-in-charge on entering and leaving the facility;
- Coordinating closely with the Adult Home Specialist in conducting the evaluation;
- Informing the administrator of the findings from the evaluation using the Notice to the Administrator

It is possible that a facility determines that one of its residents needs medical treatment to which the adult cannot consent. In such circumstances, a report alleging the need for protection may be made by facility staff or another reporter. In such situations, the APS report should be screened by the three APS criteria. If screened in the evaluation shall be completed and, if applicable, protection provided. In situations where there is no legal surrogate decision-maker, authorization will need to be obtained through court action.

k. Planning and Mobilizing Protective Services as it Relates to APS in Facilities

In planning and mobilizing services the social worker should help the facility, in conjunction with the resident, family, and others, to develop and implement a plan for protecting the resident. Examples of protective services plans include moving a resident to another room or floor to minimize contact with another abusive resident, or asking the administrator of the facility to provide training to staff so that a resident will not be victimized again because of inadequate care such as an improper transfer technique. In some situations, it may be necessary to move the resident to another facility to provide protection.

4. Case Decision Following A Thorough APS Evaluation Guidelines Related to the APS Case Decision

The case decision is made using the same three criteria as the screening decision. Upon the completion of a thorough evaluation, a case shall be staffed with a supervisor, member of management or their designee and the social worker. The staffing can include others as designated by supervisor/management. The questions that must be answered to make a case decision are:

- Is the adult incapacitated by disability?
- Has the disabled adult been abused, neglected, or exploited or is being

- subjected to abuse, neglect, or exploitation?
- Is the disabled adult in need of protective services?

It is recommended that the case decision process have a systematic method in making the determination that is based on a careful and thorough review of all information gathered at Intake and Evaluation.

Reaching a case decision is the sole responsibility of the department of social services. Although other agencies may help with the evaluation, the ultimate responsibility and authority for making the case decision rests with the DSS evaluating the need for protective services. It is incumbent upon the agency to ensure that case decisions are based on G.S. 108A. DSS must have determined that the adult is disabled, has been mistreated and is in need of protection. Further guidance as it pertains to components of the case decision are outlined and explained in the subsections below:

a. Time Frames Related to the Case Decision

Case decisions must be made within statutory time frames but can, and should, be concluded earlier when there is enough information to warrant a case decision. The evaluation should not be held open or extended just to meet the statutory timeframe. Case decisions shall be compressed or expedited in order to protect the disabled adult in a life-threatening or emergent situation. If diligent efforts to locate the disabled adult are unsuccessful during the 30/45-day time frame, a case decision must be made based upon information obtained during the evaluation.

b. Types of Case Decisions

There are three different case decisions that can be rendered at the end of a thorough evaluation. It is the expectation that the documentation will clearly show how criterion are or are not met in each case.

(1) Unconfirmed/Unsubstantiated

Social worker does not have enough information to clearly state that the allegations are true and/or the adult does not meet the definition of incapacitated by a disability. If allegations are true, but the adult is not disabled, this is a potential law enforcement issue.

(2) Confirmed/Unsubstantiated

Social worker has enough information to clearly state that the alleged maltreatment happened, but the disabled adult does not need protection. This could be because either the adult is willing, able and responsible to seek their own essential services or the adult has someone else able, willing, and responsible to seek essential services. The disabled adult may also have already been protected from the maltreatment or no longer

needs protective services (e.g. -the disabled adult is deceased).

(3) Confirmed/Substantiated

Social worker has information to clearly state that the adult is incapacitated by a disability, alleged maltreatment happened, AND the adult needs protection.

c. Case Decision Terms Defined

(1) Confirmation

Confirmation of maltreatment occurs when evidence of abuse, neglect, and/or exploitation of a disabled adult is found during the evaluation. It is possible to confirm abuse, neglect, and/or exploitation has occurred, but not substantiate the need for protection because there has been intervention and the need for protection no longer exists.

(2) Substantiation

A report is substantiated when the adult is disabled as defined in G.S. 108A 101(d); the adult is abused, neglected or exploited as defined in G.S. 108A 101(a)(j) or (m); and the adult is in need of protective services as defined in G.S. 108A 101(e).

The decision of whether the agency is going to assume responsibility to protect the abused, neglected and/or exploited disabled adult is based on the APS criteria being met and authorization being obtained. Once the agency has obtained authorization from the disabled adult, legally responsible person or a court order to provide protection the agency must immediately and without delay begin providing or arranging services needed to protect the adult.

(3) Unsubstantiation

A report is unsubstantiated if any one of the three criteria for substantiation are not met. When the evaluation of the report indicates that it is not substantiated, an offer shall be made to the individual of any available and appropriate services (if possible). The social worker shall explain such services to the individual. Although a protective service report may be unsubstantiated, that does not always mean that the individual does not need or could not benefit from other services. A visit should be made to the disabled adult to inform him/her when the APS evaluation has been completed, and that there will be no further APS involvement unless another report is received and accepted. When the disabled adult has been minimally involved in the evaluation due to limited mental capacity and a family member, POA, or legal guardian has worked with the social worker, that individual should be informed of the case

decision.

If the disabled adult or the adult's family member(s), POA, or legal guardian indicate to the adult protective services social worker that they would like to request services, the social worker should make a referral to the appropriate agency or service. The referral should include only the information that is relevant and necessary to process the request for services.

If other agency services are needed and accepted by the adult or his/her legal representative, the case is closed for APS and opened in the Services Information System (SIS) for the requested service. The social worker should follow the guidance in the Services Information System (SIS) Manual for opening and closing cases on the DSS-5027 form. Since the local DSS is the only agency with statutory authority to provide adult protective services in NC there is a responsibility to provide protection. Under no circumstances should a decision be made to unsubstantiate the need for protective services due to lack of a thorough evaluation, staffing resources, formal services, access to court systems, legal consultation or prior history with the same individual who may have refused services in the past. The thorough APS evaluation, including interview(s) with the disabled adult, contact with collaterals, other professional's evaluations, and record reviews should supply the information needed for making a case decision. If any element of the case decision is unclear more information may need to be obtained.

d. Guidelines Related to Case Decision Criteria

(1) Determining if the Adult is Disabled

The key to determining whether the disabled adult is able to perform or obtain essential services needed to address the abuse, neglect and/or exploitation that is occurring is based on their functionality. G.S. 108A-101(e) states that the disabled adult, due to physical or mental incapacity, is unable to perform or obtain for himself essential services. Some items to consider when determining disability are addressed below.

Physical and Mental/Emotional functioning must be assessed as part of the thorough APS evaluation. At a minimum, information documented in the Community Evaluation under the sections for Physical Health, Medication, Activities of Daily Living, Mental/Emotional Health and Self Endangering Behaviors should provide the basis for determining the adult's physical and mental incapacities and how those incapacities limit functioning. A physical or mental condition, disease, or diagnosis that limits one person may not limit another. Heart disease or Schizophrenia in one person may not impair their functioning while in another it completely limits their functioning or decision-making ability. In every situation a

person-centered approach should be used as every person is unique.

Additionally, just because an adult possesses skills necessary to perform a task does not mean that they are fully capable of completing that task. The social worker must determine if the person has the physical, emotional, intellectual and social skills to conduct activities of daily living and perform/obtain essential services. For example, an adult may have the physical ability to clean their home but due to mental illness may not actually perform this task. An adult may have the mental ability and wherewithal to take medications but physically cannot open the bottle or see the prescription to know which medication to take.

Sometimes, an adult's disability is intermittent in nature. This type of disability occurs frequently with substance use disorders and mental illness diagnoses. The social worker should visit the adult at various times to determine the frequency, duration and intensity of the behavior of the individual. In such cases, it is important to determine whether the disability is prevalent to the extent that the adult is incapacitated by the disability and unable to seek essential services.

(2) Determining Maltreatment

When determining maltreatment, it is important to look at each of the allegations and all aspects of the person's functioning. In order to make the case decision, information should be collected during the evaluation process from the individual, collaterals, other professionals and various records to determine if the individual has been abused, neglected or exploited. The information gathered during the course of the evaluation should determine the type of mistreatment that has occurred based on the following:

- For abuse, the social worker must have found evidence of willful infliction of pain, injury or mental anguish, unreasonable confinement or the willful deprivation by a caretaker of services which are necessary to maintain the mental and physical health of the individual.
- For neglect, the social worker must have found evidence that the individual is not able to provide for themselves the services which are necessary to maintain their mental or physical health or is not receiving these services from their caretaker.
- For exploitation, the social worker must have found evidence that the individual or their resources have been illegally or improperly used for another's gain.

(3) Determining the Need for Protection

When determining the need for protection the social worker must describe how the individual, due to their physical or mental incapacity, is unable to perform or obtain for themselves essential services and if that person is without a willing, able and responsible person (all three attributes) to perform or obtain essential services. For example, the individual would be in need of protection if the caretaker is willing and responsible to provide protection but is unable to do so. The following definitions and guidance are provided as tools to assist when making this critical decision.

- A “willing person” is one who voluntarily commits to and is in agreement to providing or mobilizing the protective services needed by the disabled adult.
- An “able person” is one who is physically capable and has the necessary skills, means, and know how to provide or mobilize the protective services needed by the disabled adult.
- A “responsible person” is one who appears emotionally mature; has a history of being trustworthy, reliable, and dependable; and uses good judgment and sound thinking.

Other questions to consider when determining able, willing and responsible:

- Does the individual have a criminal history; if so, how will this affect the individual’s ability to provide protective services and in the agency’s judgment, is a criminal history check warranted?
- What is the individual’s authority (both legal and relational) over the disabled adult?
- What is the individual’s relationship to the disabled adult? Current and past involvement should be considered.
- What is the individual’s knowledge of the disabled adult’s protective service needs and does there appear to be a willingness to make sure those needs are met?
- What are the individual’s own impairments (physical, mental, substance abuse or other) which may negatively impact the individual’s ability to mobilize protective services?
- When appropriate, what is the disabled adult’s opinion about the individual and the disabled adult’s wishes related to him/her?

Unless the agency is reasonably assured that the individual or the identified person(s) will be able to act comprehensively on behalf of the individual to provide protective services, the determination must be made that this person is not able, willing and responsible. If an individual(s) expresses a desire to become able, willing and responsible but needs the assistance of the agency to serve in this way, the need for protective services should be substantiated. The agency would assume responsibility for protection and include the identified individual(s) in the service plan.

e. Documenting the Case Decision

Once the case decision has been made it should be clearly documented. The case decision is best documented using the case findings section of the DHHS-AS-0005 APS Community Evaluation or the DHHS-AS-0006 APS Facility Evaluation tools.

The documentation should clearly specify how each of the three criteria for substantiation has been met or how it has not been met. For example, if the social worker determines that the disabled adult is self-neglecting, the documentation should provide enough information to understand how the decision was reached. Once the social worker has described how each of the criteria has or has not been met, an overall decision on whether the report is substantiated should be documented.

f. (NC OAASIS) (DHHS-AS-5026)

The North Carolina Online Aging and Adult Services Information System (NC OAASIS) is used by county staff to enter APS data for collection. An entry into NC OAASIS must be completed on all adult protective services reports received and evaluated by the DSS. The form must be completed and keyed within 15 calendar days of the case decision date. Entries submitted after this timeframe will be accepted by NC OAASIS but designated as a late submission. The NC OAASIS User Manual – APS-R provides instructions on how to enter the required information into the system.

g. Case Decision and its Relationship to Capacity to Consent

It is the directive that the staffing team avoid prematurely rendering a capacity decision before a case decision has been made. The disabled adult's capacity to consent to protective services is not a factor in making the case decision. The decision for a disabled adult's capacity should be rendered after a case decision is made in order to prepare for obtaining service authorization. The case would be substantiated if all three criteria are met and the adult then given the opportunity to accept or refuse protective services based upon the capacity decision.

5. Determining Capacity to Consent after Case Decision

This step in the APS process is one of the most critical and shall be made without delay following the case decision. The social worker will utilize assessment tools during their evaluation, conduct interviews, and make observations related to the adult's capacity for informed consent. The capacity decision will only be rendered when there is a case decision made to substantiate the need for protection. It is recommended that the capacity decision be staffed with APS leadership.

a. Guidelines for Assessing the Capacity to Consent to Protective Services

Assessment of a person's capacity to consent to protective services focuses on their ability to perceive and understand their situation by conveying a:

1. Sufficient understanding of their limitations/deficiencies in their surroundings (environment);
2. Sufficient understanding of their own mental or physical limitations;
3. Sufficient understanding of resources available to assist in meeting their needs; and
4. Sufficient understanding of the consequences to him/her if nothing is done to improve or remedy his/her situation.

Note: Sufficient understanding shall mean that the adult demonstrates an adequate comprehension of each of the above. An adult may 'convey' their understanding in different ways (e.g. verbal statements, written statements, or physical cues.)

If a person expresses knowledge in some or all these areas, they may have the capacity to consent to protective services. Conversely, if they are deficient in some or all these areas, they may lack the capacity to consent to protective services. The capacity decision is complex, and care should be taken to evaluate each component independently as well as how it all intertwines. Through documenting the adult's understanding in relation to each of these four areas, the social worker can support the capacity decision as a sum of all parts.

If the agency is unable to determine whether the adult demonstrates sufficient understanding of their protective service needs, further evaluation by a psychologist, psychiatrist, physician, clinical social worker or other appropriate professional may be necessary in order to help determine whether or not the person has capacity. This information can be used to support the capacity decision made by the agency. The department of social services is ultimately responsible for making the decision about the adult's capacity to consent and the decision shall not be delayed for an inability to receive further capacity clarification from alternative providers.

b. Capacity to Consent Decision Example

Below are different versions of the same situation. Each depicts a different capacity decision. The case situation involves an individual having a gangrenous foot. A medical provider has recommended amputation as the treatment plan and asserted that failure to comply with the recommendation may result in death. In all versions the individual refuses to consent to surgery.

Example Option 1: The individual verbally states that they understand they

have gangrene, that it is serious enough to potentially cause death, and that the recommended treatment is amputation of the foot. The individual emphatically refuses surgery because “a man came to my room and told me he would heal my foot.” The social worker then asks the individual who ‘the man’ is? The social worker’s evaluation has already indicated that this individual suffers from paranoid schizophrenia. Further conversation indicates that ‘the man’ is a delusionary character resulting from their mental illness. On the surface it appears that they understand the circumstances of their situation, but they are unrealistic about the consequences. The social worker asks the individual what they will do if ‘the man’ does not intervene. The individual maintains that ‘the man’ will intervene and they will not ever consent to medical treatment because ‘the man’ will heal their foot. It would appear, in this situation, that the individual does not have capacity to consent to protective services as they have not demonstrated sufficient understanding of the consequences if nothing is done to remedy the situation or the resources available to them to remedy the situation.

Example Option 2: The individual verbally states that they understand they have gangrene, that it is serious enough to potentially cause death, and that the recommended treatment is amputation of the foot. The individual then states they prefer to die rather than lose their foot. They are aware that, barring a miracle, death is likely. They convey understanding that the treatment includes a surgical procedure and that post-surgical treatment would include rehabilitation and possibly a prosthesis. The individual states “I’m too old to go through all this.” The individual explains that they do not want to attend rehab or wear a prosthesis and are concerned of the potential for further complications from such an extensive surgery. This would indicate that they understand the circumstances of their situation and that they have the capacity to consent/refuse protective services.

c. Capacity vs. Competency

An important issue to consider is the difference between capacity to consent to protective services, as defined in G.S. 108A 101(l), and competency as defined in G.S. 35A 1101(7), the guardianship statute.

These are two separate and distinct concepts, as follows:

- An adult’s capacity to consent to protective services is determined by the DSS. Lack of capacity may be temporary, such as when an adult is incapacitated by an acute illness, and its effects may be specific and limited.
- A judge, on the other hand, must adjudicate an adult incompetent. Incompetence is typically a long-term condition, and its effects are global.

It is likely that an adult who has been adjudicated incompetent lacks the

capacity to consent to protective services, but conversely, an adult who lacks the capacity to consent may not be incompetent.

2) Documentation of Capacity to Consent to Protective Services

Once a decision has been made about the adult's capacity to consent to protective services, it should be documented thoroughly. It is recommended that the social worker utilize the Case Findings section of the DHHS-AS-0005 APS Community Evaluation and the DHHS-AS-0013 Determination of Ability to Consent to Protective Services.

Note: It is important to remember that the capacity decision will determine the type of service authorization needed to provide protective services.

3) Notices Following Evaluation

(1) Notice to the Reporter

The statute requires that after completing the evaluation, the director shall notify the individual making the report of his determination as to whether the disabled adult needs protective services. The DHHS-AS-0004 Notice to Reporter: Completion of Evaluation may be oral or in writing at the discretion of the reporter and shall be made immediately upon completing the evaluation and making the case decision. It shall include a statement of whether the report was substantiated and, if so, a statement that the agency is providing continued services.

Documentation shall be made of when and how the notice is given. In order to protect the disabled adult's confidentiality, the notice shall not include specific findings of the evaluation.

(2) Written Report

After completing the evaluation, the director shall complete a DHHS-AS-0009 Written Report of APS Evaluation indicating whether he believes protective services are needed. Written reports shall be completed when:

- The adult protective services evaluation was conducted on a patient or resident of a nursing or combination facility; mental health residential facility; or adult care home; (the DHHS-AS-0003 Notice to Administrator: Completion of Evaluation see below, serves as the Written Report) or
- Evidence of abuse, neglect or exploitation is found (except self-neglect); or
- Evidence of financial exploitation is found in Medicaid-funded facilities; or
- The results of the APS evaluation indicate violations of statutes, rules, or regulations enforced by other governmental agencies.

The DHHS-AS-0009 Written Report of APS Evaluation shall include the following information:

- The name, address, age, and condition of the adult;
- The allegations (the written report shall not include the identity of the person making the complaint or other contacts);
- The evaluation including the agency's findings and supporting documents (e.g. psychological, medical report);
- conclusions; and
- recommendations for action

The Written Report is a separate document filed in the case record and should not be used as a notice to the complainant. It may be used to provide information about the results of the APS evaluation to various entities which may require this notification. Other documentation, such as photographs or expert evaluations, may be included when forwarding the Written Report. Some examples of the use of this form include, but are not limited to:

- Notification to the District Attorney and Law Enforcement
- Notification to the Division of Health Service Regulation
- Notification to the Division of Health Benefits when evidence of financial exploitation is found for an adult residing in a Medicaid-funded facility
- Notification to governmental agencies such as the Social Security or Veterans Administration when an APS evaluation indicates violations of applicable statutes, rules, or regulations
- Notification to Conflict of Interest county

(3) Notice to Administrator

The county director shall provide the administrator of a nursing, combination, or residential care facility with a notice. The DHHS-AS-0003 Notice to Administrator: Completion of Evaluation is limited to acknowledgement that a protective services report was received on a specified patient or resident of the facility, the specific allegations in the report, whether or not evidence of abuse, neglect or exploitation was found, whether or not the need for protective services was substantiated, and a general statement as to how the conclusion was reached. The names of persons who were contacted during the evaluation and the name of the complainant shall not be given.



ADULT PROTECTIVE SERVICES MANUAL

VI. Obtaining Service Authorization for Adult Protective Services

VI. Obtaining Service Authorization for Adult Protective Services

A. Statutory Requirements Related to Service Authorization

§ 108A-104. Provision of protective services with the consent of the person; withdrawal of consent; caretaker refusal.

- (a) If the director determines that a disabled adult is in need of protective services, he shall immediately provide or arrange for the provision of protective services, provided that the disabled adult consents.**
- (b) When a caretaker of a disabled adult who consents to the receipt of protective services refuses to allow the provision of such services to the disabled adult, the director may petition the district court for an order enjoining the caretaker from interfering with the provision of protective services to the disabled adult. The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and consents to the receipt of protective services and that the caretaker refuses to allow the provision of such services. If the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and consents to the receipt of protective services and that the caretaker refuses to allow the provision of such services, he may issue an order enjoining the caretaker from interfering with the provision of protective services to the disabled adult.**
- (c) If a disabled adult does not consent to the receipt of protective services, or if he withdraws his consent, the services shall not be provided.**

§ 108A-105. Provision of protective services to disabled adults who lack the capacity to consent; hearing, findings, etc.

- (a) If the director reasonably determines that a disabled adult is being abused, neglected, or exploited and lacks capacity to consent to protective services, then the director may petition the district court for an order authorizing the provision of protective services. The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and lacks capacity to consent to them.**
- (b) The court shall set the case for hearing within 14 days after the filing of the petition. The disabled adult must receive at least five**

days' notice of the hearing. He has the right to be present and represented by counsel at the hearing. If the person, in the determination of the judge, lacks the capacity to waive the right to counsel, then a guardian ad litem shall be appointed pursuant to G.S. 1A-1, Rule 17, and rules adopted by the Office of Indigent Defense Services. If the person is indigent, the cost of representation shall be borne by the State.

- (c) If, at the hearing, the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and lacks capacity to consent to protective services, he may issue an order authorizing the provision of protective services. This order may include the designation of an individual or organization to be responsible for the performing or obtaining of essential services on behalf of the disabled adult or otherwise consenting to protective services in his behalf. Within 60 days from the appointment of such an individual or organization, the court will conduct a review to determine if a petition should be initiated in accordance with Chapter 35A; for good cause shown, the court may extend the 60 day period for an additional 60 days, at the end of which it shall conduct a review to determine if a petition should be initiated in accordance with Chapter 35A. No disabled adult may be committed to a mental health facility under this Article.
- (d) A determination by the court that a person lacks the capacity to consent to protective services under the provisions of this Chapter shall in no way affect incompetency proceedings as set forth in Chapters 33, 35 or 122 of the General Statutes of North Carolina, or any other proceedings, and incompetency proceedings as set forth in Chapters 33, 35, or 122 shall have no conclusive effect upon the question of capacity to consent to protective services as set forth in this Chapter.

§ 108A-106. Emergency intervention; findings by court; limitations; contents of petition; notice of petition; court authorized entry of premises; immunity of petitioner.

- (a) Upon petition by the director, a court may order the provision of emergency services to a disabled adult after finding that there is reasonable cause to believe that:
- (1) A disabled adult lacks capacity to consent and that he is in need of protective service;
 - (2) An emergency exists; and
 - (3) No other person authorized by law or order to give consent for the person is available and willing to arrange for emergency services.

- (b) The court shall order only such emergency services as are necessary to remove the conditions creating the emergency. In the event that such services will be needed for more than 14 days, the director shall petition the court in accordance with G.S. 108A-105.**
- (c) The petition for emergency services shall set forth the name, address, and authority of the petitioner; the name, age and residence of the disabled adult; the nature of the emergency; the nature of the disability if determinable; the proposed emergency services; the petitioner's reasonable belief as to the existence of the conditions set forth in subsection (a) above; and facts showing petitioner's attempts to obtain the disabled adult's consent to the services.**
- (d) Notice of the filing of such petition and other relevant information, including the factual basis of the belief that emergency services are needed and a description of the exact services to be rendered shall be given to the person, to his spouse, or if none, to his adult children or next of kin, to his guardian, if any. Such notice shall be given at least 24 hours prior to the hearing of the petition for emergency intervention; provided, however, that the court may issue immediate emergency order ex parte upon finding as fact (i) that the conditions specified in G.S. 108A-106(a) exist; (ii) that there is likelihood that the disabled adult may suffer irreparable injury or death if such order be delayed; and (iii) that reasonable attempts have been made to locate interested parties and secure from them such services or their consent to petitioner's provision of such service; and such order shall contain a show-cause notice to each person upon whom served directing such person to appear immediately or at any time up to and including the time for the hearing of the petition for emergency services and show cause, if any exists, for the dissolution or modification of the said order. Copies of the said order together with such other appropriate notices as the court may direct shall be issued and served upon all of the interested parties designated in the first sentence of this subsection. Unless dissolved by the court for good cause shown, the emergency order ex parte shall be in effect until the hearing is held on the petition for emergency services. At such hearing, if the court determines that the emergency continues to exist, the court may order the provision of emergency services in accordance with subsections (a) and (b) of this section.**
- (e) Where it is necessary to enter a premises without the disabled adult's consent after obtaining a court order in compliance with subsection (a) above, the representative of the petitioner shall do**

so.

- (f) (1) Upon petition by the director, a court may order that:
- a. The disabled adult's financial records be made available at a certain day and time for inspection by the director or his designated agent; and
 - b. The disabled adult's financial assets be frozen and not withdrawn, spent or transferred without prior order of the court.
- (2) Such an order shall not issue unless the court first finds that there is reasonable cause to believe that:
- a. A disabled adult lacks the capacity to consent and that he is in need of protective services;
 - b. The disabled adult is being financially exploited by his caretaker; and
 - c. No other person is able or willing to arrange for protective services.
- (3) Provided, before any such inspection is done, the caretaker and every financial institution involved shall be given notice and a reasonable opportunity to appear and show good cause why this inspection should not be done. And, provided further, that any order freezing assets shall expire ten days after such inspection is completed, unless the court for good cause shown, extends it.
- (g) No petitioner shall be held liable in any action brought by the disabled adult if the petitioner acted in good faith.

§ 108A-107. Motion in the cause.

Notwithstanding any finding by the court of lack of capacity of the disabled adult to consent, the disabled adult or the individual or organization designated to be responsible for the disabled adult shall have the right to bring a motion in the cause for review of any order issued pursuant to this Article

B. Administrative Code Related to Service Authorization

10A NCAC 71A .0302 SUBSTANTIATED REPORT: ADULT REFUSES SERVICES

- (a) When the evaluation of a report indicates that the allegations are substantiated and the disabled adult is capable of making responsible decisions and refuses the receipt of protective services, the worker must respect that decision and terminate contact with the adult. Prior to doing so, the worker shall explain the services available to the adult and that the adult may call the agency to request assistance, if needed.
- (b) Documentation shall be made of the worker's explanation and offer of services and of the adult's refusal to accept services. The worker shall obtain from the adult a signed statement of his refusal of services or shall document in the record the attempt to obtain such a signed statement.

10A NCAC 71A .0903 PROTECTIVE SERVICES PETITION TO COURT

In preparation to petition the court for an order authorizing the provision of protective services, the worker must document the facts which show that: the disabled adult is being abused, neglected, or exploited; and the adult lacks the capacity to consent to such services.

10A NCAC 71A .0904 EMERGENCY PETITION TO COURT

The information required by G.S. 108A-106(c) to be included in the petition shall be documented in the agency file.

10A NCAC 71A .0905 FINANCIAL EXPLOITATION: PETITION TO COURT

In preparation to petition the court under G.S. 108A-106(f), documentation must be made of specific information indicating that:

- (1) the adult lacks the capacity to consent;
- (2) the adult is in need of protective services;
- (3) the adult is being financially exploited; and
- (4) no one else is able or willing to arrange for protective services.

C. Social Work Practice Related to Service Authorization

After substantiating the need for protective services and rendering the capacity decision the agency must obtain service authorization without delay and prior to providing protective services. The result of the capacity decision determines the type of service authorization obtained. There are several different types of service authorizations based upon the capacity decision including:

- **Adult has capacity**
 - Consents to Protective Services
 - Refuses Protective Services
- **Adult does not have capacity**

- Adult's surrogate decision maker authorizes Protective Services (e.g. POA, Guardian)
- Protective Services Order authorizes Protective Services (e.g. PS order, Emergency Order, Ex-Parte Order)

Each of these types of authorizations, and the social worker requirements for each, are outlined below.

1. Disabled Adult Has Capacity

a. Adult has Capacity and Consents to Protective Services

The right of self-determination is a basic principle of protective services for adults. When the need for protection has been substantiated and the adult has the capacity for informed consent, the social worker shall clearly explain the plan of protection based upon the needs identified during the evaluation. The social worker shall then ask the adult if they wish to accept or refuse protective services.

If the adult accepts protective services, the agency must provide clear documentation of their authority to provide protective services. A written statement of consent to services, signed by the disabled adult, should be obtained. The disabled adult shall also sign the DSS-5027 to consent to mobilization of services. A copy of their signed 5027 including their rights and responsibilities and their consent to protective services shall be provided to the adult.

There should be diligent efforts to obtain written consent for protective services. If the adult is unable to sign but consents to protective services verbally, the social worker should attempt to have a witness to the adult's verbal consent. The social worker should document the date, time and circumstances under which the verbal consent was given.

Once an adult accepts the provision of protective services the social worker shall move into Planning and Mobilization of Protective Services, SIS code 204.

b. Adult has Capacity to Consent - Caretaker Interference

If a disabled adult consents to the receipt of protective services and the adult's caretaker refuses to allow the provision of such services, the department may petition the district court for an Order to Enjoin Interference with Protective Services AOC-CV-782. The petition must allege specific facts sufficient to show that:

- The disabled adult is in need of protective services;

- The disabled adult consents to the receipt of protective services; and
- The caretaker refuses to allow the provision of such services

In preparation for petitioning the court for an order enjoining a caretaker from interfering with the provision of protective services, the social worker shall document:

- The date, time and circumstances under which the disabled adult's consent for services was given and
- The attempts which were made to obtain the caretaker's consent, including the circumstances under which the caretaker's consent was requested and the information provided to the caretaker before asking for his/her consent.

Before petitioning the court, the social worker should explore all avenues for obtaining the caretaker's cooperation. This includes attempting to explain the disabled adult's need for assistance and the agency's legal responsibility to provide services in such instances.

The social worker should be sensitive to family relationships and to the dynamics of such relationships in instances where the disabled adult's caretaker is a member of his family.

At times the caretaker may verbally agree, but exhibit behavior that prevents the provision of services. Such behavior may constitute a refusal to cooperate and/or interference and should be carefully documented in order to provide factual information in the event court action becomes necessary.

The petition must include specific facts as to how the caretaker is interfering with the provision of protective services. This is necessary in providing the judge with sufficient evidence to issue an order enjoining caretaker interference. The form to be used in petitioning the court is the Order to Enjoin Interference with Protective Services AOC-CV-782.

If a caretaker refuses to cooperate in the provision of protective services after an order enjoining his/her interference has been issued the agency shall return to court and have the caretaker held in contempt.

c. Adult has Capacity and Refuses Offer of Protective Services

The right of self-determination is a basic principle of protective services for adults. When the need for protection has been

substantiated and the adult has the capacity for informed consent, the social worker shall clearly explain the plan of protection based upon the needs identified during the evaluation. The social worker shall then ask the adult if they wish to accept or refuse protective services.

If the adult refuses, the social worker shall clearly document the adult's refusal to receive protective services in the case record. A recommended form for the documentation of the refusal of protective services when an adult has capacity is the DHHS-AS-0013 Determination of Ability to Consent to Protective Services. This form combines the capacity decision documentation with the refusal of protective services documentation.

When an adult has capacity and refuses protective services the social worker shall make appropriate referrals. The APS case shall then be closed.

2. Disabled Adult Does Not Have Capacity

If the adult lacks the capacity to consent to protective services, only a legally authorized person such as guardian or durable power of attorney can consent to protective services. If no legally authorized person is available to consent to or decline the provision of protective services, then legal authorization must be obtained in another manner before protective services can be provided.

When there is no legal surrogate decision maker to give consent, protective services court orders provide a legal mechanism for quick, short term intervention when a disabled adult who lacks the capacity to consent to services needs protection. These orders are especially appropriate to use when an adult's lack of capacity results from a condition which may be corrected or improved through the provision of protective services.

Legal orders authorizing protective services are discussed in the next sections.

a. Surrogate Decision-Maker Authorizes Protective Services

Surrogate decision makers are individuals who have been granted responsibility and are authorized to make decisions on behalf of the disabled adult. These could include Powers of Attorney and Legal Guardians. The type and scope of authority granted by these tools vary widely and are unique to the adult and their situation.

The DSS attorney shall review the document to ensure the scope of powers granted therein are appropriate to authorize the surrogate

to consent to protective services. For example, a healthcare power of attorney may not authorize the attorney-in-fact to consent to financial transactions necessary to protect the disabled adult (see Appendix E for types of Surrogate decision makers).

If the surrogate decision maker accepts protective services, they must provide clear documentation of their authority as well as sign the DSS-5027. A copy of the signed 5027 shall be provided. If the surrogate decision maker is not acting in a manner consistent with their authority this should be discussed with the agency attorney to determine what steps, if any, need to be taken.

b. Protective Services Order Authorizes Protective Services

A protective services order may be an appropriate tool to gain service authorization when:

- the disabled adult needs protective services and lacks capacity
- the disabled adult has not designated a surrogate decision maker, or the designated surrogate decision-maker is unable or unwilling to authorize protective services
- protective services are needed but an emergency does not exist

In preparation to petition the court for an order authorizing the provision of protective services, the agency must document the facts, which show that:

- the disabled adult is being abused, neglected, or exploited and
- the adult lacks the capacity to consent to such services

To obtain a protective services order, the agency must file a Petition for Order Authorizing Protective Services AOC-CV-770 in district court. The petition specifies the type of order needed. Once the petition is filed, notice is served on appropriate parties, including the adult, before the hearing.

The court will schedule a hearing within 14 days after the petition is filed. The disabled adult must receive at least five days' notice of the hearing. The disabled adult has the right to be present and represented by counsel at the hearing. If the judge determines that the adult lacks the capacity to waive the right to counsel, the court shall appoint a guardian ad litem. If the person is indigent, the cost of representation shall be borne by the State. [G.S. 108A 105(b)]

If the district court judge finds clear, cogent and convincing

evidence at the hearing that the disabled adult is in need of protective services and lacks the capacity to consent he may issue an Order Authorizing Protective Services AOC-CV-773. The order may include the designation of an individual or organization to be responsible for the performing or obtaining of essential services on behalf of the disabled adult or otherwise consenting to protective services on their behalf.

Within 60 days the court will conduct a review of the disabled adult's situation. The initial 60-day period can be extended for an additional 60 days if good cause is shown. Within 60 days from the appointment, the court will conduct a review to determine if a petition should be initiated in accordance with G.S. 35A.

The agency's authority to provide protective services by court order ends with the expiration of the 60- or 120-day period specified in the court order. The

agency has no authority to continue its involvement with the adult after this period unless the court review indicates that a guardianship petition should be initiated or unless the adult consents to the continued provision of services.

c. Emergency Order Authorizes Protective Services

An emergency protective services order may be an appropriate tool to gain service authorization when there is an urgent need requiring intervention. Upon Petition for Order Authorizing Emergency Protective Services AOC-CV-770 by the director, the court may order the provision of emergency services to a disabled adult after finding there is reasonable cause to believe that:

- a disabled adult lacks capacity to consent and is in need of protective services
- an emergency exists; and
- no other person authorized by law or order to give consent for the disabled adult is available and willing to arrange for emergency services

An emergency is a situation where:

- the disabled adult is in substantial danger of death or irreparable harm if protective services are not provided immediately
- the disabled adult is unable to consent to services
- no responsible, able, and willing caretaker is available to consent to emergency services; and
- there is insufficient time to utilize procedures for

a regular order authorizing protective services

The court shall order only such emergency services as are necessary to remove the conditions creating the emergency. If such services will be needed for more than 14 days, the director shall petition the court in accordance with General Statute.

"Emergency services" are services necessary to maintain the person's vital functions and without which there is reasonable belief that the person would suffer irreparable harm or death. This may include taking physical custody of the disabled person.

The petition for emergency services shall set forth:

- the name, address and authority of the petitioner
- the name, age and residence of the disabled adult
- the nature of the emergency
- the nature of the disability if determinable
- the proposed emergency services
- the petitioner's reasonable belief as to the existence of the conditions set forth in G.S. 108A 106(a); and
- facts showing the petitioner's attempts to get the disabled adult's consent to the services

Notice of the filing of such petition and other relevant information, including the factual basis of the belief that emergency services are needed and a description of the exact services to be rendered, shall be given to the person, to his spouse, or if none, to his adult children or next of kin, to his guardian, if any. Such notice shall be given at least 24 hours prior to the hearing of the petition for emergency intervention.

d. Ex-Parte Order Authorizes Protective Services

A Petition for Order Authorizing Ex-Parte Emergency Services AOC-CV-770 may be an appropriate tool to gain service authorization when there is an immediate need requiring intervention.

The court may issue an ex-parte upon finding:

- that the conditions specified for obtaining an emergency order [G.S. 108A 106(a)] exist
- there is likelihood the disabled adult may suffer irreparable injury or death if an order is delayed; and
- reasonable attempts have been made to locate interested parties and secure emergency services

from them or get their consent to the petitioner's provision of emergency services

The length of time for which the adult can go without service or treatment is the primary factor in determining whether an ex-parte order should be requested. If death or irreparable harm is expected to result within 24 hours unless services are provided, it is appropriate to request an immediate emergency order ex-parte.

Even when an emergency ex-parte order is issued, the petition and hearing process for emergency services, as described in this section, are to be followed. The petition for emergency services may be filed before or after the ex-parte order is issued, depending on the circumstances in each individual case.

The department of social services should notify the court of any persons who should receive a copy of the emergency ex-parte order. The names of such persons may be included in the petition for emergency services, if the petition is filed before the ex-parte order is issued.

The show cause notice in the emergency ex-parte order is included to give persons an opportunity to present to the court objections to the order, or reasons that the order should be terminated. This is particularly important as the ex-parte order is issued without notice and without a hearing that would otherwise provide opportunity for persons to present to the court any objections or concerns about the petition for protective services.

In an emergency ex-parte order, the department may be asked to draft the order for the court and should be prepared to ask the agency attorney to do so.

The ex-parte emergency order shall contain a show cause notice to each person upon whom served, directing such person to appear immediately or at any time up to and including the time for the hearing of the petition for emergency services, and show cause, if any exist, for the dissolution or modification of the said order.



ADULT PROTECTIVE SERVICES MANUAL

VII. Planning and Mobilizing Essential Services

VII. Planning and Mobilizing Essential Services

A. General Statute Related to Planning and Mobilization

§ 108A-101 Definitions.

(i) The words "essential services" shall refer to those social, medical, psychiatric, psychological or legal services necessary to safeguard the disabled adult's rights and resources and to maintain the physical or mental well-being of the individual. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, and protection from exploitation. The words "essential services" shall not include taking the person into physical custody without his consent except as provided for in G.S. 108A-106 and in Chapter 122C of the General Statutes.

(n) The words "protective services" shall mean services provided by the State or other government or private organizations or individuals which are necessary to protect the disabled adult from abuse, neglect, or exploitation. They shall consist of evaluation of the need for service and mobilization of essential services on behalf of the disabled adult.

§ 108A-108. Payment for essential services.

At the time the director, in accordance with the provisions of G.S. 108A-103 makes an evaluation of the case reported, then it shall be determined, according to regulations set by the Social Services Commission, whether the individual is financially capable of paying for the essential services. If he is, he shall make reimbursement for the costs of providing the needed essential services. If it is determined that he is not financially capable of paying for such essential services, they shall be provided at no cost to the recipient of the services.

B. Administrative Code Related to Planning and Mobilization

10A NCAC 71R .0101 SOCIAL SERVICES BLOCK GRANT FUNDED SERVICES

The following services may be reimbursed with Social Services Block Grant Funds:

- (1) adjustment services for the blind or visually impaired;
- (2) adoption services;
- (3) adult placement services;
- (4) child care services;

- (5) children and adults needing mental health, developmental disability or substance abuse services;
- (6) community living services;
- (7) day care services for adults;
- (8) delinquency prevention services;
- (9) employment and training support services;
- (10) family planning services; family preservation services;
- (11) family support services;
- (12) foster care services for adults;
- (13) foster care services for children;
- (14) health support services;
- (15) home health services (includes skilled nursing, physical therapy, speech therapy, occupational therapy, medical social services and nutrition care);
- (16) housing and home improvement services;
- (17) individual and family adjustment services;
- (18) in-home aide services;
- (19) in-home aide services for the blind;
- (20) intensive family preservation services;
- (21) personal and family counseling;
- (22) preparation and delivery of meals;
- (23) problem pregnancy services;
- (24) protective services for adults;
- (25) protective services for children;
- (26) residential treatment for the emotionally disturbed;
- (27) respite care services;
- (28) transportation services; and
- (29) youth services.

10A NCAC 71R .0103 MANDATED AND OPTIONAL SERVICES

- (a) The following services funded with Social Services Block Grant funds shall be made available in each county. These services are:
- (1) adjustment services for the blind and visually impaired;
 - (2) adoption services;
 - (3) child care services;
 - (4) in-home aide services for the blind;
 - (5) family planning services;
 - (6) adult placement services;
 - (7) foster care services for adults;
 - (8) foster care services for children;
 - (9) health support services (sterilization component is optional);
 - (10) individual and family adjustment services;
 - (11) in-home aide services;
 - (12) protective services for adults;
 - (13) protective services for children.

- (b) With the exception of those mandated services specified in Paragraph (a) of this Rule, all other services are optional for purposes of the Social Services Block Grant.

10A NCAC 71R .0505 MAXIMUM INCOME LEVELS FOR SERVICES

- (a) Sixty Percent of the Federal Poverty Guidelines. An individual whose income unit's gross monthly income is less than 60 percent of the Federal Poverty Guidelines as published annually in the Federal Register by the U.S. Department of Health and Human Services (HHS) is eligible for transportation services or the federally funded sterilization resource item of health support services funded under the Social Services Block Grant (Title XX) if available in the county in which (s)he lives.
- (b) Eighty Percent of the Federal Poverty Guidelines. An individual whose income unit's gross monthly income is less than 80 percent of the Federal Poverty Guidelines is eligible for the federally funded sterilization resource item of health support services if available in the county in which (s)he lives and if conditions for payment as set out in 10A NCAC 71J .0105 have been satisfied.

10A NCAC 71R .0915 PROTECTIVE SERVICES FOR ADULTS

- (a) Primary Service. Protective services for adults are services provided to correct or prevent further abuse, neglect, exploitation or hazardous living conditions of individuals 18 years of age or older or lawfully emancipated minors who are unable to manage their own resources, carry out the activities of daily living or protect their own interests. Services include acceptance and evaluation of reports of the need of individuals for protective services; planning and counseling with such individuals and their relatives or caretakers to identify, remedy or prevent problems which result in abuse, neglect or exploitation; assisting in arranging for appropriate alternate living arrangements in the community or in an institution; and arranging for the provision of medical, legal and other services as needed and appropriate. Also included are assistance in arranging for protective placement, guardianship or commitment when needed as part of the protective services plan, and carrying out the duties of guardian or representative payee when part of a protective services plan; and the provision of medical and psychological diagnostic studies and evaluations where needed to substantiate and assess the circumstances of abuse or neglect. At its option, the county may provide advocacy, including legal services, to assure receipt of rights and entitlements due to adults at risk, and services of lawyers to represent the agency where court action is necessary to protect adults.
- (b) Components. None.
- (c) Resource Items. None.

(d) Target Population. "Disabled" adults (18 years or older or lawfully emancipated minor) who are unable to manage their own resources, carry out activities of daily living, or protect their own interests.

C. Social Work Practice Related to Service Authorization

Protective Services consists of a thorough evaluation, case decision, capacity decision, authorization of services, and then mobilization of essential services on behalf of the disabled adult if the need for protection has been substantiated. The DSS, without delay, shall develop and move forward with a plan in mobilizing services necessary for the protection of the disabled adult. Essential services are defined by statute as those social, medical, psychiatric, psychological or legal services necessary to safeguard the disabled adult's rights and resources and to maintain the physical or mental well-being of the individual.

Essential services include but are not limited to:

- provision of medical care for physical and mental health needs
- assistance in personal hygiene
- food
- clothing
- adequately heated and ventilated shelter
- protection from health and safety hazards
- protection from physical mistreatment; and
- protection from exploitation

Essential services shall not include taking the person into physical custody without his consent, except as provided for in G.S. 108A-106 and in Chapter 122C of the General Statutes.

1. Development of a Service Plan

Careful development of a DHHS-AS-0011 Service Plan is critical in providing the necessary protection to the disabled adult. The goal of the service plan is to improve adult safety, prevent ongoing maltreatment, and improving the disabled adult's quality of life. The plan should flow from the evaluation. The adult's and family's strengths, goals, concerns and areas for change identified in each functional area during the evaluation should be addressed in the service plan.

The plan should be person-centered in addressing the protective service needs of the adult. The adult should participate to the fullest extent possible and should also participate in the implementation of the plan. People identified by the disabled adult, which could include family or other informal supports, should also be involved in service planning and implementation. Each person designated in the plan should be knowledgeable of their roles and responsibilities in the

implementation of the protective services plan.

APS is a short term, crisis-oriented service. The service plan should contain goals that address the need for protection and are SMART (specific, measurable, achievable, realistic, and time limited.)

A wide range of services should be considered when developing an APS plan. They can vary from nursing home placement to in-home services to home delivered meals. The goals which are included in the plan will vary according to factors such as community resources available and the adult's personal needs and choices. Services will also include the social worker's efforts with the adult such as problem solving or counseling with the adult and their family.

Protection should be provided on a continuum ranging from a very restrictive plan, such as placement, to a less restrictive plan, such as provision of in-home aide services several days per week. Often a compromise must be reached between the level of protection the agency considers optimal and the level of protection the disabled adult is willing to accept.

Some of the basic principles which are important in service planning include:

- respecting the integrity and authority of adults to make their own life choices
- holding the perpetrators, not the disabled adult, accountable for the maltreatment
- taking into consideration adults' concepts of what safety and quality of life mean
- recognizing resilience and honor the strategies that the disabled adult has used in the past to protect themselves; and
- redefining success—success is defined by the adult; not what professionals think is right or safe (National Adult Protective Services Association, 2013)

In addition, for development of the service plan include the following four recommendations:

- identify with the disabled adult the factors that influence intervention risk and needs
- engage the disabled adult and caregiver as appropriate in an ethical manner with useful strategies to develop mutual goals to decrease risk of maltreatment
- determine with the disabled adult and other reliable sources (such as family members, friends and community partners) the

appropriate interventions that may decrease risk of maltreatment; and

- in some cases, the use of a proper Domestic Violence Safety Planning tool is warranted. (National Adult Protective Services Association, 2013)

Once a service plan has been developed, it must be documented. Documentation should include:

- the strengths and resources identified during the evaluation;
- goals for each problem area;
- a list of activities which must be completed to reach the goals
- identification of individuals to complete each activity (the social worker, the adult, etc.); and
- a time frame for completion of each task

2. Provision of Essential Services

Adult protective services should be a shared community responsibility. Services from other agencies should be included in the plan as much as possible, and other community professionals should be involved in the development of the plan and in the provision of services. Use of a multidisciplinary team to develop and implement a service plan is ideal.

While there is a consensus in most local communities as to the importance of serving abused, neglected and/or exploited adults, weak interagency coordination can inhibit priority attention to this population. DSS should take the lead role as services' coordinator for assuring that appropriate essential services for APS disabled adults in need of protective services are obtained and that these individuals receive priority status for the receipt of those services.

Procedures within the department of social services shall be developed that will enable these disabled adults to receive essential services from the agency on a priority basis. These may include, but are not limited to, adult day services, placement services, transportation, and in-home aide services. Referrals should stipulate that the disabled adult is receiving adult protective services.

These disabled adults shall be given priority status for services when it can be demonstrated that the service is essential to prevent further abuse, neglect or exploitation or to stabilize their ability to function without utilizing more restrictive alternatives such as placement resources.

When another agency is involved in providing essential services, confidentiality becomes a concern. It is acceptable to share information about the adult's condition or situation with the other agency to facilitate service provision. However, the APS social worker should only share the specific information that is needed by the other agency.

While it is strongly recommended that all disabled adults receiving adult protective services receive essential services on a priority basis, policies for serving these older disabled adults on a priority basis have been established for community service providers who receive Home and Community Care Block Grant funds.

The NC Home and Community Care Block Grant Manual states, that once community service providers have determined that individuals meet the eligibility criteria for a given service as specified in the service standard, individuals must be served on a priority basis, the first priority is: "Older adults for whom the need for Adult Protective Services has been substantiated by the local department of social services and the service is needed as part of the adult protective service plan."

When referrals are made for older disabled adults to in home and community-based services which are funded by the Home and Community Care Block Grant the social worker should provide the service provider with information that the disabled adult is receiving adult protective services. This is to help ensure priority for the receipt of these services.

3. Payment for Essential Services

If it is determined, after a thorough evaluation, that a disabled adult is financially capable of paying for essential services necessary for their protection, the disabled adult should be responsible for payment of those services. The disabled adult must consent to the payment of services. For persons who are determined able to pay and have capacity to consent to services, refusal to pay for services subject to cost sharing should not be considered as a refusal of services. Refer to Consumer Contribution Manual. If the disabled adult does not consent to the payment of services or if the disabled adult is not financially capable of paying for essential services necessary for their protection, the DSS shall be responsible for payment of those services to provide the necessary protection, per The Requirements for the Provision of Social Services Manual. This means that the agency should always provide the needed

services, or arrange for their provision first, and then request appropriate reimbursement from the adult for agency funds expended in the provision of such services.

For essential medical services, an individual is deemed financially incapable of paying if he meets the eligibility criteria for Title XIX-Medicaid. Essential medical services must be provided at no charge to a Medicaid eligible person, whether or not the needed services are available under Medicaid.

When an adult who is determined financially able to pay, lacks the capacity to consent to services and has no one legally authorized to act for him/her, the agency should consider petitioning for appointment of a guardian. A guardian could be authorized to manage the adult's resources and reimburse the agency for the cost of providing needed services. See the Guardianship Manual.

If a caretaker who controls a disabled adult's funds refuses to allow such funds to be used to pay for essential services, such refusal may constitute abuse, neglect or exploitation or may constitute caretaker interference.

Situations that constitute a conflict of interest for an agency receiving an APS referral require the evaluation be conducted by another county DSS. The county conducting the evaluation acts as the case manager; providing protective services in coordination with the county of residence. The county of residence is responsible for paying for essential services and any expenses for medical, psychological or other examinations and legal services incurred by the county conducting the evaluation.



ADULT PROTECTIVE SERVICE MANUAL

VIII. Reassessment and Termination

VIII. Reassessment and Termination

A. General Statute Related to Reassessment and Termination

None as it relates to Reassessment and Termination

B. Administrative Code Related to Reassessment and Termination

10A NCAC 71R .0603 BASIS FOR DENIAL OR TERMINATION OF SERVICES

a. Reasons for denial of an application for services and reasons for the termination of services include the following:

- (1) The individual has failed to cooperate with the agency in determining (or redetermining) eligibility;**
- (2) The individual cannot be located to allow for determination (or redetermination) of eligibility;**
- (3) The individual has been determined to be not eligible for the services requested on the basis that (s)he does not meet (or because of changing circumstances, no longer meets) the conditions of eligibility for the program funding sources under which the service is provided or the definition of the target population for receipt of the service;**
- (4) The service is not available in the county in which the individual has legal residence;**
- (5) The service will not be available in sufficient time to ensure its prompt provision, as set forth in Rules .0802 and .0803 of this Subchapter;**
- (6) The agency has exhausted its funds for the provision of the service for that program year;**
- (7) The individual has notified the agency that (s)he no longer wants or needs the service;**
- (8) The agency has determined that the individual is no longer able to avail himself/herself of the service because (s)he has moved to another county or has been admitted to an institution;**
- (9) The individual has failed to utilize the service or to cooperate in service delivery;**
- (10) The individual is residing in a facility or institution and the**

funding source prohibits provision of the service to clients in facilities or institutions; and

(11) The individual fails to meet any other conditions set forth in rules in Chapters 70 and 71 of this Title governing delivery of the service.

b. The agency must document the basis for denial or termination of services on the notice to the client, except in cases where notice is not required as set forth in 10A NCAC 67A .0202.

10A NCAC 71R .0606 QUARTERLY REVIEW

a. The agency shall review and document the client's situation and service plan at least quarterly from the date of application except for clients whose only service(s) is (are):

- (1) transportation;**
- (2) child care;**
- (3) foster care;**
- (4) adoptions; and**
- (5) housing and home improvement.**

b. The agency shall conduct the review in the month it is due. The month the quarterly review is due is determined by the month in which the application was made.

c. The agency must label and date the quarterly review in the record.

C. Social Work Practice Related to Reassessment and Termination

APS is a crisis-oriented service and the adult's situation should be stabilized as quickly as possible. While providing protective services, cases should be reassessed constantly to determine if the need for protection still exists. For example, if the plan involves significant change for the adult, such as provision of in-home aide services, attendance at adult day care, or placement into a new residence the case should remain open long enough to determine that the service plan is providing effective protection to the disabled adult.

Mobilization of protective services has no set time limits but protection shall be provided as quickly as possible. If the case remains open at 90 days, from the date SIS Code 204 services were opened, then a quarterly review shall be completed.

There will be times that some disabled adults never reach a stable point in their

lives. These cases should not be kept open for APS indefinitely. Once an adult no longer has a need for protective services the case should be transferred to another service, such as Individual and Family Adjustment, for ongoing follow up.

When closing a case, it is recommended to use a systematic method. The criterion for case closure should include, but are not limited to:

- safety issues have been resolved or mitigated
- the adult's situation is stabilized
- referrals have been made to appropriate resources and followed up on
- goals of the adult have been attained and documented on the service plan
- the adult has moved out of the county's jurisdiction
- the adult having capacity to consent refuses continued services
- Steps in terminating the APS case when an adult has consented:

the social worker and supervisor shall staff to determine if the adult's need for protective services is resolved and agree that termination of protective services is appropriate

- the social worker shall then visit the disabled adult (and contact other support members such as family or service providers) to review the service plan and make referrals to other services if applicable
- the social worker shall notify the adult that the need for protection no longer exists and that APS is being terminated
- the social worker shall provide the adult with a 10-working day notice of termination via the DSS-5027- refer to the Requirements for the Provision of Services Manual Termination Process
- if other service providers have been involved as part of the implementation of the service plan and are to remain involved, they should be notified that the case is being closed for APS
- staff shall ensure all notifications and documentation are complete
- staff shall close SIS Code 204 services on the DSS-5027

Steps in terminating the APS case when a court order is involved:

- prior to the expiration of the court order authorizing protective services the social worker and supervisor shall staff to determine if the adult's need for protective services is resolved and agree that termination of protective services is appropriate
- the social worker shall then visit the disabled adult (and contact other support members such as family or service providers) to review the service plan and make referrals to other services if applicable
- the social worker shall inform the adult (or family member) of the expiration date of the court order authorizing protective services and the intent to terminate the APS case
- staff shall consult with the agency attorney about their recommendation for termination of protective services provided via court order

- staff shall ensure the court order has been dismissed and that all documentation is complete
- staff shall close SIS Code 204 services on the DSS-5027.



ADULT PROTECTIVE SERVICES MANUAL

IX. Special Circumstances

IX. Special Circumstances

A. Conflict of Interest

When a report is received alleging abuse, neglect or exploitation by a social services board member, department of social services staff member, county commissioner, or the county manager, this constitutes a conflict of interest for an agency receiving an APS referral and will require the evaluation be conducted by another county DSS. Upon receiving a report, if the county determines the report constitutes a conflict of interest, the county receiving the report shall screen the report promptly and without delay. The county department shall contact the Division of Aging and Adult Services listserv at DHHS.Adultservices@dhhs.nc.gov for assignment of the report. Guidance on contacting the listserv can be found in Dear Director Letter AFS-09-2012. Also, please refer to Appendix C, "Conflict of Interest Protocol." The county conducting the evaluation acts fully as the case manager; evaluating all six domains thoroughly, making the case decision, making the capacity decision and providing protective services in coordination with the county where the adult lives. The county where the adult lives is responsible for paying for essential services and any expenses for medical, psychological or other examinations and legal services incurred by the county conducting the evaluation.

If the evaluation substantiates the report, the agency that conducted the evaluation will seek authorization for services, including petitioning the court when necessary. The petition shall be filed in the county where the adult lives and shall include the reason for filing by an agency in another county.

When a county conducts an evaluation for another county and the report is unsubstantiated, the DHHS-AS-0009 Written Report of APS Evaluation may be used to meet the requirement that a referral be made back to the county of residence. It should contain recommendations for services or referrals that the disabled adult needs or has requested. The Written Report may also contain information to indicate that further services were not needed or that the disabled adult refused services.

If a referral for services is indicated, the county that conducted the evaluation should include with the Written Report any assessment summaries or other information that would be beneficial to the county of residence. The county of residence would then be better able to appropriately provide or obtain needed services in a timely manner.

It is not necessary for the county of residence to know all of the specific findings of the evaluation in order to be able to offer other appropriate services. Examples of specific findings that might not need to be shared include medical or mental health evaluations conducted as part of the APS evaluation, details of financial records or other details about the family situation. If the county conducting the

evaluation has received the disabled adult's consent for the release of information, then all information except for the name of the complainant and the collateral contacts may be shared.

B. County of Residence/County of Location

As stated in General Statute definition, 108A-101 (c), the county DSS responsible for protective services is the county DSS where the adult "resides or is present." Residence shall be defined as where the adult resides. Refer to the Requirements for the Provision of Services Manual for definition of residence. *Note: the county of residence shall be referenced in this section as COR.

Questions to guide counties in determining residence:

- What does the reporter state is the adult's address at the time of intake?
- Is the adult located in a place other than the address of their residence? (i.e. hospital)
- Is the adult homeless or transient?
- Has the adult been discharged from a facility and an alternative facility has not been named? It is possible that an adult is located or present in a county other than the county in which they reside. The county of location shall be referenced in this section as COL. Based on statutory definition the COR and the COL share the responsibility for protective services for a disabled adult in their county.

The APS report can be received by either county. The county receiving the report shall screen the report without delay, based on the three APS criteria. The county of residence is responsible for directing and ensuring that the APS process is carried out, including initiation, evaluation, and case decision.

Guidelines when the report is received by the COL:

- COL will screen the report
- COL will immediately notify the COR of the screened in report
- COL will initiate the report if requested by the COR and will comply with all APS timeframes *Note: If there is an emergency the COL will initiate immediately while concurrently notifying the COR of the report
- The COL shall continue to cooperate with the COR's directives and provide information about the evaluation to the COR
- The COR is responsible for the case decision and for filing petitions. Responsibility does not vary depending on the type of legal action needed

Guidelines when the report is received by the COR:

- This procedure is based on 10A NCAC 71A .0701 and the DSS can refer to Appendix D for specific procedures. The disabled adult's COR is responsible for the case in its entirety, including the assignment of the SIS number, initiation, evaluation, case decision and mobilization of protective services. If the disabled adult's COR cannot be determined, or the adult is homeless, the COL assumes

all responsibilities.

C. Movement During the APS Process

There are times during the APS process the adult may move. Movement can have multiple meanings and can be temporary or permanent. Addressing movement will depend on where the social worker is in the APS process.

1. Temporary movement during the APS Process

Temporary movement is when an adult has not established residency in an alternate county, and they are only temporarily located elsewhere. This could be a short-term hospital admission or visiting family and friends etc. The county of residence shall continue the APS process regardless of where the adult is temporarily located. Staff from the county of residence may choose to visit the adult where they are temporarily located or may request assistance from the alternate county. If the social worker elects to visit the adult in the alternate county it is recommended that the county of residence inform the alternate county that a visit is being conducted.

2. New residence established during APS evaluation

When the social worker has confirmed during the evaluation, that the adult has moved and established residency in another county, the social worker shall make a case decision based on the information gathered to that point. If the information confirms maltreatment the social worker shall document these findings in the case decision. However, the case would be unsubstantiated because protective services cannot be provided if the adult is no longer in the county conducting the evaluation. Based on these findings an APS report should be made to the new county of residence without delay.

3. New residence established after a substantiated case decision but prior to consent to services.

The adult has established a new county of residence after the case decision has been made, but prior to obtaining consent to services, the DSS shall document confirmation of the adult's new county of residence and make an adult protective services report to the adult's new county of residence without delay. The report should include relevant information obtained during the evaluation which supports the alleged need for protection.

4. New residence established after consenting to protective services

If a disabled adult has established residency in an alternate county after consenting to the provision of protective services and no court order is involved, the DSS providing protective services shall ask the disabled

adult to consent for information to be shared with the DSS in the new county of residence. If the adult consents, the DSS shall notify the new county of residence of the disabled adult's protective service needs without delay. The DSS in the new county of residence shall contact the disabled adult to determine whether protective services continue to be needed and, if so, if the disabled adult consents to their provision. If the adult does not consent, the DSS providing protective services shall not share information with the DSS in the new county of residence. *Note: If the original DSS still believes that the adult is in need of protection, the law requires a report be made to the DSS in the new county of residence.

5. Movement of adult while providing protection through a court order

If the DSS in the original county of residence has been providing protective services under a court order, the DSS shall file a motion in the court to be relieved of responsibility because the disabled adult has established residency in another county. (*Note: court orders are typically only valid where the order was issued.) The DSS shall make a protective service referral to the DSS in the new county of residence. The DSS in the new county of residence shall evaluate the adult's current situation to determine whether protective services are needed and, if so, shall request authority to provide services in accordance with policies contained in this manual. When considering dismissing protective services orders it is essential the agency attorney be consulted.

D. Repeated Reports Regarding the Same Adult

According to General Statute 108-103 all APS reports must be received and screened. This is critically important in situations of repeated APS reports on the same adult. This requirement applies to disabled adults who may already have an existing APS evaluation (SIS code 202) or mobilization and planning services (SIS code 204). If the report meets the three APS criteria, it must be screened in and initiated within timeframes.

Guidelines for receiving multiple reports:

- All information received alleging abuse, neglect, or exploitation must be taken as an APS report.
- All APS reports must be screened based on information provided by the reporter.
- All APS reports screened in must be initiated within assigned timeframes (this applies to adults at any point in the APS process.)
- All screened in APS reports must be evaluated and the case decision made within statutory timeframes of 30 days for abuse and neglect and 45 days for exploitation.

If the DSS is conducting an APS evaluation (202) and receives additional reports on the same disabled adult:

- Screen each report based on the three APS criteria and assign the initiation time frame as applicable.
- If the report is screened in, it must be initiated within the assigned timeframe, and the following actions taken:
 - All allegations for each report must be addressed in the evaluation process.
 - If the allegations from multiple reports can be addressed within the assigned timeframe of the initial report, one case decision may be made for all reports evaluated concurrently.
 - If all allegations cannot be addressed for all reports within the assigned timeframe of the initial report, multiple case decisions may be made based upon the case decision time frame of each report.

If the DSS is providing APS mobilization and planning (204) and receives additional reports on the same disabled adult, screen each report based on the three APS criteria and assign the initiation time frame as applicable. If the report is screened in, then SIS code 202 will be opened on the DSS-5027 and begin the evaluation. Note: It is possible to have 202 and 204 services open for the same disabled adult at the same time.

E. Natural Disasters/Emergency Operations

It is recommended that each county DSS has a set of internal policies established with guidelines and procedures for APS and individuals under guardianship. Each county DSS should have clear guidelines and procedures that clearly outline the role of APS supervisors and workers in the event of emergencies in the community, such as natural disasters (e.g. hurricanes, flooding, earthquakes, severe storms), violent attacks, or other states of emergency. It is recommended that these policies address the following phases:

1. Planning for Emergencies Before They Occur:

- through multi-agency planning and coordination, understanding the role of APS and guardianship, as well as the potential resources and limitations of partnering agencies;
- by establishing data systems capable of adequately tracking disabled adults who may be affected by emergencies; (have a master index of all APS disabled adults and individuals under guardianship) Note: If the master index is kept electronically a printed copy may be beneficial in case of power outages;
- by establishing a clear chain of command, base of operations, and means to communicate with social workers;
- by creating clear lines of communication and responsibility with first responders, Neighborhood Emergency Response Teams, Red Cross, etc. before the emergency has occurred; and
- by training social workers on emergency preparedness for when in the office and when out in the field.

2. Responding During the Emergency:

- Social workers shall not be required to respond to a situation that would put the worker or his/her family at risk; (contact emergency personnel)
- Social workers shall understand the changing nature of emergencies and demonstrate flexibility of attitude and approach; workers should be clear what their role is and is not during emergencies; and
- by providing all APS and guardianship personnel with emergency personal protection (e.g., filtering masks, gloves) and emergency equipment (e.g., flashlights, two-way radios), as needed, to safely carry out their assigned duties.

3. Post Disaster Follow-up:

Social Workers should check on individuals under guardianship and APS disabled adults to ensure safety and provide any necessary referrals or supports.

Please remember it is the county DSS's responsibility to identify, locate and continue availability of services for APS disabled adults and individuals under guardianship who are displaced or adversely affected by a disaster; and respond to new APS cases in areas adversely affected by a disaster, and provide services in those cases. Please refer to NC GS 35A and 10A for statutory responsibilities. The Adult Services Listserv will be available during normal hours for county DSS's and NC 2-1-1 may also be a resource where a trained call specialist can assist with finding available human services resources in your area.

F. Reporting Abuse, Neglect and Exploitation in DHHS Divisions, Facilities and Schools

Authority: G.S. 143B-10; G.S. 7B, Subchapter I; G.S. 108A, Article 6; G.S. 122C-66 Directive III-5 states that reports will be made to the county DSS in which the facility is located if the mistreatment occurred therein, or to the local DSS where the disabled adult resides if it occurred during a home visit. A contact person may be assigned at a DHHS facility in order to expedite required notifications to management or reports to the county DSS and to act as liaison with the DSS.

Determination of the scope, procedures, information necessary to evaluate the report, or services needed is within the discretion of the county DSS. All DHHS staff are required to cooperate fully with the DSS in all aspects of the evaluation. When the evaluation is completed the chief administrative officer or designated contact person is required to request the adult protective services worker to promptly conduct an on-site review of the findings of the evaluation, followed by a written report of these findings. The report to the administrator should be completed in all situations involving an APS evaluation in a state institution as

described in this manual. A meeting with staff of the institution should take place if the case is substantiated in order to plan protective intervention. Meetings to review findings in unsubstantiated cases are left to the discretion of the county DSS.

In substantiated cases, DSS should cooperatively work with the facility staff in establishing a plan for mobilizing essential services on behalf of the disabled adult to help reduce the risk factors contributing to the mistreatment.

Evaluations in State Operated Healthcare Facilities should follow the outlined steps for evaluations in this manual.

A working agreement between the Division of Aging and Adult Services and the Division of Mental Health/Developmental Disabilities and Substance Abuse Services is available.

This agreement outlines procedures for obtaining adult protective services for individuals requiring medical or surgical treatment that reside in any of North Carolina's state operated healthcare facilities.

G. Undocumented Persons

This guidance refers to DSS Administrative Letter No. Adult and Family Services 03-2002 Nonqualified Aliens and Adult Protective Services (excerpts below) which outlines the procedures counties are to follow related to Adult Protective Services for undocumented persons.

There are several points that should be understood when considering the provision of APS to nonqualified aliens. The policy guidance has been developed in collaboration with the NC Attorney General's Office and the School of Government and includes the county DSS's statutory responsibility to respond to APS reports and the limitations placed on public benefits to non qualified aliens by federal law. The policy guidance has been discussed and supported by the Adult Services Committee and the Executive Board of the NC Association of County Directors of Social Services.

County DSSs must accept all reports alleging that an abused, neglected or exploited disabled adult is in need of protective services regardless of the disabled adult's alleged immigration status. Various federal civil rights laws and regulations prohibit discrimination by governmental entities on the basis of race, color, national origin, gender, religion, age or disability, and failure to accept these reports may constitute discrimination. The APS screening process is the same for undocumented persons as it is for all other reported situations; the three screening criteria must still be alleged during the intake process.

County DSSs must evaluate all APS reports regardless of the alleged immigration status of the disabled adult. The APS statute requires county DSSs to evaluate reports, determine if protection is needed, and what essential services are

needed. This process remains the same for undocumented persons. The thorough evaluation and steps required by state law and policy must still be completed.

If a service eligibility is based on immigration status, a determination of immigration status must be made to aid in the assessment of eligibility for that service. This determination should be made by the eligibility unit for the particular service (e.g., Medicaid) and cannot be made as a means to discontinue the protective services evaluation. There are many categories of immigration status, and the adult may be eligible for some services or benefits, or may be found to be a qualified alien, permanent resident or citizen.

County DSSs must develop service plans in substantiated cases, regardless of the immigration status of the disabled adult and provide or arrange for services, if needed. The availability of resources in substantiated cases will depend on the adult's immigration status. Eligibility for some services is dependent upon the adult's classification as a citizen, qualified alien or nonqualified alien. Services should be provided according to the adult's citizenship or immigration status.

Nonqualified aliens are sometimes referred to as "undocumented" persons. It is important to note that some aliens who do not qualify for "Federal Public Benefits" may be "documented," i.e., they may be lawfully present in the United States but nevertheless be nonqualified. For example, an alien in the United States on a tourist visa would be documented, but nonqualified.

1. Services and Public Benefits

Citizens and qualified aliens are eligible for a broader range of public benefits than are nonqualified aliens. The largest group of qualified aliens are persons who are lawfully admitted for permanent residence in the United States or are permanently residing in the United States. However, there are other qualified groups such as refugees admitted for humanitarian reasons, persons granted asylum for religious or political reasons or persons determined by the U.S. Attorney General to be subject to persecution if they were to return to their country of origin. The Medicaid Manual at MA-2504 contains excellent guidance for determining immigration status. Any person who is not considered

a qualified alien will be considered a nonqualified alien for purposes of receiving public benefits.

2. Intent of Congress to Provide Public Benefits to Aliens

Nonqualified aliens are not eligible for federal, state or local benefits which often fund the services traditionally used to provide protection in APS cases. The Personal Responsibility and Work Opportunity Act of 1996 (PRWOA) limits the provision of services or benefits to nonqualified aliens living in this country. The intent of Congress in its passage of the PRWOA was to clearly state that "it continues to be the immigration policy of the United States that aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations". This Act further states that "it is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits".

3. Federal Public Benefits Defined

The PRWOA states that an alien who is not a "qualified alien" is not eligible for programs and services meeting the definition of a "Federal Public Benefit". A "Federal Public Benefit" is defined, in part, as "any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit or any other similar benefit for which payments or assistance are provided to individuals, households or families by a federal agency or through appropriated federal funds".

4. State and Local Public Benefits Defined

The PRWOA also restricts eligibility for state and local benefits to nonqualified aliens. The Act states that a nonqualified alien is not eligible for "State or Local Public Benefits". These are defined, in part, as "any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit, or other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government". An example of a State or local benefit for which a nonqualified alien is not eligible is State/County Special Assistance.

The PRWOA allows a state to provide state or local benefits to nonqualified aliens, but only through the enactment of a law subsequent to the PRWOA that affirmatively provides for such eligibility. The North Carolina General Assembly has not enacted such a law. Without such a law, states are prohibited from creating any benefits for nonqualified

aliens that would be similar to a federal, state or local benefit as defined in the PRWOA. This means state and local governments cannot use funds or create benefits that would replace those prohibited as "Federal Public Benefits". For example, if a nonqualified alien needs nursing home care and is ineligible for Medicaid because of his immigration status, neither the state nor county may create a fund to pay for his care in a nursing home.

5. U.S. Attorney General Exception for the Provision of Adult Protective Services

The U.S. Attorney General is authorized to establish limited exceptions to the provision of "Federal Public Benefits", including such services as soup kitchens, short-term shelter or housing for the homeless, community food banks, and programs for victims of domestic violence. This authorization included within its scope, programs or services that deliver

in-kind services at the community level, serve the purpose of protecting life or safety, and do not condition the assistance according to the individual's income or resources. In an order issued by U.S. Attorney General Janet Reno in 1996, she stated that the PRWOA did not "preclude aliens from receiving police, fire, ambulance, transportation, sanitation, and other regular, widely available services". She further specified that adult protective services were among the services determined to be necessary for the protection of life and safety. It should be noted that the concept of "protection of life and safety" has not been defined by Congress or any federal agency, and its scope is therefore ambiguous. Nevertheless, the term is generally thought to pertain to situations of a short duration.

When the federal requirements and exceptions described above are considered in conjunction with North Carolina's APS law, the resulting requirements are that DSSs must receive APS reports, complete evaluations, and develop protective service plans. Federal funding through SSBG and state funding through the State APS Fund may be used for the social worker's time spent on these functions for the protection of life and safety, and because APS is a service of short duration. Where problems may arise is in the provision of essential services traditionally utilized in substantiated APS cases. Since many of these services and benefits described below fall under the definition of a "Federal Public Benefit" and were not made exceptions by the Attorney General's 1996 order, nonqualified aliens are not eligible for them.

6. Programs and Services Considered to be Public Benefits

Programs such as SSI, Food Stamps and Medicare are among those

considered to be "Federal Public Benefits" and cannot be provided to nonqualified aliens. Services funded by the Social Services Block Grant and Medicaid are also "Federal Public Benefits" and cannot be provided to nonqualified aliens. The only exception to Medicaid is for the treatment of an emergency medical condition. This term is defined as "a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in (A) placing the patient's health in serious jeopardy, (B) serious impairment to bodily functions, or (C) serious dysfunction of any bodily organ or part".

Other programs and services used in APS cases that nonqualified aliens are not eligible for include: Food and Nutrition Services, the Independent Living Program, Low Income Energy Assistance Program, Medicare, Medicaid (CAP-DA, which first require Medicaid eligibility) and Special Assistance.

Obtaining guardianship of a nonqualified alien does not change, nor can it change, the adult's immigration status. Therefore, federal, state, and local public benefits are not available to the DSS for a nonqualified alien who becomes an individual under guardianship of the DSS or any other public agency.

Eligibility will need to be determined separately for each service or benefit needed for the essential services included in a protective services plan involving a nonqualified alien.

DSSs have the ability to determine immigration status as a part of eligibility for Medicaid and Food and Nutrition Services. Social workers and supervisors should utilize these resources within their agencies as part of the APS evaluation. The Social Security Administration may also be able to assist in determining an adult's immigration status. Once the adult's immigration status is known, eligibility for services and benefits can be determined.

7. Other Possible Resources

Resources for nonqualified aliens will obviously be limited. County DSSs should consider utilizing informal resources in substantiated APS cases such as religious or charitable organizations to plan and arrange for services to adults who are nonqualified aliens. The PRWOA exempts all charitable organizations from the requirement to verify the applicant's immigration status or citizenship. If the charitable organization provides services or benefits that require immigration status or citizenship to be verified, e.g., services funded by SSBG or Medicaid, nonqualified aliens are not eligible for these services. Most charitable organizations can be

identified through their federal tax-exempt status as a 501(3)c organization.

Other resources may include contacting the Embassy or Consulate of the adult's home country. Contacting the Immigration and Naturalization Service (INS) may also be a possible resource. An adult who is thought to be nonqualified may have had their status changed, for example, through some amnesty program. The INS may help to restore the adult's legal status making him eligible for certain benefits. Issues of deportation should be left up to the INS. Contacting an immigration attorney to assist with these cases and the various classifications of immigration status may also be useful. The INS may not always be aware of the serious and immediate nature of the burden placed on communities when nonqualified aliens need assistance and are not eligible for "public benefits." Cases involving nonqualified aliens will no doubt require greater coordination of resources and creativity in identifying and utilizing the limited available resources.

Questions about these cases may be directed to your Adult Programs Representative or the Adult Services listserv.

H. Veterans Administration Request for Patient Information

Once a County DSS receives a report, opens an evaluation, and needs records from the VA, a letter is required to be sent to the appropriate VA facility in order for necessary information to be disclosed to the County DSS. The provisions of Title 5 U.S.C.552a(b)(7) of the Privacy Act govern the disclosure of requested patient information from the Department of Veterans Affairs (VA). The information requested should be the minimum necessary for investigating suspected abuse, neglect, or exploitation of disabled adults for APS. The DHHS-AS-5337 Request for Patient Information for Veterans should be completed each time your agency requests any records from a VA Medical Facility and/or their associated Outpatient, or Community-Based Outpatient Clinic in NC. These Request for Patient Information letters will need to be issued from the Department of Health and Human Services, Division of Social Services.

DHHS has developed the following process to request identifiable Patient Information from VA facilities in NC upon the receipt of an abuse, neglect, dependency or exploitation report:

- County DSS staff complete and submit the DHHS-AS-5337 Request for Patient Information for Veterans form to the VA Listserv at: DHHS.VA.request.APS@dhhs.nc.gov via encrypted email.
- After receiving the completed form, an APR will obtain the required signature.
- The signed request will be forwarded to the appropriate VA agency and a courtesy copy sent to the county DSS Director associated with the request.

- VA agency receives the request and sends the requested information directly to the County DSS specified in the request letter form.
- The DSS may follow-up with a VA representative regarding any missing or delayed information



ADULT PROTECTIVE SERVICES MANUAL
**X. Legal Alternatives and Supplements to Adult
Protective Services**

X. Legal Alternatives and Supplements to Adult Protective Services

A. Introduction

There are times that adults, due to disability, are no longer able to manage their personal or financial affairs. In APS there are tools available that can be used to further or enhance the APS process. This section describes a range of legal proceedings and supplements including the process for obtaining civil commitments and guardianship, powers of attorney and advance directives such as living wills and representative payees. Each has a specific purpose and is only appropriate under certain conditions.

Adult Protective Services assists adults who are incapacitated by a disability and are in need of protective services. Adults may not have anyone able, willing, or responsible to assist them to meet their needs. It may be necessary to use a combination of the methods described in this section when providing protective services to a disabled adult and/or their families. The least restrictive method which will adequately meet the adult's needs for assistance and protection should be chosen.

B. Civil Commitments

All statutes pertaining to Civil Commitments can be found in Chapter 122C but are summarized by topic below.

G.S. 122C-211 and 122C-212: Voluntary Admission and Discharges. Competent Adults, Facilities for the Mentally Ill and Substance Abusers

Any individual in need of treatment for mental illness or substance abuse may seek voluntary admission at any facility by presenting himself or herself for evaluation to the facility. A facility may elect not to admit an adult if it determines that the adult does not need, or cannot benefit from, the care, treatment, habilitation or rehabilitation available and that the individual is not in need of evaluation by the facility. The facility shall give to the individual a referral to another facilities or facilities that can provide treatment.

G.S. 122C-231 to 122C-233 Voluntary Admission and Discharges. Incompetent Adults, Facilities for the Mentally Ill and Substance Abusers

Incompetent adults must be diagnosed as having a mental illness or a substance abuse problem and be in need of treatment as a requirement for admission. The legally responsible person appointed under G.S. 35A

acts on the incompetent person's behalf in applying for admission, consenting to treatment, and receiving legal notices. Incompetent adults are entitled to a district court hearing within 10 days of admission to the facility.

G.S. 122C-261 and G.S. 122C-262 Part 7 Involuntary Commitment: Facilities for the Mentally Ill

Addresses criteria for commitments and the procedures which must be followed for both inpatient and outpatient commitment of persons with mental illness and persons with substance abuse problems.

An individual may be committed involuntarily to a mental health facility if he is: mentally ill and either dangerous to self or dangerous to others, or in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.

(1) Procedure for IVC

Please refer to the information listed above for specific procedures as it relates to Involuntary Commitments on an inpatient basis. IVC law changed effective October 1, 2019. If the DSS needs to pursue an IVC the procedure is:

- Petition the clerk or magistrate.
- The petition shall include the facts on which the petitioner's opinion is based.
- If the petitioner has knowledge or reasonably believes that the disabled adult, in addition to having a mental illness, also has an intellectual disability, this fact shall be stated in the petition.
- Note: Jurisdiction under this subsection is the clerk or magistrate in the county where the respondent resides or is found.

(2) Social Work Guidance as it relates to Voluntary/Involuntary Commitments

A commitment can happen at any point during the APS process. The decision to seek commitment will be based on information available to the social worker.

During intake, when making a screening decision about whether a situation presents a need for commitment, all three of the APS screening criteria shall be applied. There may not be a need for protective services at this time if the adult in need of commitment to a mental health or substance abuse facility has sought voluntary admission or there is another able, willing and responsible person

who has sought admission for the disabled adult.

During evaluation, if it appears that an adult is a danger to themselves or others, the social worker can petition for an involuntary commitment. If a disabled adult has been admitted due to an IVC and will be in the hospital during the evaluation period, the social worker shall continue their evaluation to determine if there is a need for protection. This shall include speaking with collaterals, collecting medical records, and assessing all six domains. Upon completion of a thorough evaluation, a case decision shall be made based on the three criteria. If the case is substantiated and the disabled adult returns to the community, case planning should be coordinated with the LME and other responsible agencies in order to assure that the disabled adult is receiving appropriate services and is free from further maltreatment.

If the adult is hospitalized after an IVC for longer than 30 days, the protective services case should be unsubstantiated and closed. The agency shall inform the hospital or inpatient mental health facility to make another report upon discharge, if necessary.

DSS may need to work with the hospital and mental health agencies in arranging for services such as representative payee, guardianship, or other community services.

Forms pertaining to involuntary commitment proceedings can be found at NC Courts. It is important to note that an APS order cannot be used to place someone in a mental health facility [G.S. 108A-105(c)].

C. Guardianship Proceedings

Policies and Social Work Guidance Related to Guardianship can be found in the Guardianship Manual.

Guardianship may be an integral component of protective services for adults in that it is a mechanism for assisting incompetent adults with management of their affairs and preventing or alleviating situations in which personal well-being and/or property are threatened because of an inability to make decisions. This is one resource that may be considered in substantiated APS cases.

In substantiated APS cases consideration of whether to pursue an APS order or the appointment of a guardian should include:

- the long-term needs of the disabled adult;
- the urgency of the need;
- the expediency of the courts; and
- the type of court intervention which is the most appropriate for a

particular disabled adult

After completing a protective services evaluation in which it is determined that legal action is needed, there are two instances when guardianship may be the more appropriate alternative for providing protection in a substantiated APS case.

One instance is to provide authorization for essential services. When the evaluation indicates that the disabled adult may be incompetent and will need assistance with decision making for an extended period of time or needs assets protected, guardianship may be pursued. Consideration should be given to the time frame for the proceedings and whether the length of time will place the disabled adult in danger of further mistreatment.

Interim guardianship can sometimes be used to obtain service authorization depending on the circumstances and the information. Getting an interim guardian appointed can be beneficial if the disabled adult is believed to be incompetent and there is an imminent or foreseeable risk of harm to his/her physical well-being and/or assets requiring immediate intervention. It can also be used when the social worker believes that the disabled adult's incapacity is temporary i.e. the disabled adult suffered a mild stroke but is anticipated to fully recover their faculties.

Another instance is when services are authorized through an APS court order, but it is determined that an adult's incapacity or incompetency will be long term which warrants a modification of the protective services plan. When an adult protective services order has been obtained authorizing services for the disabled adult, it is recommended that a review be conducted to determine if a guardianship petition should be filed during or before one of the 60- day expiration dates of an APS order.

When a DSS decides to petition the court for guardianship to obtain service authorization, 202 is the most appropriate SIS code for all activities including filing the petition, the hearing, and the court case decision. Once authorization for protective services is obtained, 202 will be closed and service code 204 should then be opened on the 5027 to provide mobilization and planning.

D. Power of Attorney

Laws governing Powers of Attorney have been updated as of January 2018. A Power of Attorney (POA) is a document by which a competent adult (referred to as the principal) authorizes another designated person (referred to as the agent) to act for him/her and manage his/her affairs.

When presented with a Power of Attorney document, the agency shall consult with their agency attorney regarding the specifications and authorities granted to the agent.

Changes to the Power of Attorney laws can be found in G.S. 32A-1, Article 1.

If there is an APS report being made regarding mistreatment by an agent, the APS screening criteria should be applied before conducting a thorough evaluation to determine if the disabled adult is in need of protective services.

If a POA is inappropriately utilizing their authority, the POA may need to be revoked if the disabled adult is not incapacitated or incompetent.

If the disabled adult is thought to be incompetent or incapacitated, the social worker might consider petitioning for guardianship, since a guardian's authority supersedes the authority of an attorney-in-fact and the guardian can choose to have the POA revoked (except healthcare POA.) A healthcare POA should be revoked by the Clerk in the event that the healthcare POA is the perpetrator of the maltreatment for the disabled adult.

An APS order cannot legally revoke a power of attorney. However, the court can order essential services be obtained or provided by DSS. This may conflict with what the power of attorney has or has not provided or obtained to provide protection. It would then be up to the power of attorney to bring this to the attention of the court, if desired.

For example: if the POA has refused to appropriately place an adult and this is causing the adult to be abused, neglected or exploited, the APS order could allow

DSS to place the adult in a facility against the wishes of the POA.

It is often very difficult to prove that a POA acted outside the realm of the wishes of the adult. Courts find it difficult to prosecute or revoke a designated POA without due cause when the POA document gives unlimited authorization.

The lack of specificity in a POA document is often problematic. The limits on the authority of the POA over the person or the person's property are not always clear. It is important to read the POA document thoroughly and seek legal guidance to determine the scope of the POA's authority and whether they can consent to the provision of protective services.

E. Advance Directives

North Carolina has two methods for competent adults to communicate decisions about their medical care in the event they should become incapacitated or incompetent and no longer able to make these decisions for themselves or communicate their wishes. A "living will" is a written declaration of the individual's desire for a natural death. A health care power of attorney is a written document appointing another person to accept or refuse medical treatment in the event of incapacity. Not all states have laws providing for living wills or health care powers of attorney. Only documents prepared under North Carolina law are valid in this

state.

North Carolina G.S. 90 Article 23 recognizes, in part, as a matter of public policy that an individual's rights include the right to a peaceful and natural death, and that a patient or the patient's representative has the fundamental right to control the decision making relating to the rendering of the patient's own medical care, including the decision to have life prolonging measures withheld or withdrawn in instances of a terminal condition.

The living will or a Declaration of a Desire for a Natural Death allows the individual to make choices about withholding or discontinuing "extraordinary means" such as artificial nutrition or hydration in the event of terminal illness, incurable illness or a diagnosis of being in a persistent vegetative state.

The instructions in the living will cannot be used until the attending physician determines, and a second physician concurs in writing, that the individual's condition is terminal and incurable or diagnosed as a persistent vegetative state. The individual can revoke the living will at any time, but the revocation does not become effective until the attending physician is notified.

F. Substitute Payee

Individuals may need assistance with decisions regarding their finances. This may not constitute a need for protective services. It is important to appropriately apply the APS screening criteria to make this determination. There are different types of substitute payee. These include protective payee and representative payee. Requirements and procedures for appointment of a protective payee can be found in the Division of Social Services Work First Manual Section 205. G. S. 108A-37 addresses the procedures for obtaining personal representatives for mismanaged public assistance and G.S. 108A-38 addresses the procedures for protective and vendor payments. The Federal Statutory Requirements for Representative Payee can be found at: <http://ssa.gov/payee/faqrep.htm>.

The Written Report regarding an APS evaluation may be sent to federal, state and law enforcement agencies when the protective services evaluation indicates violations of statutes, rules or regulations enforced by these agencies. This would include federal or state administrative agencies (DHB, SSA, VA etc.) if evidence of exploitation occurs by someone acting as a representative payee for a disabled adult.

If an evaluation is conducted and the need for protective services is substantiated, goals of the APS case may include having a payee appointed by the federal agency administering the benefit payment (e.g. SSA or VA.) This payee may be DSS or another responsible person or agency. For example, when the disabled adult has been exploited because he was not able to manage his money, but can manage other aspects of his life, obtaining a representative payee may be the appropriate plan for this adult.



ADULT PROTECTIVE SERVICE MANUAL

XI. Provision of Services with Federal and State Funds

X. Provision of Services with Federal and State Funds

A. Introduction

The Requirements for the Provision of Services Manual describes the circumstances under which funds administered by the Division of Social Services may be used to support the provision of protective services for disabled adults. It includes the scope of activities which may be funded, as well as the disabled adult's eligibility criteria and required documentation.

B. Social Work Practice Related to the Provision of Protective Services for Disabled Adults

(1) Application

No written application for social services shall be required to initiate an evaluation to determine the need for protective services for adults. Although no application is required for protective services for adults, documentation which identifies the provision of the service and documents the date the service was initiated is done by completing the DSS-5027. For purposes of documenting the initiation of protective services, the date the agency receives the referral or APS report is viewed as the date of application.

A notice to the adult of action taken regarding eligibility decisions is not required for adult protective services. However, if other services are provided in conjunction with protective services, application must be made via the DSS-5027, including the applicant's or authorized representative's signature and date of signing. The notice of action taken is required which includes the adult's rights and responsibilities regarding the receipt of services.

(2) Documentation

A service record must be opened and maintained for each individual for whom an application for social services is made and for each recipient of protective services. Recipient service records must be documented and maintained in accordance with procedures set forth in the Requirements for the Provision of Services Manual. At the time of case termination case documentation should be complete and current.

Applications for social services must be maintained as part of the individual's services record for purposes of documentation in establishing the record for fiscal accountability and for purposes of prompt provision of services. Documentation of the continuing need for the service is made in the individual's record at least quarterly according to procedures established for the quarterly review in the Requirements for the Provision of Services Manual.

(3) Fees for Services

No fees are imposed for the provision of protective services for adults. In addition, services that are funded under the Social Services Block Grant that are needed in conjunction with protective services may be provided without regard to income and without a fee during the first 12 months that protective services are provided (12 months from the most recent protective services report) if it is documented that:

- such service is available in the county in which the individual lives;
- the agency has received a report pursuant to G.S. 108A-103;
- the agency has initiated protective services in accordance with program policies; and
- the agency has determined that other services are needed to support the provision of protective services.

Any service which has been provided in conjunction with protective services and terminated during the first 12 months in which protective services are provided may be reestablished without regard to income and without a fee; provided:

- the adult is still in the first 12 months of protective services;
- a request for the service is documented; and
- the reestablished service is necessary to support the provision of protective services.

After the 12-month period has ended, if protective services are still being provided, any income criteria or fee requirements applicable to specific services being provided must be applied.

(4) Termination

Included in the reasons for termination, contained in the Requirements for the Provision of Services by County Departments of Social Services is that the individual has been determined to not be eligible for the service requested on the basis that he does not meet, or because of changing circumstances, no longer meets, the conditions of eligibility for the program funding source under which the service is provided.

Protective services pursuant to G.S. 108A, Article 6 are initiated with the receipt of a report by the county department. Any actions necessary to receive and evaluate a report alleging an abused, neglected, or exploited disabled adult is in need of protective services are viewed as the provision of protective services including arranging for the provision of medical and psychological diagnostic studies as needed. If the evaluation substantiates the need for protective services, services will continue in accordance with policies in this manual. If the evaluation does not substantiate the report, protective services are terminated, and an offer of any other available and appropriate agency services is made. In addition, information and referrals must be made to appropriate community services.

Mobilizing essential services is part of the provision of protective services once

service authorization has been obtained. Any activity surrounding this mobilization including problem solving, service planning, facilitating medical and legal services, assisting with placement planning, legal alternatives, and any other case management activities involved in arranging or providing services is considered to be the provision of adult protective services for funding purposes. Once the situation has stabilized through the mobilization of services and there is no longer a need for protective services, protective services should be terminated. Other services such as guardianship, placement, in-home services, or individual and family adjustment may continue to be needed, independent of adult protective services.



ADULT PROTECTIVE SERVICE MANUAL

XII. Administration of Adult Protective Services

XII. Administration of Adult Protective Services

A. Introduction

Services must be properly administered if they are to be provided in an effective, efficient manner. The scope and complexity of adult protective services require that several administrative issues be addressed in designing a service delivery system which responds appropriately to disabled adults in need of protection. The nature of protective services requires ongoing administrative involvement and support at all levels of the process.

This section provides guidelines regarding various aspects of administration of adult protective services including:

- staffing
- caseload organization and size
- agency policies and procedures for the provision of protective services
- use of community resources

It may be used by administrative staff in organizing, operating and evaluating the agency's adult protective services program.

B. Staffing

An agency's adult protective services staffing pattern should promote systematic service delivery and provide continuity for case work. Staffing needs should be considered in relation to the agency's conceptual framework for adult protective services, the size and resources of the agency, the needs of the disabled adult population, and the size and resources of the community.

An assessment of an agency's staffing patterns and needs is important in order to determine if the current number of positions and type of organization is adequate to provide services in a manner which is consistent with the agency's mission for adult protective services. Elements such as staff/supervisor ratio, job qualifications, staff development and caseload sizes will affect the agency's ability to receive reports, thoroughly evaluate those reports and deliver effective services to disabled adults.

a. Staff/Supervisor Ratio

One of the primary considerations in organizing Adult Protective Services staff is the social worker/supervisor ratio. Two key components in determining the ratio are scope of responsibility of the supervisor and availability of the supervisor to their individual social workers, the agency and the community.

The supervisor is the key to the effective delivery of Adult Protective Services. The supervisor establishes the expectations, influences

attitudes, provides training and consultation and gives support. This person is also the liaison with other staff within the agency such as the director and agency's attorney, and with other agencies helping to develop resources in the community for disabled adults.

b. Supervisor Qualifications

The supervisor should have experience in and knowledge of adult services, have prior supervisory experience and knowledge of supervisory methods and techniques.

Knowledge of the special needs of disabled adults, APS law and policy, and agency and community resources, are also necessary for effective supervision in Adult Protective Services. The supervisor should have the skills necessary to promote coordinated service delivery both within the agency and with other community resources.

The supervisor should have basic skills as follows, but not limited to:

- Knowledge of Adult Protective Services General Statute, Administrative Code, and Social Work Practice.
- Ability to use legal knowledge necessary to intervene and to exercise good judgment in recommending legal steps to be taken.
- Knowledge of the three Adult Protective Services screening criteria.
- Ability to appropriately apply the three screening criteria.
- Ability to staff cases regularly with social workers.
- Ability to assist, oversee, and render case decisions within mandated time frames outlined in General Statute 108A.
- Ability to oversee the mobilization of protective services.
- Ability to provide guidance, problem solving, and support to social work staff throughout the APS process.
- Ability to respond to crisis situations without delay.
- Ability to determine when the need for protective services no longer exists.

c. Social Worker Qualifications

The social worker needs to be knowledgeable of Adult Protective Services law and policy and services and resources available in the community for disabled adults. An understanding of how Adult Protective Services interfaces with other services and programs is essential. The social worker responsible for providing Adult Protective Services operates within a broad network of in-home, community, and long-term care services and should have the ability to advocate on behalf of elderly and disabled adults.

The social worker should have basic skills as follows:

- Ability to intervene effectively and immediately, including the ability to plan and implement the provision of an array of services under

emergency and/or crisis situations that are often substandard, inhumane and complex.

- Ability to motivate disabled adults to participate in the family assessment and change process, even if involvement is minimal.
- Ability to work with other professionals and agencies on behalf of the disabled adult.
- Ability to use basic legal knowledge necessary to intervene and to exercise good judgment in recommending legal steps to be taken.
- Ability to recognize the differences regarding the appropriate times to refocus social work practice in supporting, enabling and empowering the disabled adult.
- Ability to "shift gears" from supportive casework to authoritative casework (and to know when to shift.)
- Ability to be a creative and assertive service provider in tapping resources which meet the disabled adult's needs.

d. Staff Development/Training

The qualities and competencies necessary to be an APS Social Worker are not all inherent in the employee. Some must be developed, and others improved. The agency should possess a positive philosophy regarding in-service and continuing education and training for all social workers.

The Division of Social Services provides programmatic training for social workers responsible for any aspect of adult protective services. This training curriculum is an orientation to the law and policy governing APS and can be found on the DHHS Adult Services Learning Management System (LMS). Staff providing Adult Protective Services should receive APS Basic Skills training prior to providing direct client services in APS. Preservice is an important component of APS Basic Skills training and its successful completion is required prior to participating in the classroom portion of training. Additional Training Resources including eLearnings are found on the Division's Sharepoint site.

e. Caseload Organization and Size

It is important to consider the number of reports received by a county when assessing the organization of the APS program, especially when deciding how many cases to assign to a particular social worker and how many social workers to assign to a supervisor. Case complexity affects a social worker's caseload manageability and should be considered during case assignment.

Based on the recommendations made by the 2010 work group and accepted by the NC Association of County Directors of Social Services Adult Services Committee in March, 2011, the current recommended APS caseload size for a full-time APS social worker is to manage 15 total cases

- 6 APS on-going evaluations and 9 on-going planning and mobilization. The workgroup's recommendations and methodology are included in this section.

C. Agency Policies

a. Agency Written Policies and Procedures for the Provision of Protective Services

General Statute 108A and NC Administrative Code 10A-NCAC.71 shall always be followed. Local agency policies may be established to provide further guidance, clarification, or monitoring to all levels of staff in carrying out APS law and policy. These policies should be designed to assist those who are involved in making decisions throughout the APS Process. Local policies could be established to address the following:

- how to make requests to law enforcement agencies for assistance;
- procedures for making the decisions necessary to file a petition requesting authorization to provide protective services on a non-emergency, emergency, or emergency ex-parte basis;
- criteria necessary to initiate consultation by agency administration or review by a multidisciplinary team.

An APS Procedural Manual should be developed to include written procedures for:

- receiving reports
- after-hours coverage
- setting up case records
- notifying DHSR, NCDHHS Division of Health Benefits, the complainant, the DA, the facility administration and other agencies as required
- inter-county cooperation with evaluations and services
- case consultation within the agency
- the use of multidisciplinary teams
- record-keeping standards
- referrals to other agencies
- working with the agency attorney on legal issues
- transferring of cases to other service units
- case closure
- other procedures that would provide clear expectations of the socialworkers and operation of the delivery system

b. The Ability to Respond to Reports

Another staffing issue concerns the agency's ability to respond to reports. Two such critical times are related to intake activities and after-hours, weekend and holiday coverage.

c. Intake Activities

Responsibility to receive reports should be assigned to staff who are highly skilled in interviewing. Staff should know the screening criteria as defined in law and policy regarding APS and be able to obtain relevant information to make a determination as to whether the information given constitutes an APS report. The agency should ensure that procedures are in place for reports to be transferred without delay to the APS supervisor for response.

Staff should be aware of other community resources and services available to make appropriate referrals if the information does not meet the three criteria for adult protective services.

d. After-Hours, Weekend and Holiday Coverage

Arrangements shall be made for 24-hour 365-day coverage to receive reports and take appropriate action. This includes inclement weather, disasters, and emailed/faxed reports received after hours. Response must be initiated by the agency within the mandated immediate, 24-hour and 72-hour time frames. Social workers providing after-hours coverage need the skills, knowledge, and resources necessary to conduct APS evaluations including those skills necessary to provide crisis intervention. The agency should consider preparing an after-hours procedure which provides access to relevant legal forms, after-hour procedures for obtaining signatures, list of resource persons and telephone numbers. A variety of methods may be used to provide after-hour coverage. The type of coverage depends on the needs and resources of the county.

D. Case Record

Administrative Code Related to Case Records indicates that a separate record, or a separate section of an existing record, shall be established to contain information on protective services provided to an adult, including the following:

- The report of a need for protective services;
- The written report by the department (when the evaluation was conducted on a patient or resident of a facility or when evidence of abuse, neglect or exploitation was found);
- Any court documents about the case (petition, orders, etc.); and
- Other information relative to the evaluation of the report and the provision of protective services.

a. Purpose of Separate Record

The primary purpose of a separate protective services record is to maintain the confidentiality of the disabled adult. If court action is necessary, the protective service record may be subpoenaed, and it is

important that there be a clear separation of the protective services information. Information about other services received by the adult which is not relevant to the court action (i.e. FNS, SAIH, Guardianship) should be maintained separately from the APS record.

b. Contents of Record

All APS records should contain:

- A report form
- Documentation of a thorough evaluation, including assessment of the six functional areas
- Documentation of the case decision
- Documentation that a notice to the complainant has been given and
- Service eligibility documentation (DSS-5027)

Other documents that may need to be included are:

- A Written Report to the district attorney if evidence of abuse, caretaker neglect or exploitation was found
- If the report was substantiated, documentation of capacity, documentation of authorization for services (consent from disabled adult or court order) or documentation of disabled adult's refusal to accept services
- If the report was on a resident or patient of a facility: a written report to the Division of Health Service Regulation; a notice to the facility administrator; a report to the Division of Health Benefits if exploitation was involved; and a notice to the adult's county of residence if the report was substantiated
- Court documents
- Bank Statements
- Expert evaluations (mental health, medical, psychological etc.)
- If the report was on a resident of a state mental health institution, a notice to the chief administrator of the facility and to the disabled adult's legal guardian, if any
- Photographs

E. Use of Community Resources

The agency is part of the community it serves and should be responsive to the community's concerns. Being responsive to and interacting positively with the community promotes a good public image and encourages understanding and support for the agency and its programs.

a. Working with Other Agencies

When community service agencies have an understanding of their shared responsibility for prevention and remediation of problems related to abuse,

neglect and exploitation of disabled adults, service provision is enhanced for the disabled adult. DSS has a responsibility for providing leadership in the education of other agencies regarding their role and mandates in APS.

b. Assistance with Evaluating the Report

Due to the complex nature of disabled adults' situations, it is imperative that APS social workers have input from other disciplines for the purpose of evaluating each disabled adult's needs and facilitating coordinated service delivery.

This manual addresses laws and policy regarding the cooperation of other agencies when conducting an APS evaluation. This includes assistance from staff and physicians of local health departments, mental health providers, and other public or private agencies.

c. Assistance with Service Provision

Cooperation is needed not only with conducting the evaluation but also with service planning and provision of services to the disabled adult. In coordinating a protective services plan, DSS should actively involve other community resources in determining appropriate needs and resources to meet those needs and in providing the necessary services. Services from other agencies such as adult day services, home delivered meals, home health, mental health services, and/or counseling may be needed to meet the complex needs of disabled adults. The agency may need to access and coordinate these types of services with more than one provider in order to develop a protective services plan for the disabled adult. The development of formal relationships with other community agencies is important and can be structured through the use of written agreements such as memorandums of understanding and the use of multidisciplinary teams.

d. Formal Relationships and Memorandum of Understanding

Written agreements should be initiated by management, include the procedures for referrals, and should outline the responsibilities of both parties for the disabled adult's assessment and the planning and provision of services. Reference should be made to the legal requirements of the APS law as the basis for the agreement. Regular review of the provisions of the agreement is crucial, and a plan for such review by both parties should be included in the agreement.

e. Multidisciplinary Teams

The development and support of a team approach should also be encouraged by the agency. The agency may want to develop their own APS Multidisciplinary Team. This team approach helps agencies coordinate services, reduce duplication of services, provide a means for sharing the disabled adult's information with several other professionals in the community, and have the benefit of other's knowledge, experience and expertise in developing service plans and resolving the disabled adults problems. Guidance for developing an

APS/Elder Abuse MDT is available at: The North Carolina Elder Protection Network.

F. Working with the Court and Law Enforcement

To establish a cooperative working relationship with the district attorney and law enforcement, it is helpful to arrange a meeting with both to discuss the agency's legal responsibility under the law to notify the district attorney upon finding evidence indicating that a person has abused, neglected, or exploited a disabled adult. The district attorney may have a preference for how and when he wants law enforcement to be involved in these cases.

The Initial Notice to the district attorney and/or law enforcement should be sent upon finding evidence indicating that a person has abused, neglected and/or exploited a disabled adult. It should precede and be followed by the Written Report of Adult Protective Services Evaluation. If an APS social worker has found evidence and reached a case decision simultaneously, the written report will suffice as the notice. The social worker shall attach any evidence obtained to this point in the evaluation, such as medical evaluations, photographs, or financial records for exploitation cases.

The relationship between APS and local law enforcement agencies is an important one. At any time during the APS evaluation the agency may contact the district attorney's office with concerns that the mistreatment of the disabled adult appears criminal in nature. Mistreatment could be considered criminal if a caretaker had, in a planned, knowing, and willful manner, caused the disabled adult to suffer injury as a result of assault, failure to provide medical care, or confinement in a condition that is cruel or unsafe. While the agency is responsible for reporting the information to local law enforcement and the district attorney's office, determining whether the information is criminal is the role and responsibility of the district attorney's office in conjunction with law enforcement.

DSS may verbally share the names of the reporter and of individuals who have knowledge of the situation when requested by law enforcement or the district attorney's office when these agencies are involved in a criminal evaluation or prosecution of abuse, neglect or exploitation. It will not be necessary, in most cases, to distinguish between the identity of the reporter and the identity of other individuals who have knowledge of the situation. This distinction should not be made unless specifically requested by law enforcement or the district attorney's office. It will be important for the agency to indicate which individuals the social worker has interviewed, and which have not been contacted.

Specific findings the agency has to date must be shared when requested by a law enforcement agency or a district attorney's office involved in a criminal investigation of abuse, neglect, or office involved in a criminal investigation of abuse, neglect, or exploitation. It is important to remember that the county DSS's mandated role does not change because of the involvement of law enforcement or the district attorney's office, and the APS social worker must continue the agency's evaluation of the

disabled adult's need for protective services. In some instances, the APS evaluation and the criminal investigation will occur simultaneously. In those cases, cooperation, collaboration and communication will be vital.

a. Legal Counsel

The availability of an attorney is essential to the delivery of APS. The attorney is necessary for expert consultation, to secure petitions and court orders and to represent the agency in court. The attorney should be knowledgeable about APS law and policy and be familiar with the types of disabled adults and situations encountered by the social worker. The attorney should be part of any multidisciplinary teams addressing the issues of Elder Abuse or Adult Protective Services. Agency policies and procedures should include a method for accessing the attorney and guidance on when to inform the attorney of cases which may require legal action.

b. Court Officials

Social workers need to understand the procedures of the court system and the appropriate use of those procedures. APS staff should facilitate the development of a good working relationship between the DSS and the court system and should do so before a crisis case. Court officials should be familiar with APS staff, their role, and the types of problems presented in APS cases.

c. Law Enforcement

APS social workers should be knowledgeable of the range of services available through law enforcement and how and when to access their services. Law enforcement officials should be familiar with the DSS and which social workers are responsible for APS. It is important that law enforcement understand the nature of APS and why their assistance may be needed.

d. District Attorney

This manual addresses laws and policy regarding notification to the district attorney when evidence of abuse, neglect or exploitation is found. For the agency to establish a cooperative working relationship with the district attorney it is helpful to arrange a meeting to discuss the agency's responsibility under the APS law. The district attorney may suggest types of information necessary for preparing a case for prosecution, such as photographs, which the agency may already have gathered as part of the APS evaluation.

G. Inter-County Cooperation

Separate from Conflict of Interest (COI) and COL/COR there will be times when a county needs assistance from another county in the provision or evaluation of protective services. Keeping in mind that the goal of APS is to assess the disabled adult's situation and determine if protective services are needed, it is vital that the

county providing the assistance does so in a prompt and thorough manner. The following is an example of a temporary situation that would require assistance from another county.

Information is received by a county DSS that a disabled woman, living with her daughter, is being neglected. The allegations are that the daughter is not getting her mother's prescriptions filled, her mother sometimes misses doctor's appointments, and her special diet is not being followed. At some time, either before the evaluation is actually started or during the evaluation, the mother goes to visit a daughter who lives in another county. The county that initially accepted the report is still obligated to evaluate the woman's need for protective services and will make a request to the second county to assist with the evaluation. That assistance would be in the form of a prompt visit to the disabled adult, consultation with the second daughter, who would be a collateral contact, and others in that county who may have information pertinent to the evaluation.

a. Substantiated Report: Inter-County Cooperation

When a county has assisted in the evaluation for another county and the report is substantiated, that county may also provide or arrange for protective services as needed. The county where the disabled adult resides should cooperate in the provision of protective services and any other services.

Cooperation may be best achieved by both counties being involved in coordinating the provision of protective services. The county which can best meet the needs of the disabled adult by arranging for or providing the needed services should do so.

Some suggestions for coordinating services are listed below. This is not an exhaustive list but includes ideas that may be pertinent to APS service plans.

- The county that conducted the evaluation may want to contact the county of residence, prior to developing a service plan, to discuss available resources. If appropriate services are not available in the county of residence, alternate resources may need to be explored together in order to develop a service plan which will meet the goals established by the county with case management responsibility.
- The county of residence should also inform the county developing the service plan of any services unavailable due to a waiting list and of the availability, if any, of services for high risk disabled adults. This includes services funded by the Home and Community Care Block Grant. The county of residence should offer to assist with the provision of any services that are to be obtained in the county such as setting up medical or mental health appointments and providing or arranging for transportation.

- The county of residence may also need to help facilitate the provision of protective services by making home/site visits and monitoring the situation for the county with case management responsibility until the goals in the service plan have been met and the need for protective services no longer exists. The county of residence may then need to offer services to the disabled adult after protective services are terminated, if necessary. At that time, the county of residence would become the case manager for the provision of those services.

H. APS Data Collection

10A NCAC 71A .0806 ADULT PROTECTIVE SERVICES REGISTER

- (a) Information submitted by county departments of social services to the Adult Protective Services Register is confidential. Non-identifying statistical information and general information about the scope, nature and extent of adult abuse, neglect and exploitation in North Carolina is not subject to this Rule of confidentiality.**
- (b) Access to the Adult Protective Services Register is restricted to:**
- (1) the county department of social services,**
 - (A) in order to identify whether an adult who is the subject of an Adult Protective Services evaluation has been previously reported and evaluated under G.S. 108A, Article 6 in any county in the state; or**
 - (B) in order to share client specific information with an out-of-state protective services agency to assure that protective services will be made available to an adult previously served in North Carolina as quickly as possible for the purpose of preventing further abuse, neglect or exploitation; or in order to share client specific information with law enforcement agencies to assure that protective services will be made available to an adult as quickly as possible;**
 - (2) the Division of Social Services staff,**
 - (A) in order to perform duties pertinent to managing and maintaining the Register and monitoring, auditing, evaluating or facilitating the administration of other state and federal programs regarding Adult Protective Services based on information in the Register, or**

(B) in order to share client specific information with an out-of-state protective services agency to assure that protective services will be made available to an adult previously served in North Carolina as quickly as possible for the purpose of preventing further abuse, neglect or exploitation; and

(3) individuals who receive approval to conduct studies of cases in the Adult Protective Services Register.

(A) Such approval must be requested in writing to the Director, Division of Social Services. The written request will specify and be approved on the basis of:

(i) an explanation of how the findings of the study have potential for expanding knowledge and improving professional practices in the area of prevention, identification and treatment of adult abuse, neglect and exploitation;

(ii) a description of how the study will be conducted and how the findings will be used;

(iii) a presentation of the individual's credentials; and

(iv) a description of how the individual will safeguard the information.

(B) Access will be denied when in the judgment of the Director the study will have minimal impact on either knowledge or practice.

I. Social Work Practice Related to the APS Register

A description of how to complete the DHHS-AS-5026 forms is available in the NC OAASIS User Manual – APS-R, additional training is available on the NC DHHS Adult Services LMS. All DHHS-AS-5026 forms should be entered into the NC OAASIS system within 15 calendar days of the case decision date. Management reports related to APS statistics and demographics can be pulled from NC OAASIS; for information about these reports, please refer to the user manual and the LMS system.



ADULT PROTECTIVE SERVICES MANUAL

XIII. Appendices

Appendix A

The 8 Basic Principles of Adult Protective Services

1. Adults have a fundamental right to self-determination

Autonomy through self-determination is a key principle of Adult Protective Services. Adults have the right to make, what others may consider, bad choices and poor decisions.

2. Adults should be treated with honesty, care, and respect

It is important that adults understand the role and purpose of Adult Protective Services. Concern for each adult should be conveyed in an honest and respectful manner without bias, ageism, racism, or sexism.

3. Always use the least restrictive alternative

The adult's life should be disrupted as little as possible in the provision of protective services and should enable them to live in the environment of their choosing whenever possible. Out-of-home placement should be a last resort and in-home supports and/or services considered first.

4. Give highest priority to family and other support systems

Think broadly about who constitutes support and family to the adult. Consider family dynamics and past conflict and honor what adults have implemented in their own lives for support.

5. Inadequate or inappropriate intervention can be more harmful than no intervention

Interventions which do not meet the essential need for protection can create an inaccurate perception of adequacy and incur more harm than benefit for the adult.

6. Protecting disabled adults is a shared community responsibility

The scope of protective services is as broad and varied as the needs of vulnerable adults. Therefore, the capacity to adequately meet those needs must be the result of a cooperative partnership between Adult Protective Services and the array of community stakeholders.

7. Focus of APS is the on the need for protection rather than investigation of incidents

The focus of APS should be ensuring that protective services are provided to alleviate further maltreatment and not on a particular incident or punishing the perpetrator.

8. The adult's confidentiality and right to privacy should always be respected

There are references within APS Statute and Administrative Code which address adults' right to confidentiality and privacy. However, it is equally important that the adult's personal boundaries for privacy be respected to the degree that information is gathered only as it pertains to the individual's needs for protective services.

Appendix B

The Six Domains: SEEMAP

<p style="text-align: center;"><u>Social Support</u></p> <ul style="list-style-type: none"> • Identify individuals in the adult's network including caregivers • Assess strengths and deficit of current support networks • Identify individuals, groups, or agencies who may provide essential services • Determine if there are able, willing, and responsible individuals • Determine social activities the adult enjoys or previous enjoyed • Determine the nature of support, types of relationship, and their impact on the adult 	<p style="text-align: center;"><u>Environmental</u></p> <ul style="list-style-type: none"> • Assess impact of the environment on health including ventilation, unsanitary conditions, animal/insect infestation, food storage • Assess adult's safety including mobility, accessibility, fire hazards, hoarding, safety devices such as smoke detectors, and the neighborhood • Assess impact to function as it relates to structural issues, food preparation, isolation, rural/urban location • Determine if the environment contributes or detracts from the adult's functioning or available supports/services
<p style="text-align: center;"><u>Economic</u></p> <ul style="list-style-type: none"> • Determine sources of income i.e. Social Security, Pensions, Retirements, Employment, Child Support, SA-IH etc. • Determine financial accounts and assets such as property, savings/checking accounts, stocks, bonds, and/or CD's • Determine expenses i.e. mortgage/rent, utilities, internet, phone, food, medications, insurance • Determine money management i.e. rep payee • Determine irregularities in money • Determine adequacy of resources available 	<p style="text-align: center;"><u>Mental/Emotional</u></p> <ul style="list-style-type: none"> • Determine psychiatric diagnoses and recommended mental health treatment • Identify medications, what they are used for, and compliance of taking medications • Determine impact of the mental health issues on overall functioning • Gather information on orientation, memory, judgment, cognition, and attention • Determine mental incapacity due to diagnosis • Determine compliance with recommended mental health treatment
<p style="text-align: center;"><u>ADL's/IADL's</u></p> <ul style="list-style-type: none"> • Assess abilities and needs with ADL's including bathing, dressing, toileting, eating, transferring • Assess abilities and needs with IADL's including money management, household chores, telephone use, hygiene • Identify the need for assistance with any of those tasks • Identify dependence on independence and impact on functioning • Explore adult's understanding of functional limitations 	<p style="text-align: center;"><u>Physical Health</u></p> <ul style="list-style-type: none"> • Identify essential health and well-being needs • Identify medications, what they are used for, and compliance of taking medications • Identify recommended medical treatments and therapies and compliance with those recommendations • Determine medical diagnoses and disabilities • Identify indicators of physical abuse such as bruises, skin breakdown, or skin tears • Determine impact on functioning

Appendix C

Adult Protective Services Conflict of Interest Protocol

The purpose of the Conflict of Interest Protocol is to implement the most efficient and effective means of conducting an APS evaluation when there is a conflict of interest with the county's ability to do its own APS evaluation as defined in the Division of Aging and Adult Services Protective Services for Adults manual and **10A NCAC 71 A.0203 Regarding County Officials**. In these instances, the County of Residence must seek the assistance of another county to conduct the APS Evaluation and to mobilize services when the case is substantiated. For purposes of this protocol, the County of Residence will be defined as the county that received the report and where the disabled adult lives. The county that is requested to conduct the APS Evaluation for the County of Residence because there is a conflict of interest will be referred to as the Responsible County.

A request from the County of Residence for a Responsible County to conduct an APS evaluation will convey the same sense of urgency and priority as an in-county referral. Each county DSS should identify one person in Adult Protective Services who will be the contact person for the Responsible County. There should also be a back-up person identified. The County of Residence has a responsibility to ensure that the APS Report is received by the Responsible County.

The County of Residence is responsible for:

1. Receiving the report alleging that a disabled adult is in need of protective services and for the screening decision. If the Responsible County disagrees with the County of Residence about the acceptance of the report, or the existence of a conflict of interest, the counties should discuss their difference of opinion. If the County of Residence and Responsible County are unable to resolve the issue, a request should be immediately sent to the Adult Services Listserv for the Adult Programs Representative on Listserv to make the final screening decision. At no time shall an APS evaluation be delayed because of a dispute about the report. If there is not a timely resolution of the dispute, the County of Residence decision shall stand.
2. Contacting the identified person (or the back-up person) in the Responsible County, directly, with all the referral information. The County of Residence is responsible for documenting and sharing the intake report with the Responsible County. The time frames established in statute for initiating the evaluation remain applicable. Therefore, referrals from the County of Residence must be made in a timely manner, allowing the Responsible County to respond within the mandated time frames.
3. Responding to and cooperating with the Responsible County in every way possible, providing all necessary assistance as may be requested by the Responsible County. This may include conducting local criminal records checks and making any necessary appointments for the disabled adult within the community.
4. Making an offer of other services to the adult once the Responsible County has conducted the evaluation and made the case decision; when the case is unsubstantiated.
5. Maintaining a log of requests for evaluation by the assigned Responsible County. The log should contain the case name, date and reason for report; date referred to the Responsible County, and results for the evaluation. The log will be available for review.

B. The Responsible County is responsible for:

1. Responding quickly to a request for assistance by the County of Residence. Every effort should be made to begin the prompt evaluation by seeing the disabled adult within the statutory time frames.
2. Completing a thorough evaluation in a timely manner. A case decision should be made by the Responsible County within the 30 or 45-day statutory time frame.
3. Making a referral back to the County of Residence if the case is not substantiated and providing information that is adequate to support the County of Residence's offer of other services to the adult. Note: The Written Report should be used to share this information with the County of Residence.
4. Retaining responsibility for the case if it is substantiated. The Responsible County will continue with the case and will obtain appropriate service authorization, including petitioning the court; and will act as case manager providing protective services in coordination with the County of Residence. Note: Only enough information to facilitate the coordination of services needed by the disabled adult should be shared with the County of Residence.
5. Documenting the case, including the evaluation, the DHHS-AS-5026 entering the required case information into NC OAASIS , applicable notices, authorization for services, the protective service plans and all other pertinent documentation are the responsibility of the Responsible County.
6. Maintaining a log of requests for assistance in an APS evaluation. The log will be available for review.

Appendix D

APS Reports Received When Adult Is Not Located in County of Residence

The following procedure is to be used whenever your agency receives an APS report regarding an adult who is a resident of another county, but present in your county.

- As part of the intake process, determine if the disabled adult is a resident of another county but present in your county. If the disabled adult is a resident of another North Carolina county, the Supervisor (or their designee) in the county of location (COL) must notify the Supervisor (or their designee) of the county of residence (COR) without delay. If this is an emergency the COL will initiate immediately without delay. This includes the requirement to notify law enforcement and the District Attorney.

Use this process to notify the Supervisor (or designee) of COR:

1. Telephone the COR and document the date, time and Supervisor/designee contacted. Do not leave a voice mail message; you must speak with the Supervisor/designee.
2. Send the APS intake report to the COR by FAX or an encrypted e-mail as requested.
3. COR will call the COL to confirm receipt of the intake.
 - COR will determine which DSS agency will initiate the evaluation.
 - If COL is requested to initiate the evaluation, follow required APS procedure for initiating and evaluating as described in Section V. "Adult Protective Services Evaluation" of the APS manual.
 - COL Adult Protective Services Social Worker will verbally share findings with the COR and will follow up with written documentation within seven workdays.
 - COL will share the initiation findings with the COR using the following:
 - Agency specific or DAAS APS Evaluation tool
 - Attachments such as medical and/or mental health information and narratives
 - Following initiation, if the disabled adult is still present in the COL, the COR may request the COL continue to assist with the thorough evaluation. If the COL continues with the evaluation, follow required APS procedures and timeframes as described in Section V. "Adult Protective Services Evaluation" of the APS manual.
 - The COL will share information as often and as necessary for the COR to make a case decision using the following:
 - Agency specific or DAAS APS evaluation tool
 - Attachments, such as medical and/or mental health information and narratives
 - Verbal staffing
 - If legal action is needed at any point in the APS process, the COR has legal jurisdiction and legal responsibility to petition.

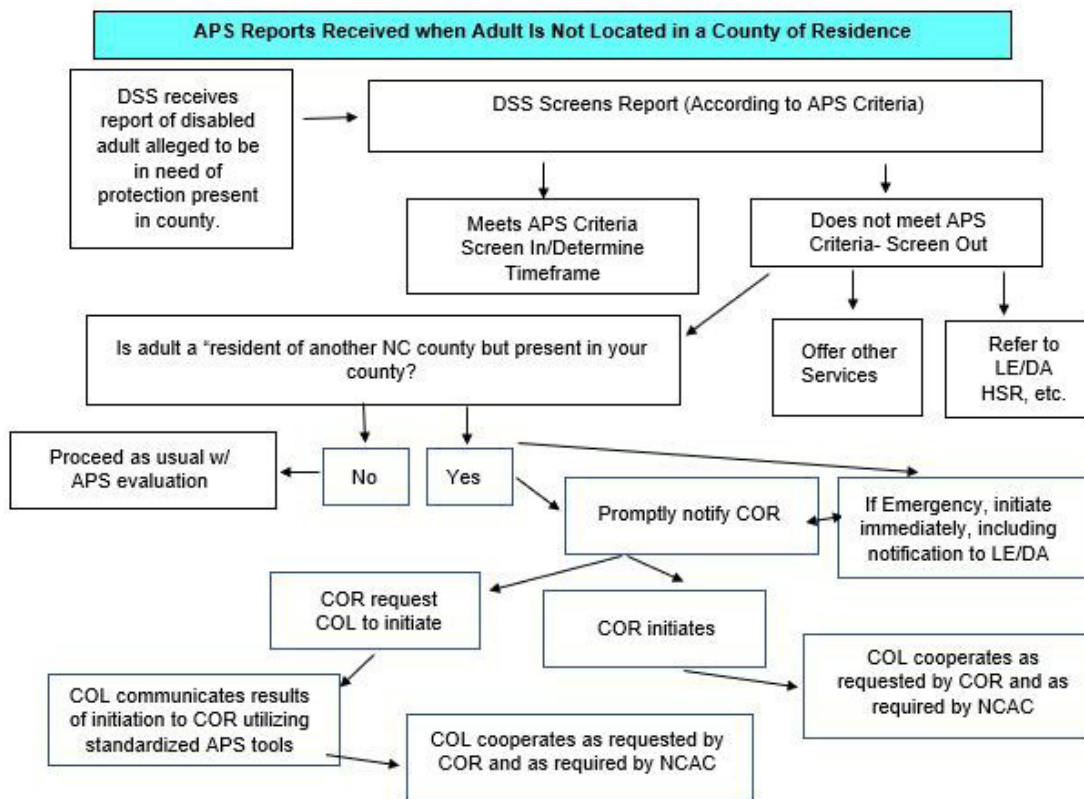
COR is responsible for the case decision and for filing petitions. Responsibility does not vary depending on the type of legal action needed.

If the COL has firsthand knowledge of the disabled adult's condition, it is recommended for representatives of that agency to be present at the hearing.

If the COL cannot be present at the COR hearing, a sworn affidavit can be obtained and used as part of the petitioning process and in the hearing as evidence.

The disabled adult has the right to be present at any court action.

As required by 10A NCCAC 71A.0701



Definitions:

"Initiate": Face to Face, private interview, as required by NC G.S. 108A-103 & 10A NCAC 71A.0205

"Cooperate": As required by 10A NCAC 71A.0701

"Prompt": Without Delay "COR": County of Residence "COL": County of Location

- IF COR cannot be determined, COL assumes all responsibilities.
- COL/COR cooperation is required; this process is not a courtesy; cooperation requires standard APS practice and adherence to law and rules.

"153A-257 "Legal residence for social service purpose."

Note: COR is responsible for the evaluation, required notifications, case decision and mobilization of protective services (requesting assistance as needed from COL)

Appendix E

Types of Surrogate Decision Makers

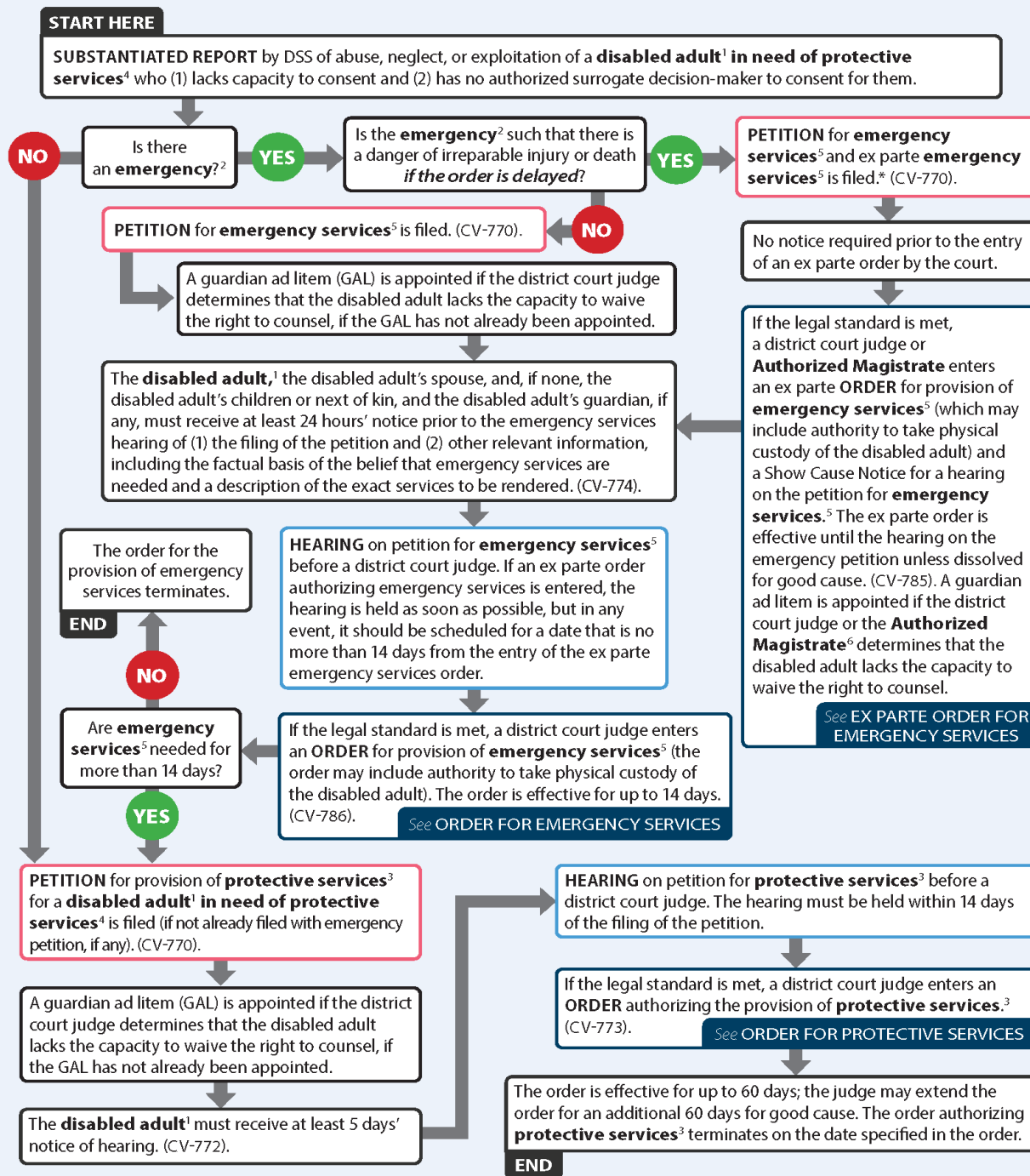
A basic principle of APS practice in North Carolina is the adult’s right to self-determination. The ability of an adult to exercise this right is contingent upon many factors which affect their capacity for informed consent. There are tools available to which allow them to express their wishes regarding decisions affecting their life should they become incapacitated. Also, there are tools which allow adults to grant authority for decision-making to individuals of their choosing. The following is a resource to guide APS social workers regarding some of these tools. (Note: This is not a comprehensive topical description but only a reference and should not replace the guidance provided by legal counsel.)

Type	Description	APS Application	Notes
Advance Directive (or “Living Will”)	Allows an adult to authorize or direct the withholding or withdrawal of life-prolonging measures that would only serve to delay death.	When faced with emergencies requiring medical treatment, this document can inform the APS SW of the scope of medical services desired by the adult/victim before mental incapacitation.	Can also include specific unique directives by the adult such as the withholding of nutrition, etc. Does not convey authority to consent to protective services.
Psychiatric Advance Directive (or “PAD”)	Allows adult to express preferences for treatment in a mental health crisis.	When an adult/victim is experiencing a mental health crisis, this document can inform the APS SW of the adult’s desires for treatment options.	Can give consent for or decline specific psychiatric treatment, and/or authorize a trusted person to make treatment decisions in a crisis. Does not convey authority to consent to protective services.
Power of Attorney (or “P.O.A.”)	Allows an adult to appoint an agent to act for them should they become incapacitated. These tools vary in the scope and nature of the powers granted.	When an adult lacks the capacity for informed consent, a POA agent may be able to consent to protective services if the powers granted allow that scope of authority.	Some “types” can include Healthcare POA, Durable POA, and Financial POA. Can convey authority to consent to protective services.
Substitute Payee	When an adult is unable to effectively manage their funds or benefits a substitute payee may be appointed to manage those benefits or funds.	It is possible that an adult may be exploited by a substitute payee or may benefit from the appointment of a payee during the course of an APS case.	Includes two types of payee: A Protective Payee for various benefits or a Representative Payee for federal (Social Security/VA benefits). Does not convey authority to consent to protective services.
Guardianship	Allows a clerk of court or judge to appoint a guardian to make decisions for an adult who is deemed “incompetent.”	A guardian may mistreat an adult or may provide authorization for protective services, when applicable.	A local DSS may petition for adjudication of incompetence for an adult/victim in order to secure an entity to provide consent. Can convey authority to consent to protective services.

Appendix F
Client Movement During the APS Process

Circumstances	Legal Basis	Guidance
Temporary movement; Adult has not changed residence but is located in another county.	<ul style="list-style-type: none"> • <i>NCGS 108A-101 (c)</i> • <i>10A NCAC 71A .0701</i> 	The county (DSS) where the adult resides continues with the APS process (regardless of the stage in the process) and requests the cooperation of the county (DSS) where the adult is located.
New residence established during an APS Evaluation.	<ul style="list-style-type: none"> • <i>NCGS 108A-101 (c)</i> • <i>NCGS 153A-257</i> 	Make a case decision based on information gathered prior to the change of residence. Document maltreatment if applicable, provide notices, and make an APS report to the new county (DSS) where the adult resides.
New residence established after a substantiated case decision, but prior to consent to protective services.	<ul style="list-style-type: none"> • <i>NCGS 108A-101 (c)</i> • <i>NCGS 153A-257</i> 	Document confirmation of adult's change of residency and make a new APS report based upon findings from evaluation (protecting client's confidentiality, as appropriate)
New residence established after consenting to protective services.	<ul style="list-style-type: none"> • <i>NCGS 108A-101 (c)</i> • <i>NCGS 153A-257</i> • <i>10A NCAC 71A .0702 (a)</i> 	Obtain consent of adult for case information to be shared with new county (DSS). New county DSS will assess if protection is still needed and provide w/adult's consent. If adult does not provide consent for original county (DSS) to share information with new county (DSS) the information will not be shared but the original county may choose to make an APS report to the new county (DSS).
New residence established while DSS is providing protective services via a court order.	<ul style="list-style-type: none"> • <i>10A NCAC 71A .0804</i> 	The original county (DSS) will file a motion to be relieved of the responsibility of the court order and will make an APS report to the new county (DSS).

Appendix G Adult Protective Services Flow Chart



*The petition seeking an ex parte order authorizing emergency services may be filed with the magistrate after hours when the clerk's office is closed. G.S. 108A-106.1.

Appendix H
Critical Time Frames for Adult Protective Services

Action	Time Frame
Receipt of APS Referral	Complete intake and screen promptly and without delay
DSS-5027 SIS Code 202	Opened when report is screened in
Initiation Time Frame when referral indicates a threat of death	Immediately/Without delay
Initiation Time Frame when referral indicates a risk of irreparable harm	Within 24 hours
Initiation Time Frame when referral indicates maltreatment without risk of death or irreparable harm	Within 72 hours
Evaluation Time Frame for Abuse or Neglect	Completed within 30 days
Evaluation Time Frame for Exploitation	Completed within 45 days
Initial Notice to DA and Law Enforcement	Upon finding evidence indicating that a person has been abused, neglected, or exploited
Case Decision Time Frame for Abuse and Neglect	Must be made by the 30 th day
Case Decision Time Frame for Exploitation	Must be made by the 45 th day
Capacity Decision	Should be made at the time of the case decision
DHHS-AS-5026	Completed and keyed within 15 calendar days of the case decision
Authorization to Provide Protective Services	Type of authorization should be determined and sought immediately after the case and capacity decision
Ex-Parte Order	May be issued immediately upon finding evidence that a disabled adult lacks capacity and is in danger of death or irreparable harm if protective services are not provided
Emergency Protective Services Order	May be issued upon finding evidence that a disabled adult lacks capacity and is in danger of death or irreparable harm if protective services are not provided. There is 24-hour notice provided to the individual and other interested parties. If granted, an emergency order is valid for 14 days

Protective Services Order	May be issued upon finding that a disabled adult lacks capacity and needs protective services. The petition should be heard in district court within 14 days. If granted the agency has authority to provide protective services by court order for 60 days. The order can be extended for an additional 60-day period if requested and granted. The agency has no authority to continue its involvement with the adult after the expiration of the court order unless a court review indicates that a guardianship petition should be initiated or unless the adult consents to the continued provision of services.
Interim Guardianship	Upon filing of the motion for appointment of an interim guardian, the clerk shall immediately set a date, time, and place for a hearing on the motion. The hearing shall be held as soon as possible but no later than 15 days after the motion has been served on the respondent. Once appointed the order is valid for 45 days and can be extended for an additional 45 days.
Guardianship	Within five days after filing of the petition, the clerk shall issue a written notice of the date, time, and place for a hearing on the petition, which shall be held not less than 10 days nor more than 30 days after service of the notice and petition on the respondent, unless the clerk extends the time for good cause or for preparation of a multidisciplinary evaluation as provided in G.S. 35A-1111.
DSS-5027: SIS code 204	Should be opened when authorization is obtained either through consent or through a court order.
APS Quarterly Review	90 days from the day 204 Mobilization and Planning Services were opened.
Written Report for APS in Facilities	Due to DHSR within 30 days of completion of the evaluation.
Termination of APS Mobilization and Planning (SIS code 204)	Send a ten working day notice (DSS-5027) unless adult waives right to a notice (document copy provided to client including rights and responsibilities).
Termination of APS Mobilization and Planning under Court Order	Terminate upon dismissal or expiration of a court order (document closure on DSS-5027).

Appendix I
APS[A2] Case Staffing Sheet

Date of Staffing _____ Date of Report _____
Client Name _____ Case Number _____

Date/Time Report was Initiated _____
Date/Time of face to face/Private interview _____ [A3]
Number/Dates of Home visits made _____
Collaterals Contacted (Please check) ___ Family/Friends; ___ Medical Personnel; ___ Financial
Institutions; ___ Mental Health; ___ Home Health Provider; ___ Law Enforcement
APS Evaluation Completed? ___ Yes ___ No
Is Case Documentation current? Yes ___ No ___
Disabled Adult? ___ Yes ___ No If yes, explain _____

Mistreatment Confirmed? ___ Yes ___ No If yes, explain _____

Need for Protection? ___ Yes ___ No If yes, explain _____

Substantiate ___ Unsubstantiate ___ Date of Case
Decision _____ [A4]
Follow Up Needed? ___ Yes ___ No

If yes, explain _____

Date follow up is due _____
Does the client have capacity? Yes ___ No ___ Capacity decision documented?
Type of Authorization: ___ Client Consent ___ Guardianship/DPOA ___ Court Order

_____ 5027 Completed for 202/204 _____ 5026 completed/submitted
Supervisor _____ Social Worker _____