

**Adult Protective Services
Division of Aging and Adult Services Manual**

Effective Date: April 1, 2011

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I. Statement of Philosophy and Purpose

A. Statement of Philosophy and Purpose

Protective Services for Adults is a multifaceted service which is based on an awareness of the vulnerability of disabled adults to abuse, neglect and exploitation. The service includes provisions in state law for evaluation of the need for protective services and intervention in situations in which adults are found to be in need of protective services.

The Protective Services for Adults Statute was developed to assist adults who have disabilities which have incapacitated them so that they are unable to take care of themselves, and who have no one able or willing to assist them with the care they need. These adults may be abused or neglected by a caretaker, they may be neglecting themselves, or they may be exploited. They may be alone, or they may have a spouse, other relative or unrelated person acting as caretaker. They may live in private homes, residential care facilities, state institutions or other types of living arrangements. They may be old or young, male or female, rich or poor.

The protective services evaluation may be initiated without the consent of the adult. In this respect, protective services differs from other services which are provided only on request. The involuntary nature of the evaluation component of the service, as well as the vulnerability of the population, make consideration of ethical issues especially important. The following basic principles should be adhered to in the practice of adult protective services (hereafter referred to as APS).

The right to self-determination is a basic tenet of APS.

As long as adults can recognize the consequences of decisions they have made about their lives, their right to make those decisions must be respected. A disabled adult has the right to make bad choices and poor decisions, to be eccentric, to live in a filthy environment or to refuse medical treatment.

Clients should be treated with honesty, caring and respect.

"Honesty" means that the worker should be truthful with clients about who she is and why she is there. It may not mean telling everything she knows, however. She may say that a referral was made by "someone who is concerned about you", since the statute prohibits giving the reporter's name, for example.

"Respect" includes checking practice for biases such as ageism, racism and sexism. Are older clients treated the same as younger persons? (For example, not infantilizing or talking down to the older adult). Small courtesies, such as calling the client Mrs. Smith instead of Sally, indicate respect for the client.

The least restrictive alternative should be used whenever possible. Protective services should be provided with as little disruption to the client's life as possible. Whenever possible, clients should be helped to live in the environment of their choice. Even when out-of-home placement becomes necessary, the client should be placed in the least restrictive environment which meets his needs. What is least restrictive for any particular client may change over time and should be periodically re-evaluated.

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Give highest priority to the family and other informal support systems as resources when appropriate.

Workers should think broadly about who constitutes the client's "family." Neighbors, friends, church members, etc. may be good resources, as well as blood relatives. Although family resources should be explored and used whenever possible, the worker should be sensitive to family conflicts. Placing the adult with family members who are unable or unwilling to provide a home is inappropriate. Families can be the problem, rather than the solution.

Inadequate or inappropriate intervention can be more harmful than none at all.

An example of this assumption is the self neglecting client who has lived for many years in a filthy home, is removed from his home against his wishes, and placed in a rest home. While the rest home provides a cleaner, safer environment, the client cannot adjust to the change in his life and dies shortly after the placement.

Protection of disabled adults is a shared community responsibility.

It is essential that community agencies such as mental health, aging service providers, health departments, home health agencies and hospitals work together to improve the lives of disabled adults who have been abused, neglected or exploited. Cooperation is needed at every step of the APS Process, from reporting to evaluating to providing protective services. The county department of social services should provide the leadership for community cooperation.

The emphasis in APS is always on the need for protective services rather than investigation of incidents.

The APS worker's primary concern is ensuring that protective services are provided to disabled adults who have been abused, neglected or exploited rather than determining whether a particular abusive incident occurred or punishing the perpetrator.

The client's confidentiality and right to privacy should always be respected.

This includes both the legal and policy requirements for confidentiality and issues such as not intruding into areas of the client's life which may be interesting but not relevant to the APS evaluation.

In a generic sense, protective services for adults encompasses a wide array of services and activities which are intended to remedy abuse, neglect and exploitation. This manual chapter presents the various aspects of adult protective services in this light, including the protective services law, alternatives to adult protective services, and administration of the service. The policies and guidelines in this chapter will assist supervisors and social workers in carrying out an adult protective services program which is beneficial to its recipients and is consistent with laws and policies governing its provision.

II. Legal Base

A. Legal Base

[Article 6, Chapter 108A of the North Carolina General Statutes](#) requires that county departments of social services perform certain activities for disabled adults who are alleged to be abused, neglected or exploited and in need of protective services. In accordance with its authority under N.C. G.S. 143B-153, the North Carolina Social Services Commission has established rules and regulations for the provision of Protective Services for Adults with funds administered by the Division of Social Services

III. APS Law

A. Introduction

[Article 6, Chapter 108A](#) of the General Statutes was enacted to provide a mechanism for protecting the increasing number of disabled adults in North Carolina who are abused, neglected or exploited. The statute authorizes county departments of social services to provide adult protective services (APS) which includes receiving, screening, and evaluating reports that adults with disabilities are in need of protective services as well as mobilization of essential services on their behalf. A report should always be considered protective services unless the individual does not meet the criteria of being a disabled adult who is abused, neglected or exploited and in need of protective services as defined in G.S. 108A-101. The goal of the APS program is to provide protection and assistance to adults with disabilities with the least possible disruption of chosen lifestyle and least restrictive care. The APS program is supportive in that it helps the alleged victim and the victim's social support system to ameliorate the mistreatment and restore stability.

A systematic process has been established which county departments should follow when providing adult protective services. The process begins with receiving and screening referrals and continues through closure of the APS case. This process is referred to as [The Family Assessment and Change Process](#) as used in APS. The material in this manual section is arranged according to this model.

This manual section contains a detailed description of the law, [policies](#), and recommended social work practice departments of social services should use in carrying out their statutory responsibilities. Statutory requirement, state policies and recommended social work practice are given for each step in the APS process, as well as for other relevant topics. County departments of social services must follow statutory requirements and state policy. The recommended social work practice is intended to provide interpretation and guidance to departments in carrying out the statutory requirement and state policies. Article 6, Chapter 108A in its entirety and other resource materials are referenced within the section and are available as links or in the appendices of this manual.

B. Receiving and Screening Reports

Statutory Requirement

Reporting Requirement

The statute requires that any person having reasonable cause to believe that a disabled adult is in need of protective services shall report such information to the director [of the department of social services]. The report may be made orally or in writing. It must 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; and**
- **The nature and extent of the disabled adult's injury or condition resulting from abuse, neglect or exploitation**
- **Any other pertinent information. [G.S. 108A-102(a)(b)]**

Initial Notice to the District Attorney and/or Law Enforcement

Upon finding evidence indicating that a person has abused, neglected, or exploited a disabled adult, the director shall notify the district attorney. (G.S. 108A-109)

Immunity

Persons who make APS reports or assist with an APS case are protected from civil or criminal liability by the statute which states: 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. [G.S. 108A-102(c)]

State Policies

The county department of social services must 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.

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.

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

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, the county department shall notify the regional [field] office immediately. The regional [field] office will assign the report to another county department for evaluation.

Note: DSS should contact their assigned field-based [Adult Program Representative](#) instead of the regional (field) office. See [Appendix U](#), "APS Reciprocal County Protocol."

In addition to these specified instances 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.

Note: DSS should consult their assigned field based [Adult Program Representative](#) instead of the regional (field) office on all cases that appear to represent a conflict of interest.

Recommended Social Work Practice

Screening Criteria

General Statute, 108 A-101 sets out three criteria for the APS program. The three criteria are: the alleged victim is a disabled adult, is alleged to be abused, neglected, or exploited and is in need of protective services. When a report is received in the agency, an initial screening should be made to determine whether it is a protective service report. A report should always be considered protective services unless the individual does not meet the criteria of being a disabled adult who is abused, neglected or exploited and in need of protective services as defined in G.S. 108A-101. There is a responsibility to screen in a report therefore, the allegations should suggest that a disabled adult has been abused, neglected or exploited and is in need of protective services. The adult may be unwilling to participate in the evaluation, or may not allow the APS social worker access to the home, the APS social worker should use good social work skills and if necessary, a court order to gain access to the disabled adult and initiate the evaluation. It is important to note that requests which come to the agency for other services, may, upon further exploration, merit APS intervention.

A report should be considered protective services in all cases in which allegations are made that the individual is:

a disabled adult

According to the statute, a disabled adult is "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 consumption or absorption of substances." [G.S. 108A-101(d).] 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. [G.S. 7A, Article 56] The adult must be alleged to be incapacitated due to a disability to be considered a disabled adult. The worker should consider the alleged disabled adult's functioning to determine incapacity. Does their non or reduced functioning necessitate reliance on others to meet their basic needs: Enough questions should be asked at intake to support the reporter's allegations that the disability limits the adult's functioning. Use of the APS Intake tool can be found at http://www.ncdhhs.gov/aging/adultsvcs/afs_aps_tool.htm.

abused, neglected or exploited

Abuse is statutorily defined as 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. [G.S. 108A-101(a).]

Additional information that may be helpful in understanding the definition of abuse is outlined below.

- A reporter may use different or non-typical language to define the mistreatment of the alleged victim.

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- The pain, injury, mental anguish of deprivation must be willful to be considered abuse. Deprivation which is not willful is considered neglect.
- To be considered abuse under the statute a caretaker must inflict the pain, injury, mental anguish or deprivation.
- Mental anguish may be exhibited as fear, emotional pain or distress elicited of victim by the perpetrator. The intent of the behavior of the perpetrator is typically to threaten, humiliate, ridicule, or change the behavior of the victim.
- Pain may be exhibited as physical or emotional suffering secondary to physical damage of the victim, threats of injury, unreasonable confinement, or willful deprivation.
- Injury may be exhibited as the physical or emotional results of physical or emotional abuse that vary from wounds, bruises, broken bones, welts, and burns to emotional distress.

According to G.S. 108A-1019(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. This means comprehensive responsibility for the adult's day-today well being.

Caretaker includes but is not necessarily limited to:

- An individual such as a family member, friend, or neighbor who has informally assumed or been given responsibility for insuring that all of the adult's needs are met, including making decisions for the adult;
- Operator of a nursing, combination or residential care facility;
- An individual or organization that has been appointed general guardian, guardian of the person, or guardian of the estate, or to whom the adult has given a comprehensive power of attorney;
- State mental health, mental retardation or substance abuse services facility.

Caretaker does not include individuals or organizations that provide specific, limited services to the adult voluntarily or by contract, such as an in-home aide and adult day care program, home health aide, or general hospital. Such services may assist to a limited degree with the adult's care, but the individual or organization providing the services does not have comprehensive responsibility for the adult's well being. Lack of a caretaker should not result in an automatic screen-out. A reporter may use the term abuse when describing the disabled adult's mistreatment. If there is no known caretaker, this should not result in the report being screened out; the allegations may be another type of mistreatment such as self neglect or exploitation.

Neglect refers to a disabled adult who is either living alone and not able to provide for himself the services which are necessary to maintain his mental or physical health or is not receiving

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the services from his caretaker. [G.S. 108A-101(m)] This type of neglect is referred to as self neglect or caretaker neglect.

Exploitation refers to illegal or improper use of a disabled adult or his resources for another's profit or advantage. [G.S. 108A-101(j)] Financial exploitation is not the only type that should be considered. Examples of other types of exploitation include sexual exploitation and forcing a disabled adult to work without pay.

Exploitation does not have to be by the caretaker to meet the statutory definition. It is important to remember that the abuse, neglect or exploitation must have already occurred to be considered adult protective services.

in need of protective services

According to the statute a disabled adult is 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 him essential services. [G.S. 108A-101(e)]

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 abused but the abuse was reported after family had intervened and moved the 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 the county medical examiner for investigation.

If an adult with a disability is unable to perform or obtain essential services for himself, he is in need of protective services unless he has a willing, able and responsible person(s) to perform or obtain the services for him. Sometimes an adult has a person who is responsible and willing to help but is not able to because of lack of education, money, poor health, etc. In such cases there is still a need for protective services.

Screening Decision

If all three of the screening criteria are alleged, the referral is appropriate as an adult protective service report and should be accepted for evaluation.

If all three criteria are not alleged, the referral is not appropriate as an APS report. The worker should make appropriate referrals, however, including referrals to:

- Other available and appropriate agency services
- Other community agencies
- District Attorney and local law enforcement agencies if evidence of abuse, neglect or exploitation is reported; the agency may contact law enforcement or the District

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Attorney's office immediately if there is reason to believe that the disabled adult may suffer physical harm and

- Division of Health Service Regulation and the Adult Homes Specialist if a licensure violation is suspected ([Appendix P](#) for more details).

A report should always be considered protective services unless it is clear that the individual does not meet the criteria of being a disabled adult who is abused, neglected or exploited and in need of protective services as defined in G.S. 108A-101. The responsibility for determining whether a report is appropriate for APS always belongs to the agency, not the caller or the community.

The decision of whether to immediately contact law enforcement will have to 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 such as poisoning or purposeful medication overdose, is taking place or has taken place at the time of the report.

In some situations, however, if police appear prior to the social worker, it may make the adult, the caretaker, and neighbors mistrustful and jeopardize the ability of the social worker to effectively intervene.

There may be instances when police intrusion 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 would not be warranted.

There may be instances when a report is made on an adult who is 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 should be applied:

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

The worker should recognize that being hospitalized or in a different setting may not satisfy the 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.

A role unique to DSS is the dual responsibility for acting as guardian for incompetent 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 ward. This includes acting responsibly to

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protect the ward from abuse, neglect 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 is in need of 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. In 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 ward. DSS, acting as guardian, should be able, willing, and responsible to perform or obtain essential services for the ward 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 ward, the allegations do not constitute an APS report.

The legal authority and responsibility granted in state statute (G.S. 35A) empowers and requires any guardian to take whatever actions are necessary to protect the ward, whether the ward 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 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 able to provide protection should be handled like all other screened out reports. All applicable notices such as referrals to the District Attorney, the Adult Homes Specialist, or Complaints Investigation Branch, etc. should be completed in accordance with policy contained in this section. 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. By completing applicable notices, DSS has fulfilled its responsibility to inform these agencies of problems for which they have authority or responsibility.

In those rare instances when DSS receives a report alleging the need for protective services on behalf of that agency director's ward, 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 ward, the allegations are to be accepted as an APS report. Situations where the agency is not able, willing, and responsible to provide or arrange for essential services to protect the ward 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.

Examples of situations which should be evaluated by another county because of a conflict of interest are:

- Allegations that a DSS failed to authorize medical or mental health treatment in a timely manner and a ward suffers abuse or neglect

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- Allegations that a DSS allowed a ward to be exploited by performing manual labor without earning wages or receiving compensation
- Allegations that a DSS allowed a ward to reside in an unsafe environment and the ward is being exploited by people living in that community

Reports alleging abuse, neglect, or exploitation by a social services board member, county commissioner, county manager, or any other county official or personnel also constitute a conflict of interest. When a former county employee or official is alleged to be the perpetrator of abuse, neglect, or exploitation the county should consider whether this presents a conflict of interest for the agency. Conflicts of interest in APS situations require that the evaluation be conducted by another county DSS. APS evaluations conducted by another county will include an assessment of the director's performance of his/her duties as guardian. When there is any doubt as to a conflict of interest, the agency should consider the situation to be a conflict of interest.

The agency should always feel free to 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, acute mental illness, or drug use may indicate the need for police assistance to assure the safety of the social worker.

Situations that constitute a conflict of interest for the agency receiving an APS report to conduct the evaluation include reports alleging abuse, neglect, or exploitation by a social services board member, department of social services staff member, county commissioner, or the county manager. In addition, situations mentioned earlier in this section wherein the director is not able, willing, or responsible to provide or arrange for essential services to protect his ward would present a conflict of interest.

Conflicts of interest in APS situations require the evaluation be conducted by another county DSS. [Appendix U](#) contains the Adult Protective Services Reciprocal County Protocol for counties to follow when an Adult Protective Services evaluation cannot be completed because of a conflict of interest for the county receiving the report. This document outlines the responsibilities of both the "home" county and the "reciprocal" county in situations where another county must complete an APS evaluation.

The protocol contains a form that is recommended for taking adult protective services referrals. The form includes both information that is required by law and information that is optional but helpful. The recommended tool is particularly useful in screening referrals to determine whether they meet the screening criteria.

Screening Practice

Use intake forms as a tool, not a crutch. APS intake should not be performed by reading the questions on the intake form to the reporter. Instead the worker should listen to the reporter's concerns, fill in the form as information is offered and use the form to remind her of additional questions to ask. Skills which are helpful in getting needed information from the reporter include:

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- Use simple language. The worker should not confuse the reporter with professional jargon. For example, instead of asking if the adult is in need of protective services, the worker could ask whether the adult has anyone to help her.
- Ask open-ended questions. For example, instead of asking whether the adult is disabled, the worker could ask the caller to describe any disabilities the adult has and how they limit him/her.

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

It is helpful to maintain an attitude of helpfulness. Instead of focusing exclusively on whether to screen a referral in or out as APS, the 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 complainant. Although the person making the report is not required by law to identify himself, the intake worker should encourage him to give his name so the social worker can contact him for additional information during the evaluation if necessary. The worker should explain that if he gives his name he would be notified of the agency's decision about whether the adult is in need of protective services, if he chooses, and asks if he prefers written or oral notification. The worker should also assure the reporter that his name would be kept confidential unless a court requires that his identity be revealed, with two exceptions. The complainant's name may be given verbally to the Division of Health Service Regulation when requested by that agency in order to carry out its investigation and to the District Attorney's office or local law enforcement agencies which are prosecuting or conducting a criminal investigation of alleged abuse, neglect or exploitation of a disabled adult.

[Initial Notice to the District Attorney and/or Law Enforcement](#)

The term "evidence" should be interpreted broadly during intake. Any time the agency receives information that indicates a disabled adult may have been abused neglected or exploited, the information should be given to the district attorney and/or law enforcement. This includes referrals that are screened out at intake because there is no current need for protective services, but the information indicates abuse, neglect and/or exploitation may have occurred.

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 he wants law enforcement to be involved in these cases.

The Initial Notice to the District Attorney and/or Law Enforcement can be used as the initial notice. The notice is to be sent upon finding evidence that someone has abused, neglected, or

exploited a disabled adult. The worker should attach any evidence obtained at intake, such as medical evaluations, photographs, or financial records for exploitation cases.

C. Evaluating the Need for Protective Services

Statutory Requirement

County DSS Responsibility to Conduct the Evaluation

The statute requires that 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 situation. The director shall have the authority when necessary 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 Human Resources. Use of information so obtained shall be subject to and governed by the provisions of G.S. 108A-80 and G.S. 122-8.1

The director shall have the authority to conduct an interview with the disabled adult with no other persons present. [G.S. 108A-103(a)]

Time Frames to Initiate the Evaluation

The statute requires that the director shall initiate the evaluation:

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

Initial Notice to the District Attorney and/or Law Enforcement

Upon finding evidence indicating that a person has abused, neglected, or exploited a disabled adult, the director shall notify the district attorney. [G.S. 108A-109]

Responsibility of Other Agencies

The statute requires that staff and physicians of local health departments, area mental health programs, and other public or private agencies shall cooperate fully with the director of the department of social services in carrying out his responsibilities under the law. This includes immediate accessible evaluations and in-home evaluations where the director deems necessary. [G.S. 108A-103 (b)].

Time Frame to Complete the Evaluation

The evaluation shall be completed within 30 days for allegations of abuse or neglect and within 45 days for allegations of exploitation. [G.S. 108A-103 (d)]

Effective Date: April 1, 2011

Last Update:

Order to Freeze Assets and Authorize Inspection of Financial Records

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 is in need of protective services;**
- **The disabled adult is being financially exploited by his caretaker; and**
- **No other person is able or willing 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-106(f)]

State Policies

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 him/her within the statutory time limit, as appropriate, shall be documented in the case record. Such efforts to locate the adult shall constitute initiation of the evaluation.

Immediate Evaluation for Life-Threatening Situations

“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:

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

Contacting the District Attorney or Law Enforcement

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.

Conducting a Thorough Evaluation

A thorough evaluation of the protective service report shall include identifying indicators of abuse, neglect or exploitation and the disabled adult's strengths and

limitations by assessing the following functional areas:

- **Physical health;**
- **Mental health;**
- **Social support;**
- **Activities of daily living and instrumental activities of daily living;**
- **Financial support; and**
- **Physical environment**

Steps in Evaluation

The complete evaluation must include:

- **The visit to the person, which means that the person must be seen by the worker. The worker will make as many visits as necessary to determine whether the adult is disabled; abused, neglected or exploited; and in need of protective services.**
- **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.**
- **Medical, psychological and/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.**

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 service evaluation. 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 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 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.

Focus of Evaluation

The evaluation must determine:

- **Whether or not the adult is disabled as defined in G.S. 108A-101(d).**
- **Whether or not the adult is abused, neglected or exploited as defined in G.S. 108A-101(a)(j) or (m).**
- **Whether or not the adult is in need of protective services as defined in G.S. 108A-101(e).**
- **Whether or not the adult lacks the capacity to consent to protective services as defined in G.S. 108A-101(1).**

Inter-County Cooperation

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.

In situations involving conflict of interest, the county of residence will be responsible for paying for any expenses for medical, psychological or other examinations needed by the disabled adult in accordance with State Policies. The county of residence will be responsible for paying for legal services incurred by the county that conducted the evaluation.

Order to Freeze Assets and Authorize Inspection of Financial Records

When preparing to petition the court, documentation must be made of specific information indicating that:

- **The adult lacks the capacity to consent;**
- **The adult is in need of protective services;**
- **The adult is being financially exploited; and**
- **No one else is able or willing to arrange for protective services.**

Recommended Social Work Practice

Initiation of Evaluation

The evaluation has not been initiated until a visit to the disabled adult about whom the report was made has been made or attempted. During the visit, the worker must actually see the adult. Making preliminary phone calls does not constitute initiation of the evaluation.

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Although it may be helpful in some situations to make calls before the initial visit to the adult, such contacts should be kept to a minimum to protect the adult's confidentiality. It may be necessary for the social worker to request assistance from law enforcement at the time of the initial visit if the report contains information that there are risks to the safety of the worker or to the disabled adult.

The worker will have to be prepared, even during an initial visit, to provide or arrange for necessary protection of the disabled adult. Some situations may necessitate immediate referrals to other agencies in order to provide protection. For instance, if the worker feels that the disabled adult may be subjected to further mistreatment, assistance of staff from a variety of agencies such as DSS, law enforcement, or public health may be needed to insure the adult's protection.

Crisis Intervention

By its very nature APS is provided to adults experiencing increased vulnerability and risk. The worker must be prepared, even during the initial visit, to provide or arrange for necessary protection of the adult. 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. Immediate action can take different forms including but not limited to petitioning for an emergency ex parte APS order to provide a specific service needed to stop abuse, neglect or exploitation; arranging for a life sustaining service such as food, heat or medically necessary prescription drugs; or assisting with an involuntary commitment.

For example an emergency ex parte APS order may be needed in instances when the adult with a disability is found in circumstances where this is substantial danger of irreparable harm or death and emergency services such as a medical assessment, placement or hospitalization are needed. The APS process can be compressed to meet the immediate emergency needs of the adult including making the capacity decision. In this type of situation decisions have to be made very quickly and the APS worker must be reasonably sure that there is no other decision maker available such as a guardian. 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 for the assessment, especially if other allegations or concerns not related to the emergency need to be addressed.

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 needed while the social worker is completing a thorough APS evaluation. This type of crisis intervention is normally needed to stabilize a one time crisis situation and does not require that a case decision be made in order to provide it.

Time Frames for Initiating Evaluation

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. Agencies should have a system in place

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to assure there is no delay once it has been determined that the allegations constitute an APS report.

Private Interview

The law authorizes the agency to conduct an interview with the disabled adult with no other persons present. If the agency's authority to do so is challenged, a request may be made to law enforcement for assistance or the agency may petition the court for an order requiring compliance with the law.

Initial Notice to the District Attorney and/or Law Enforcement

If evidence has been found during the course of an evaluation that a disabled adult has been abused, neglected, and/or exploited, the DSS should not wait until a case decision is made to notify the district attorney and/or law enforcement. This notification is to take place upon finding evidence of abuse, neglect, and/or exploitation.

The term "evidence" should be interpreted broadly during the evaluation. Any time the agency obtains information that indicates a disabled adult may have been abused neglected or exploited, the information should be given to the district attorney and/or law enforcement. This includes cases where evidence of abuse, neglect or exploitation is found during the evaluation but the case is unsubstantiated because the adult is no longer in need of protective services.

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 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 worker has found evidence and reached a case decision simultaneously, the written report will suffice as the notice. The worker should attach any evidence obtained to this point in the evaluation, such as medical evaluations, photographs, or financial records for exploitation cases.

Relationship with Law Enforcement

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 or the district attorney's office, determining

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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 investigation 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.

Conducting a Thorough Evaluation

The focus of the thorough evaluation is to determine whether or not adult protective services are needed. A thorough evaluation includes completing a thorough assessment, consultation with collaterals and consultation with other professionals. It is recommended that social workers use the APS assessment tool found at http://www.dhhs.state.nc.us/aging/adultsvcs/afs_aps_tool.htm to document findings.

- Other tools that may be helpful in conducting a thorough evaluation are:
- <http://www.elderguru.com/download-the-slums-dementia-alzheimers-test-exam/>
- <http://geriatrics.uthscsa.edu/tools/GDS%20short%20form.pdf>
- http://www.hospitalmedicine.org/geriresource/toolbox/pdfs/short_portable_mental_statu.pdf

Determining the Need for Protective Services

Determining whether the disabled adult is in need of protective services is one of three elements that must be determined as a result of the thorough evaluation. In addition to gathering information to determine whether the adult is a disabled adult and whether abuse, neglect and/or exploitation is occurring or has occurred, information must be gathered to determine whether there is a need for protective services.

There are two critical questions that must be adequately answered when deciding whether there is a need for protective services:

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- Is the disabled adult able or not able to perform or obtain essential services for him/herself;
- And if it appears the adult is not able, is there a person who is able, responsible and willing to perform or obtain services on behalf of the disabled adult.

The thorough APS evaluation will provide the social worker and supervisor with the information needed to answer these crucial questions. If the answers are not clear, more information should be gathered.

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 can present a challenge. 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.

- What is meant by physical or mental incapacity?
- How are these determinations made?
- How could being incapacitated in these ways effect a person's ability to perform or obtain essential services?
- What constitutes essential services?

Physical and mental functioning must be assessed as part of the thorough APS evaluation. At a minimum, information documented in the Physical Health, Medication, and Activities of Daily Living sections of the assessment should provide the basis for determining the adult's physical incapacities and how those incapacities limit functioning. 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 is unique. If the assessment reveals that the adult is limited by their physical functioning to the extent that it impairs their ability to perform or obtain essential services needed to remedy the abuse, neglect or exploitation then the determination must be made that this adult at this time is unable to perform or obtain essential services for him/her self. In addition to the adult's statements regarding functional limitations, the social worker will use observation and consultation with collaterals and other professionals to ensure the accuracy of the decision. In addition to the information documented in the assessment sections mentioned above the social worker and supervisor will use information in the Mental/Emotional Functioning, including Orientation, Memory, Judgment and Arithmetic, and Mental/Emotional Assessment; and Self Endangering Behaviors sections of the assessment as a basis for determining the adult's mental incapacities and how that limits the adult's functioning. Just as is the case with physical conditions, diseases or diagnoses, mental conditions, diseases or diagnoses that limit one person may not limit another. For example, depression in one person may not impair that individual's functioning while in another it keeps them confined to bed. Each person and situation is unique. Do not assume that because it appears that the individual can physically or intellectually perform an essential service but chooses not to, that they are in fact capable. The social worker must determine at each assessment that the person has the physical, emotional,

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intellectual and social skills to perform the essential services as well as the knowledge of how to do so. This is critically important in situations of repeated APS reports on the same individual. For example, when the subject of an APS report is addicted to drugs and/or alcohol, a determination of the adult's ability to perform or obtain essential services will be made each time an APS report is accepted. Moreover, in the field of domestic violence, it has been widely observed that victims may not act in their best interest secondary to "learned helplessness." Access to information about and knowledge of complex behaviors is vital to APS social workers in their social work practice

http://psychology.wikia.com/wiki/Learned_helplessness. If the assessment reveals that the adult is limited by their mental or social functioning to the extent that it impairs their ability to perform or obtain essential services needed to remedy the abuse, neglect or exploitation then the determination must be made that this adult at this time is unable to perform or obtain essential services for him/her self. In addition to the adult's statements regarding functional limitations, the social worker will use observation and consultation with collaterals and other professionals to ensure the accuracy of the decision.

Determining whether a person is able, willing and responsible is statutorily required [G.S. 108 A-101(e)], an integral part of the evaluation and is critical for making a sound case decision. The following definitions and guidance are provided as tools to assist making this critical decision.

Definitions:

- A "willing person" is one who voluntarily commits to and is in agreement to providing or mobilizing the protective services needed by the disabled (incapacitated) 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 (incapacitated) 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.

Guidance:

- Does the individual have a criminal history; if so, how will this effect the individual's ability to provide protective services and in the social worker'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?
- Consider whether the individual's own impairments (physical, mental, substance abuse or other) may negatively impact the individual's ability to mobilize protective services.

Effective Date: April 1, 2011
Last Update:

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- When appropriate (i.e. disabled adult with capacity) the disabled adult's opinion about the individual and the disabled adult's wishes should be considered.

Unless the social worker is reasonably assured that the identified person(s) will be able to act comprehensively on behalf of the adult to provide essential 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 social worker to serve in this way, the need for protective services should be substantiated, the agency assume responsibility for protection and include the identified individual(s) in the service plan.

The decision of whether the agency is going to assume responsibility to protect the abused, neglected and/or exploited disabled adult (substantiate) or whether the agency is going to rely totally on someone else (unsubstantiate) to provide protection is a key decision. Consideration should be given to the issue of agency liability particularly in the event that an identified individual not thoroughly assessed proves to be unable, unwilling or irresponsible and the adult continues to be abused, neglected and/or exploited. Consideration must also be given to the very idea that a disabled adult would continue to endure abuse, neglect or exploitation as a result of poorly informed case decision making.

North Carolina's APS statute defines essential services very broadly and includes 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. The following link contains NC GS 108A-101(i) which defines essential services: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_108A/Article_6.pdf 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. The basic needs approach is one of the major approaches to the measurement of absolute poverty. It attempts to define the absolute minimum resources necessary for long-term physical well-being. A traditional list of immediate "basic needs" is food (including water), shelter, and clothing. Many modern lists emphasize the minimum level of consumption of 'basic needs' of not just food, water, and shelter, but also sanitation, education, and healthcare. Being able to live free from abuse, neglect and exploitation would be reasonably included in our understanding of basic needs and would certainly be understood as necessary to maintaining ones physical or mental well-being.

Review of Records

When an adult's caretaker is an individual, facility or agency that maintains records related to care and treatment of the adult, the law authorizes review and copying of such records when necessary for a complete evaluation. A caretaker that maintains records related to care and treatment of an adult could be, for example, a home for the aged. If the caretaker challenges the agency's authority to have access to records, the agency may petition the court for an order requiring compliance with the law.

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Administrative Search and Inspection Warrant

In instances where the adult or his caretaker refuses to cooperate with the worker in carrying out the evaluation, the worker should do the following:

- Explain the agency's statutory responsibility to evaluate the report that the 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.
- Apply for an administrative search and inspection warrant if necessary in order to see the adult (refer to Appendices [F-1](#) and [F-2](#)). Appendix F-3, Administrative Office of Court Form 913M ([Affidavit to Obtain Administrative Inspection Warrant for Particular Condition or Activity](#)), is provided as an alternative to using Appendices F-1 and F-2. This form is a condensed version of Appendices F-1 and F-2 and contains all the information needed to obtain [an Administrative Search and Inspection Warrant](#).

Evaluation of Reports of Exploitation

Exploitation is one of the most difficult and sensitive areas of adult protective services. Often, the person who is exploiting the adult is a close relative. The worker should use all of his/her tact in the evaluation, taking care to avoid alienating the adult and family member.

Exploitation includes but is not limited to forced labor, sexual and financial exploitation. Some examples include: taking an individual's money, selling his property and taking the money from the sale, trickery, and getting an individual to work without remuneration or at wages far below the minimum wage.

A person's resources are considered to be exploited when taken under false pretenses, taken without the owner's approval, or not used on behalf of the owner.

If, during the course of the evaluation, it appears that disabled adult has the capacity to consent and is being financially exploited by his caretaker, but a case decision cannot be made because the worker has not had access to the adult's financial records, reasonable efforts should be made to get the adult to voluntarily grant access to the financial records so the evaluation can be completed. If the adult refuses to voluntarily grant access to his/her financial records, the worker should attempt to complete the evaluation by gathering other types of information, possibly from collateral contacts.

If during the course of the evaluation it appears that the adult lacks the capacity to consent, it may be necessary to obtain an order to freeze assets and inspect financial records. Such an order serves the purpose of assisting the worker in completing the evaluation while at the same time protecting the adult from further exploitation.

Note: Obtaining an order to freeze assets and inspect financial records may be an appropriate intervention at any point during the APS process, depending upon the situation and need to obtain such an order.

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Order to Freeze Assets and Authorize Inspection of Financial Records

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

The possibility of petitioning the court for authority to 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 may be filed may result in records being altered or assets being withdrawn. When preparing the petition, be as specific as possible in describing the accounts to be frozen.

Intermittent Disability

In some instances, the adult's disability may be intermittent in nature, i.e.; the adult is disabled at some times, but not all of the time. This type of disability occurs most often with continued consumption or absorption of substances (alcohol, drugs, etc.).

In such cases, it is important to determine whether the disability is prevalent to the extent that the adult is in need of protective services as defined in G.S. 108A-101(e). There may be recurring complaints on persons with an intermittent disability. Such complaints should be documented.

Inter-County Cooperation

There will be instances when a county has received an APS report and has the responsibility to conduct an evaluation because the disabled adult is present in that county. However, before the evaluation can either be initiated or completed, it is necessary for that county to request assistance from another county DSS.

Keeping in mind that the goal of APS is to assess the 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 accepted the report initially 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.

Another example of a temporary situation would be hospitalization in another county.

The policy regarding inter-county cooperation applies to disabled adults living in domestic settings. It does not refer to the responsibility of a county DSS to complete evaluations of adults living in DHSR licensed facilities. Clarification of the responsibility to conduct evaluations in DHSR licensed facilities such as adult care homes, nursing homes and mental health group homes is provided in Section III of this manual. Clarification of the responsibility to conduct APS evaluations in state operated healthcare facilities such as psychiatric hospitals and developmental centers is provided in Section III of this manual and in [DHHS Directive III-5](#).

D. Making A Case Decision

Statutory Requirement

Notice to the Complainant

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. [G.S. 108A-103(a)]

Written Report of Adult Protective Services Evaluation

After completing the evaluation, the director shall make a written report of the case indicating whether he believes protective services are needed [G.S. 108-A 103(a)].

State Policies

Notice to the Complainant

The notice may be oral or in writing at the discretion of the complainant and shall be made immediately upon completing the evaluation and making the case decision. 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. Documentation shall be made of when and how the notice is given. In order to protect the client's confidentiality, the notice shall not include specific findings of the evaluation.

Written Report of Adult Protective Services Evaluation

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; or**
- **Evidence of abuse, neglect or exploitation is found; 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 written report 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);**
- **The evaluation including the agency's findings and supporting documents (e.g. psychological, medical report); conclusions; and recommendations for action**

Substantiation of the Report

Following completion of the evaluation a determination shall be made as to whether the report is substantiated. 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).**
- **A report is unsubstantiated if any one of these three conditions is not met.**

Unsubstantiated Reports

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 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.

Inter-County Cooperation Regarding Reports Involving County Officials and/or Other Conflicts of Interest

When an APS Report is received by one county, but referred by the Regional Office for evaluation by another county, the following policies apply:

- **If the report is not substantiated, then the county conducting the evaluation must make referral back to the county of residence so that other services may be offered.**
- **If the report is substantiated, the county conducting the evaluation will obtain appropriate service authorization, including petitioning the court if necessary. The petition is filed in the county of residence.**
- **The petition must include the reason for filing by an agency in another county.**

The county conducting the evaluation will act as the case manager for providing protective services with 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.

When one county is conducting an evaluation for another county because of a conflict of interest, it is recommended the county of residence be notified in writing of the case decision. The Written Report of Adult Protective Services Evaluation should be used to communicate this information to the referring county.

Recommended Social Work Practice

Notices to the Complainant

Notices to the complainant are available at

http://www.dhhs.state.nc.us/aging/adultsvcs/APS_NoticetoReporterScreenedIn6-06.pdf
http://www.dhhs.state.nc.us/aging/adultsvcs/APS_NoticetoReporterScreenedOut6-06.pdf
http://www.dhhs.state.nc.us/aging/adultsvcs/APS_NoticetoReporterCompletionofEval6-06.pdf

and include notices regarding the screening of the report and notice regarding the completion of the evaluation.

Written Report of Adult Protective Services Evaluation

The written report is a separate document filed in the case record. It may be needed outside the agency for a protective service court hearing or to send to the district attorney and/or the Division of Health Service Regulation. It may also be needed to notify the Division of Medical Assistance when evidence of financial exploitation is found for an adult residing in a Medicaid-funded facility. It may be needed to notify other governmental agencies such as the Social Security or Veteran's Administration when an APS evaluation indicates violations of their statutes, rules or regulations. This report should not serve as the notice to the complainant.

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The Written Report can be found in the APS Tools located at: http://www.dhhs.state.nc.us/aging/adultsvcs/afs_aps_tool.htm. This form covers all the required information, and has space for additional information that may be useful. The worker should attach documentation such as photographs of injuries or expert evaluations.

Time Frames

Though it is a statutory requirement to complete the APS evaluation within 30-45 days, evaluations can be completed and should be concluded when there is enough information to warrant making a case decision. The evaluation should not be held open to simply meet the statutory time frame of 30 days for abuse and neglect and 45 days for exploitation. Equally important is the directive to expedite the APS process and make the case decision to protect the adult in a life threatening situation.

Responsibility for Decision

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 the case decision rests with the department. It is incumbent upon the agency to assure that case decisions are consistent, reliable, and fulfill the agency's responsibility to protect vulnerable adults who are being abused, neglected and exploited.

Relationship to Capacity to Consent

The disabled adult's capacity to consent to protective services is not a factor in making the case decision. The decision about the client's capacity should be made after a case decision is made in preparation for obtaining service authorization.

Making and Documenting the Case Decision

As is the case with making an APS screening decision, the APS case decision should be a shared decision, including at a minimum, the social worker and the social worker's supervisor or supervisor's designee or staffing team.

The case decision is made based solely on the same three criteria as the screening decision. The questions that the thorough evaluation must answer and are the basis for the case decision are:

- Is this individual a disabled adult?
- Does it appear that this adult is being subjected to or has been subjected to abuse, neglect or exploitation?
- Is this adult in need of protective services?

Applying other criteria to the case decision, such as the adult's capacity to consent or refuse protective services, may result in denying the disabled adult access to protective services.

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, lack of staffing resources, lack of formal services, lack of access to court systems

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or legal consultation or prior history with the same individual who may have refused services in past. The thorough APS evaluation, including the assessment, interview(s) with the disabled adult, contact with collaterals, other professional's evaluations, etc supplies the information needed for making a case decision. If any element of the case decision is unclear more information may need to be obtained. Here are some unusual circumstances that may be exceptions to this practice:

- If diligent efforts have been made during the evaluative time frame to locate the alleged victim to no avail, the diligent efforts must be thoroughly documented.
- If the alleged victim has moved out of state before the evaluation has been completed. Be mindful that you may have enough information to make your case decision;

You may also need to make a courtesy call to APS in the receiving state requesting outreach or follow up with the individual.

Once the case decision has been made it should be clearly documented. The case decision is best documented using the case findings section in the APS Evaluation tools provided with the APS Evaluation tools found at:

http://www.dhhs.state.nc.us/aging/adultsvcs/afs_aps_tool.htm

The documentation should specify whether each of the three criteria for substantiation has been met and provide details on how each criterion has been met. For example, if the worker determines that the disabled adult is self-neglecting, the documentation should provide enough information to understand how the decision was reached. Once the 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.

Unsubstantiated Report: Termination of APS Evaluation - Offer and Referral for other Services

Although a protective service report may be unsubstantiated, that does not always mean that the individual does not need or could not benefit from services. A visit should be made to the disabled adult to notify 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 has worked with the social worker, that family member should be contacted .

If the disabled adult or the adult's family member(s) indicate to the protective service worker that he or they would like to request services, the worker should make a referral to the appropriate agency or DSS staff, in situations where the referral is for DSS services. In order to expedite the provision of services, the worker should include in the referral relevant information about the situation, need and request for services. The referral should include only the information that is relevant and necessary to process the request for services.

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If other agency services are needed and accepted by the adult or his/her legal representative, the case is closed in the Services Information System (SIS) for APS and opened in SIS for the particular service that is needed.

When a county conducts an evaluation for another county and the report is unsubstantiated, the Written Report 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 client is in need of or has requested. The Written Report may also contain information to indicate that further services were not needed or that the client refused services.

If a referral for alternate 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 as well as details of bank records or other details about the family situation. If the county conducting the evaluation has received client consent for the release of information, then all information except for the name of the complainant and the collateral contacts may be shared.

Substantiated Report: Inter-County Cooperation

When a county has conducted an evaluation for another county and the report is substantiated, the county that conducted the evaluation will remain the case manager and provide or arrange for protective services as needed. The county where the disabled adult resides should cooperate in the provision of protective services and with the provision of 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 client 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 clients. 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 client 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.

E. Determining Capacity to Consent

Statutory Requirement

The statute defines "lacks the capacity to consent" as 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. The director may reasonably determine this or he may seek a physician or psychologist's assistance in making this determination. [G.S. 108A-101(1)]

State Policies

The evaluation must determine whether or not the adult lacks the capacity to consent to protective services.

Recommended Social Work Practice

Capacity Decision

During the evaluation information needed to determine the adult's capacity to consent to protective services should be collected. The determination should not be made, however, until after a case decision has been made. Once the case decision has been made a decision about capacity must be reached before authorization for services can be obtained

Guidelines for Assessing Capacity to Consent to Protective Services.

Assessment of a person's capacity to consent to protective services focuses on the adult's mental condition and his ability to perceive and understand his situation, including his:

- Awareness of the limitations/deficiencies in his/her surroundings (environment);
- Awareness of his/her own mental or physical limitations;
- Awareness of resources available to assist in meeting his/her needs; and
- Awareness of the consequences to him/her if nothing is done to improve or remedy his situation.

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If a person expresses knowledge in these four areas, he may have the capacity to consent to protective services.

If a person is deficient in all four areas, he may lack the capacity to consent to protective services.

If it is not clear that the person is knowledgeable in all four areas, 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. Even if an expert evaluation is obtained, however, the department of social services is ultimately responsible for making the decision about the adult's capacity to consent

Lifestyle

It is important to recognize that an eccentric lifestyle does not in itself reflect a lack of ability to be responsible for making decisions for oneself. The deciding factor should be whether an individual has an understanding and acceptance of the reality of the consequences of his lifestyle.

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(1), and competency as defined in G.S. 35A-1101(7), the guardianship statute. These are two separate and distinct concepts. An adult's capacity to consent 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 usually a long-term condition, and its effects are global. An adult who has been adjudicated incompetent probably lacks the capacity to consent to protective services, but an adult who lacks the capacity to consent may not be incompetent.

Documentation of Capacity to Consent

Once a decision has been made about the adult's capacity to consent to protective services, it should be documented carefully, using the Case Findings section of the [APS Assessment Tools](#). Be sure to describe the adult's perception of his situation/problem; his perception of the consequences of his situation/problem; and the impairment or incapacity which makes the adult unable to make and/or communicate responsible decisions. Refer back to any areas of the evaluation that provide more details. Although clear, concise and thorough documentation of capacity to consent is important in all cases, it is especially important if the case goes to court.

F. Obtaining Service Authorization

Adult has Capacity to Consent and Consents to Protective Services

Statutory Requirement

Effective Date: April 1, 2011
Last Update:

The statute requires that if the department determines that a disabled adult is in need of protective services and the disabled adult consents to the provision of such services, the department shall immediately provide or arrange for the provision of protective services. [G.S. 108A-104 (a)].

State Policies

None

Recommended Social Work Practice

In order to provide clear documentation of the agency's authority to provide protective services, a written statement of consent to services, signed by the disabled adult, should be obtained (see [Appendix H](#) for sample consent form).

If the adult is unable or unwilling to sign a statement but consents to protective services verbally, the worker should attempt to have a witness to the adult's oral consent. The worker should document the date, time and circumstances under which the verbal consent was given.

Adult Consents to Protective Services - Caretaker Interference

Statutory Requirement

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 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;
- The disabled adult consents to the receipt of protective services; and
- The caretaker refuses to allow the provision of such services. [G.S. 108A-104(b)]

"Caretaker" means someone who has responsibility for the care of a disabled adult as a result of family relationship or who has assumed responsibility for a disabled adult's care voluntarily or by contract. [G.S. 108A-101(b)]

State Policies

In preparation for petitioning the court for an order enjoining a caretaker from interfering with the provision of protective services, the 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.

Recommended Social Work Practice

Before petitioning the court, the social worker should explore all avenues for obtaining the caretaker's consent voluntarily. This includes attempting to explain the disabled adult's need for assistance and the agency's legal responsibility to provide services in such instances. When possible and appropriate, the social worker may want to involve family members to attempt to persuade a caretaker to cooperate in the provision of services. 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. Continued failure to cooperate should be documented over a period of time except in emergency situations in which immediate action must be taken.

The petition must include specific facts, not the social worker's opinion, in order to provide the judge with evidence sufficient to issue an order enjoining caretaker interference. The form to be used in petitioning the court is in [Appendix I](#).

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

Adult has the Capacity to Consent and Does Not Consent to Protective Services

Statutory Requirement

The statute requires that: 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. [G.S. 108A-104 (c)].

State Policies

When a disabled adult who is capable of making responsible decisions 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.

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/her refusal of services or shall document in the record the attempt to obtain such a signed statement. (See [Appendix H](#), Client Refusal to Consent to Protective Services).

Recommended Social Work Practice

The right of self-determination is a basic principle of protective services for adults. (See [Appendix A](#)) When the adult has capacity the worker should respect the right of the adult to choose whether to accept services.

In some instances, the general public and the complainant may be concerned about an individual's situation, not recognizing that the person has chosen his lifestyle. The agency should be prepared to respond appropriately to such concern, at the same time being careful to protect the person's confidentiality.

Adult Lacks Capacity to Consent

Overview

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 before protective services can be provided. Several different options are available for obtaining authorization including protective service orders and guardianship or interim guardianship appointments. The agency should consider the adult's condition and circumstances in determining whether it would be more appropriate to petition the court under the protective services law, or the guardianship law.

Protective service 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 with the provision of services such as medical treatment, better nutrition or drug management.

Guardianship may be an appropriate alternative to court action under the protective service law for an adult who is incompetent and whose incompetence results from a condition which is long-term and unlikely to improve. Also, guardianship should be pursued in any instance in which an adult has income which needs to be protected and which could not be managed by a payee, and/or property that needs to be protected and/or managed. The protective service law does not provide a basis for anyone to assume control over an adult's financial resources. Therefore, guardianship should be pursued in any instance in which an incompetent adult needs someone to manage her estate.

When guardianship is considered appropriate to meet an adult's long-term needs and assistance must be provided to protect the adult before a guardianship proceeding can be completed, it may be possible for authorization to provide such assistance to be obtained through appointment of an interim guardian. An interim guardian can be appointed if there is reasonable cause to believe that the adult is incompetent and there appears to be an imminent or foreseeable risk of harm to the adult's physical well being or estate which require immediate intervention. [\[G.S. 35A-1114\(b\)\]](#)

If an incompetent adult has a guardian who is unwilling or unable to protect the ward in an emergency situation which threatens the ward's physical well being or who fails to keep the ward's estate from being at substantial risk, the Clerk of Superior Court may remove that guardian without a hearing. The clerk may then issue an interlocutory order to protect the adult or the adult's estate until a new guardian can be appointed by the clerk. [\[G.S. 35A-1291\]](#)

Since the Clerk of Superior court has jurisdiction in this matter, and knowledge of the ward's situation, the clerk's willingness to issue an order may avoid the need to petition district court to obtain an ex parte emergency APS order. Between the time the clerk removes the guardian and the hearing to appoint a successor guardian, the interlocutory order could authorize DSS to provide protective services.

Protective Services Orders

To obtain a protective service order, the agency must file a petition in district court. The [appendix](#) to this section contains petition forms, a sample completed petition and forms for APS orders. The petition specifies the type of order needed. There are three different types of protective service orders that can be issued to the court, depending on the urgency of the situation: Order Authorizing Protective Services, Order Authorizing Emergency Services, and Ex Parte Order Authorizing Emergency Services. Once the petition is filed, notice is served on appropriate parties, including the adult. Next a hearing is scheduled. 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. Within 60 days the court will conduct a review. The initial 60-day period can be extended for an additional 60 days if good cause is shown. The following information describes each type of court order in more detail.

Order Authorizing Protective Services Statutory Requirement

If the director reasonably determines that a disabled adult is in need of protective services and lacks capacity to consent to protective services, he may petition the district court for an order authorizing the provision of protective services. The petition must allege specific facts which show that the disabled adult:

- **Is in need of protective services and**
- **Lacks capacity to consent to protective services. [G.S. 108A-105(a)]**

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. He 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, 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, he may issue an order authorizing the provision of protective services. 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 in his behalf. 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. For good cause shown the court may extend the 60-day period for an additional 60 days.

State Policies

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.**

Recommended Social Work Practice

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.

The immediacy of the need for services is the determining factor in deciding which type of court order is appropriate. A petition for a non-emergency order authorizing protective services should only be used if a 14-day delay will not place the adult in substantial danger of death or irreparable harm.

The APS statute does not require notice of the filing of a non-emergency petition to be given to anyone except the adult. It is good practice however, to notify the adult's spouse, children or next of kin and guardian, if any.

Order Authorizing Emergency Services

Statutory Requirement

Upon petition 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. [G.S. 108A-106(a)]**

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. [G.S. 108A-101(g)]**

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 G.S. 108A-105 [G.S. 108A-106(b)].

"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. [G.S. 108A-101(h)]

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. [G.S. 108A-106C]**

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. [G.S. 108A-106(d)]

When it is necessary to enter a premise without the disabled adult's consent after obtaining a court order the representative of the petitioner shall do so. [G.S. 108A-106(e)]

The court may issue an immediate emergency order 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 [G.S. 108A-106(d)].**

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. 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 [the spouse, adult children, next of kin, or the guardian]. 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. [G.S. 108A-106(d)]

State Policies

The information which must be included in the petition [G.S. 108A-106(C)] shall be documented in the agency file.

Recommended Social Work Practice

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.

Another consideration is the length of time required by the local court to schedule a hearing on a petition for an emergency order, which varies from court to court.

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.

Obtaining Service Authorization in Situations Involving Conflict of Interest

Statutory Requirement

None

State Policies

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 of residence and shall include the reason for filing by an agency in another county.

The agency that conducted the evaluation will act as case manager for protective services, in conjunction with the agency in the county of residence. The county of residence will be responsible for paying for services in accordance with State Policies and for paying for any expenses for medical, psychological or other examinations and legal services incurred by the county which conducted the evaluation.

Recommended Social Work Practice

Situations that constitute a conflict of interest for an agency that received an APS report require that the evaluation be conducted by another county DSS. If the report is substantiated, the fact that a conflict of interest exists or existed requires that another county seek services authorization and continue to have case management responsibility to ensure that the factor(s) creating the conflict of interest do not interfere with the provision of protective services. ([See Reciprocal County Protocol](#)).

G. Planning and Mobilizing Essential Services

Statutory Requirement

Essential Services

Protective Services consist of evaluation of the need for service and mobilization of essential services on behalf of the disabled adult. [G.S. 108A-101(n)]

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. [G.S. 108A-101(i)]

At the time the protective service evaluation is made, the agency shall determine whether the adult is financially capable of paying for the essential services, based on regulations set by the Social Services Commission. If the adult is determined capable of doing so, he shall make reimbursement for the cost of providing the needed services. If it is determined that he is not financially capable, such services shall be provided at no cost to the adult. [G.S. 108A-108]

State Policies

Payment for Essential Services

For essential social services that are made available by the county department of social services, the individual's responsibility for payment shall be determined in accordance with 71R.0100 [Requirements for Provision of Services Manual](#).

For essential social services which are not made available by the county department of social services, an individual is deemed financially incapable of paying if his income is less than 60% of the established income as codified in 10 NCAC 71R.0505, Requirements for Provision of Services Manual.

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.

Movement of Adult to Another County

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 about the adult's situation to be shared with the department of social services 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.

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 service 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 in accordance with policies contained in this manual.

Recommended Social Work Practice

Development of a Service Plan

Careful development of a service plan is critical to protection of the disabled adult. Before mobilizing services the worker should develop a plan which will minimize the abuse, neglect and/or exploitation and move the adult's situation toward stability. The following points should be considered when developing service plans in Adult Protective Services.

The plan should flow from the evaluation. Concerns and areas for change identified in each functional area during the evaluation should be addressed in the service plan. Client and family strengths and goals identified in the evaluation should also be taken into consideration as the plan is developed.

The plan should be client and family focused. The client should participate in developing the service plan as much as he can, and should also participate in the implementation of the plan as much as possible. If appropriate, people identified by the client, including family, should also be involved in service planning and implementation. The family and other informal support systems should be the preferred service providers.

The plan should contain function-oriented goals and be time-limited. APS is a short-term, crisis-oriented service. The service plan should reflect the nature of the service by identifying specific goals, which address problems needing immediate attention. Dates should be set for the attainment of these goals.

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

Protection can be provided on a continuum ranging from a very protective plan, such as placement, to a less protective 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 worker considers optimal and the level of protection the client is willing to accept.

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

- **Use of the least restrictive alternative;**

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- **Respect for the client's right to self-determination; and**
- **Inadequate or inappropriate intervention is more harmful than none at all.**

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

- **The checklist for change 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 worker, the adult, etc.); and**
- **A time frame for completion of each task.**

[The Adult and Family Service Plan](#) includes all these elements.

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 clients 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 should be developed that will enable APS clients 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 client is receiving adult protective services.

APS clients should 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 services are needed from other agencies, appropriate referrals should be made requesting specific services that will carry out the goals of the service plan. The referrals should stipulate that these services are needed for an individual receiving adult protective services.

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 Adult Protective Service social worker should only share the specific information that is needed by the other agency.

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While it is strongly recommended that all disabled adults receiving adult protective services receive essential services on a priority basis, policies for serving older adult protective services clients 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 client is receiving adult protective services. This is to help ensure priority for the receipt of these services.

[Appendix T](#) contains the recommended process for making referrals to a community service provider receiving Home and Community Care Block Grant funds. The referral process is also included as an attachment to the Home and Community Care Block Grant Procedures Manual for Community Service Providers.

Payment for Essential Services

The law states that an adult who is determined capable of paying shall make reimbursement for the cost of providing needed services. This means that the agency should provide the needed services, or arrange for their provision, and then request appropriate reimbursement from the adult for agency funds expended in the provision of such 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 [DAAS Manual, Consumer Contributions](#).

The person's decision regarding payment and the agency's response should be documented in the case record.

When an adult 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 [DAAS Guardianship Services 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 as caretaker interference.

Situations that constitute a conflict of interest for an agency receiving an APS report 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.

Movement of Adult to Another County

The department in the original county of residence should provide the department of the new county with relevant information about the adult and the protective service situation to help the new county assess the case.

When protective services are provided with the consent of the adult and the adult is moving to another county, the worker should explain that information should be shared with the department in the new county of residence so the agency will be prepared to provide appropriate services if the adult needs assistance after his move.

Order to Freeze Assets and Authorize Inspection of Financial Records

Obtaining an order to freeze and inspect financial records may be an appropriate intervention at any point during the APS process, including planning and mobilizing essential services. Whether or not to obtain such an order depends upon the situation and need. Such an order does not authorize the use of the adult's financial assets. It serves the purpose of making the financial records available for review while at the same time, temporarily protecting the adults assets. If assets need to be managed, other options such as guardianship should be explored during the planning and mobilizing essential service stage.

H. Reassessment and Termination

Statutory Requirement

None

State Policies

None in adult protective services policy. DAAS manual Requirements for Provision of Services does require, however, that every service recipient's situation be reviewed and assessed as often as necessary, but at least quarterly to assure effective case management and planning.

Recommended Social Work Practice

APS cases should be reassessed regularly and closed or referred to another unit when the need for protective services no longer exists. The frequency of reassessments should be based on the needs of the client.

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Some general guidelines for completing APS cases include:

Once a case decision has been made and essential services have been planned and mobilized, the case should remain open long enough to ensure that the protective plan is working. For example, if the plan involves significant change for the adult such as provision of in-home aide services and attendance at adult day care, the case should remain open long enough to determine that the service plan is providing effective protection to the client.

When the client's situation has stabilized the case should be closed for protective services and/or transferred to another service if appropriate. Most cases should be closed for APS within 90 days. The quarterly review process presents a good opportunity for reassessing the case.

Some clients, such as homeless adults or adults with chronic mental illness may never reach a truly stable point in their lives, but seem to move from crisis to crisis. These cases should not be kept open for APS indefinitely. After the crisis that precipitated a need for protective services is resolved, the case should be transferred to another service, such as Individual and Family Adjustment, for ongoing follow-up.

Prior to closing the case for APS a visit should be made to the disabled adult to notify him/her that APS is being terminated.

When the disabled adult has been minimally involved in the achievement of the service plan goals due to limited mental capacity and a family member has participated in the accomplishment of service plan goals with the social worker, that family member should also be present during the visit to discuss APS termination.

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. If other service providers have not been involved, it may be appropriate to make referrals or transfer the case to another unit within the agency.

Some questions to consider when making a decision about whether to close a case include:

- **Is there still a current need for protection?**
- **Have the goals in the service plan been accomplished?**
- **If the identified problems have been resolved and the goals accomplished, will the adult know what to do if a similar need or problem develops, or know how to get help?**
- **If additional services will be needed after the case is closed for APS, have they been arranged?**

I. Case Record

Statutory Requirement

None

State Policies

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.**

Recommended Social Work Practice

Purpose of Separate Record

The primary purpose of a separate protective services record is to protect the confidentiality of records on services other than protective services provided to the adult or to members of the adult's family. If court action is necessary, the protective service record may be subpoenaed and it is important that there be a clear separation between protective service information in the record and information in the record, which is not relevant to the court action.

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.**

Other documents that may need to be included are:

- **A Written Report to the district attorney if evidence of abuse, neglect or exploitation was found;**
- **If the report was substantiated, documentation of authorization for services (consent from client or court order) or documentation of client'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 Medical Assistance if exploitation was involved; and a notice to the adult's county of residence if the report was substantiated;
- Court documents;
 - Expert evaluations;
 - 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.

J. Adult Protective Services in Residential Care Facilities Licensed by Division of Health Services Regulation

Statutory Requirement

Statutory requirements in previous sections of this manual are applicable to adult protective services in facilities.

State Policies

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.

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 (mental health residential facilities) shall be referred to the Division of Health Service Regulation. 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 (adult care homes) shall be followed up by the adult homes specialist in accordance with the specialist's ongoing responsibility for supervision of these facilities.

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.

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 and whether or 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;
- The specific allegations in the report (the complainant shall not be named);

- Whether or not evidence of abuse, neglect or exploitation was found;
- Whether the need for protective services was substantiated; and
- A general statement as to how the conclusion was reached (the names of the persons who were contacted during the evaluation to obtain information shall not be given).

The [Notice to Administrator](#) can be used for the written summary to the administrator.

A copy of the Written Report of Adult Protective Services Evaluation shall be sent to the Division of Health Services 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 have knowledge of the situation are needed by the Division of Health Services Regulation to carry out an investigation, the department of social services shall share that information verbally with the Division on request.

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 of Adult Protective Services Evaluation to the Division of Medical Assistance, as well as to the Division of Health Services Regulation.

When, in the course of an evaluation, evidence of abuse, neglect or exploitation is found, the county director shall notify the Division of Health Services Regulation immediately by telephone. In addition, the county director shall inform the Division whether the need for protective services will be substantiated.

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

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.

Recommended Social Work Practice

A [working agreement](#) has been developed between the Division of Health Services Regulation and the Division of Aging and Adult Services which outlines in detail the responsibilities of

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each agency with respect to adult protective services in residential care facilities licensed by the Division of Health Services Regulation. The agreement is consistent with the following guidelines for performing adult protective services in facilities.

The guidelines also follow the steps in the Family Assessment and Change Process, which was introduced earlier in this section. 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 guidelines that follow.

Receiving and Screening Reports

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 particular treatment of one resident 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 Services Regulation. (1-800-624-3004) or <http://www.ncdhhs.gov/dhsr/>**
- **Mental health residential facilities should be referred to the Mental Health Licensure and Certification Section, Division of Health Services Regulation. (1-800-624-3004)**
- **Adult Care Homes should be referred to the Adult Home Specialist.**
- **Some referrals involve both APS and licensure issues. These referrals should be referred to the APS unit/worker and the appropriate supervisory agency simultaneously.**

Applying the Screening Criteria

The same screening criteria presented in Section III B of 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 or exploited and in need of protective services.

Some points to consider when applying these criteria to facility situations include:

A caretaker, to meet the definition of abuse in the APS statute, 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, however, caretaker neglect may be alleged.

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When someone other than the resident is handling the resident's finances, exploitation is often 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 needs, the report should be accepted as exploitation. The focus of protective services should be on stopping the exploitation and preventing further exploitation, however, not on collecting the bill.

If the facility is proposing to discharge the resident because of the unpaid bill, the resident should not be considered neglected just because the discharge notice has been issued. It would be appropriate, however, for the agency to offer placement assistance to help resolve the situation before the resident is discharged or to help the resident find a new placement.

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 fired the aide. Based on past experience with this administrator, the worker believes the administrator's account.
- A family member reports that her mother was severely neglected at a rest home. The family has already moved her to another facility.

In these situations abuse or neglect has allegedly occurred but protection has already been provided by the time of the report. These referrals should not be considered adult protective services reports because the 3rd criteria has not been met.

The worker must use professional judgment to determine whether a need for protective services still exists. If, in the first example given above, the worker has any reason to suspect that the aide has not actually been fired, or if the facility is new and no one knows the administrator, it would be appropriate to accept the referral as an APS report.

If, in the second example, the resident had not been moved but was currently in the hospital because of the neglect, and could be returning to the facility, the referral should be accepted as APS.

When cases involving facility residents are screened out for APS, the county DSS may still have a concern about improper care in the facility. Options are available to the agency beyond the authority of the APS statute. If the allegations are general, i.e. there is no heat, the roof leaks, residents are not bathed, these are regulatory issues and should be reported to the appropriate regulatory agency. 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. Sharing general concerns with the Ombudsman about the treatment of residents or patients in

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a facility does not violate confidentiality and may be generally beneficial for all residents living in the facility.

Receiving Referrals from the Division of Health Services Regulation

When the Division of Health Service Regulation receives a report of abuse, neglect or exploitation and a need for protective services about a specifically named person living in a facility, it will inform the reporter that the county department of social services evaluates reports that a disabled adult is in need of protective services. The reporter will be referred to the department in the county the facility is located in. Department of Health Services Regulation will also collect appropriate referral information and make a follow-up phone call immediately to the department. These procedures are spelled out in more detail in the DAAS-DHSR Working Agreement.

The county department has the responsibility to screen reports that come through Division of Health Services Regulation using the screening criteria described in III.B. If the department of social services decides that the referral is not appropriate as an APS report, the working agreement specifies that it will notify Department of Health Services Regulation by the end of the next working day.

Making a Screening Decision

Once the worker has determined whether the referral involves a specifically named patient or resident and/or general conditions or suspected violations of standards; whether all three of the APS screening criteria are alleged in the referral; and which county is responsible for performing the evaluation, a screening decision must be made. If the referral is accepted as an APS report, it should go on to the APS unit/worker for evaluation.

If the referral is not accepted as an APS report, any of the following actions that apply should be taken:

- If evidence indicating a person has abused, neglected or exploited a disabled adult was received it must be reported to the district attorney.
- If the information received indicates that a disabled adult was abused, neglected or exploited while a resident of a facility, but the referral is not accepted because the adult is not alleged to be in need of protective services, the information should be reported to the appropriate supervisory agency. The Complaints Investigation Branch should be notified if the person is a patient or resident of a nursing or combination facility.
- The Mental Health Licensure and Certification Section should be notified immediately by phone if the adult is a resident of a mental health residential facility or an ICF/MR.
- The reporter should be referred to any available and appropriate agency and community services.

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Evaluating the Need for Protective Services

Initiating the Evaluation

The worker's first priority should be to see the resident about whom a protective service report has been made. On entering the facility, the worker should do the following:

- Inform the administrator or, if the administrator is not on hand, inform any available staff member 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.
- Proceed directly to see the resident.

If access to the facility or to the resident is denied, the 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 administrative search and inspection warrant can be obtained. The worker can return with the assistance of law enforcement.

Steps in Evaluation

As discussed in earlier in this manual, the steps in a complete evaluation include a) visiting the adult, b) making appropriate collateral contacts, and c) obtaining medical, psychological

and/or psychiatric evaluations when necessary. These same steps should be followed when conducting an evaluation in a facility.

- 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 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 worker should be sensitive to factors such as fear of retaliation from staff or fear of being fired which can hinder the gathering of accurate information.
- It may be helpful to obtain the assistance of other professionals in conducting the evaluation. For example, if the report alleges serious physical abuse or neglect, the worker may want to involve a nurse who could help assess the adult's physical condition.

Review of Facility Records

Facility records are another useful 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 related to the care and treatment of the disabled adult [G.S.

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108A-103(a)]. The worker should be aware that the medical record might not be the only record on the resident, which the facility is keeping. Ask to see all the records the facility has. If the worker is denied access to the resident's records the worker's authority under G.S. 108A-103(a) should be explained which allows for the review and copy 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.

Thorough Evaluation

The worker should use all the sources of information discussed above i.e. interviews with the client and collateral contacts, expert evaluations and record reviews to assess client functioning in the six functional areas. [The Adult Protective Services Facility Evaluation](#) is a tool which can be used to document these areas.

Written Report

The required written report of an evaluation conducted on a patient of a nursing or combination facility should be sent to the Complaints Investigation Branch, Division of Health Services Regulation. Reports on residents of mental health residential facilities should be sent to the Mental Health Consultant, Group Care Facilities Branch, Division of Health Services Regulation.

The written report of an evaluation conducted on a resident of an adult care home should be sent to the adult home specialist. The adult home specialist should review the report for licensure and resident rights violations.

After reviewing it, the specialist should forward any findings of licensure or residents rights violations to the Division of Health Services Regulation in accordance with procedures outlined in the N.C. Department of Health and Human Services Adult Care Home Procedures.

The written report must not contain the name of the reporter or the names of people who have knowledge of the situation. This information can be shared verbally with the Department of Health Regulation Services upon request if it is needed to carry out their investigation.

Planning and Mobilizing Essential Services

In planning and mobilizing services the 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 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 client to a hospital or another facility to provide protection. If the disabled adult is not a resident of the county in which the facility is located, the department in the county of residence should cooperate and assist in the provision of protective services to the extent possible.

Dual Role as Placement/Supervisory Agency

The county department of social services has a dual role with residential care facilities for which it serves as a placement/supervisory agency. Evaluation of a protective service report in such facilities requires a great deal of professional skill in balancing the agency's ongoing relationship with the facility and its responsibility to insure the protection of residents. When possible, a worker other than the adult home specialist should do the APS evaluation. The worker should understand that the needs of the resident about whom a protective services report has been made always take precedence over other considerations. 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.

Responsibility of Department of Social Services in County of Residence

The departments in the county in which the facility is located and the county of residence have a shared responsibility to protect the adult in a residential care facility. The adult's needs should be the foremost consideration of both agencies in a protective service situation.

K. Protective Services in State Mental Health Facilities

Evaluation of Reports

Statutory Requirement

The Statutory Requirements in previous sections of this manual are applicable.

State Policies

Evaluation of reports involving an emergency shall be initiated within the statutory requirement.

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.

The county department shall notify the complainant that the department is making an evaluation.

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,**
- **The disabled adult's legal guardian, if any.**

For further information refer to [DHHS Directive III-5](#)

Recommended Social Work Practice

There is more than one route by which an APS report regarding a patient in a state operated healthcare facility may be made to the county DSS. Each of the state's [psychiatric hospitals, developmental centers and substance abuse treatment facilities](#) have policies which mandate that hospital staff report instances of patient abuse, neglect or exploitation internally. These internal procedures should result in protection of the disabled adult from further victimization. However, anyone who believes that the patient (disabled adult) is in need of protective services, even after the incident has been reported internally, would be obligated to report that to DSS.

The patient advocate, who has responsibility for safeguarding patient rights, may be the person who communicates protective service reports to the county department of social services.

When abuse, neglect or exploitation occurs in a state operated healthcare facility, several parties may be involved. One of the duties of the patient advocate in each facility is to accept and investigate internal reports of patient abuse. These investigations are from the perspective of patient rights and are separate from the evaluation conducted under the protective service law by the county department of social services.

Law enforcement agencies may be involved in the investigation of some reports of abuse, neglect and exploitation. The request for law enforcement assistance in an investigation is made usually by the facility administrator in order to determine whether or not criminal law has been violated.

It is important to recognize that each party has a different perspective and role, and to attempt to coordinate the efforts of others involved to insure the needs of the adult are kept paramount.

The county department of social services in the county in which the facility is located should take primary responsibility for performing evaluations in the facility. The disabled adult's county of residence should cooperate in performing the evaluation and providing protective services as needed.

It is important that the county department work with institution administrators to insure their understanding of the protective service law and the department's responsibility under the law. It can be helpful to meet with facility administration when no particular case needs to be resolved to discuss general issues.

Adult Protective Services for Residents of State Operated Healthcare Facilities Who Require Medical Treatment

Statutory Requirement

The statutory definition of neglect includes residents of one of the State-owned hospitals for the mentally ill, centers for the mentally retarded or North Carolina Special Care

Center who are, in the opinion of the professional staff of the hospital or center, mentally incompetent to give consent to medical treatment, without a legal guardian appointed pursuant to Chapter 35A, or guardian as defined in G.S. 122C-3(15), and in need of medical treatment. [\[G.S. 108A-101\(m\)\]](#)

G.S. 122-3(15) defines a guardian as a person appointed as a guardian of the person or general guardian by the court under Chapters 7A or 35A or former Chapters 33 or 35 of the General Statutes.

State Policies

The policies in section III, B, C and D of this manual shall be followed by the county department of social services in carrying out the evaluation.

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.

After the court's decision is made, the county department shall send the findings of the court to the facility.

When the court designates the county department, the director or his designee shall verbally communicate to the facility consent for medical treatment. This shall be done immediately after the judgment, to be followed by written consent.

Recommended Social Work Practice

The working [agreement between the Division of Aging and Adult Services and the Division of Mental Health, Mental Retardation and Substance Abuse Services](#) which specifies procedures for obtaining adult protective services for residents requiring medical or surgical treatment.

L. Confidentiality

Statutory Requirement

None in Adult Protective Services Law. 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.](#)

State Policies

The agency may allow disclosure of client information under the following circumstances:

Upon written or verbal request the client shall, or upon written request from the client his personal representative, including an attorney, may have access to review or obtain without charge, a copy of the information in the client's records except for:

- **Information that the agency is required to keep confidential by state or federal requirements;**
- **Confidential information from another agency; and**
- **Information that would breach another's right to confidentiality.**

The director or his delegated representative must be present when the client reviews the record. The director or his delegated representative must document in the client record the review of the record by the client.

Federal, state and county employees may have access to the case record for the purposes of monitoring, auditing, evaluating or facilitating the administration of other state and federal programs, provided that the need for the information is justifiable and that adequate safeguards are maintained to protect the information from re-disclosure.

State Division of Aging and Adult Services personnel may have access to the case record for purposes of supervision and reporting.

Other employees of the county department of social services may have access to client information for purposes of making referrals, supervision, consultation or determination of eligibility.

Other county departments of social services may have access to client information to the extent necessary to facilitate the provision of a service requested by a referring county department of social services.

Client information may be disclosed without consent of the client in response to a court order.

Client information may be disclosed without consent of the client for purposes of complying with other state and federal statutes and regulations.

Specific findings of the adult protective services evaluation shall be kept confidential and shall not be released without consent of the disabled adult or court order, except that information about the adult may be shared 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, 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.

The identity of the complainant and of individuals who have knowledge of the situation shall be kept confidential unless the court requires that such persons' identities be revealed with the following exceptions: 1) that the complainant's name and the names of individuals who have knowledge of the situation may be given verbally to the Division of Health Services Regulation when requested by that agency in order to carry out its investigation, and 2) the complainant's name and names of individuals who have knowledge of the situation may be given verbally to the District Attorney's office and local law enforcement agencies when requested by them to assist in prosecuting or conducting a criminal investigation of alleged abuse, neglect, or exploitation of a disabled adult.

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.

When a client who is receiving protective services under court order moves from one county to another, the first county may make a protective service referral to the second county without 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.

Notification to the district attorney in accordance with G.S. 108A-109 shall be in written form. In addition to the Written Report, 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.

Federal, state and local law enforcement agencies may be sent copies of the written report when the results of the protective services evaluation indicates violations of statutes, rules or regulations enforced by these agencies.

Client information may be disclosed without the consent of the client to individuals requesting approval to conduct studies of client records, provided such approval is requested in writing and the written request is specific and approved on the basis of: (1) an explanation of how the findings of the study have potential for expanding knowledge and improving professional practices; (2) a description of how the study will be conducted and how the findings will be used; (3) a presentation of the individual's credentials in the area of investigation; (4) a description of how the individual will safeguard information; and (5) an assurance that no report will contain the names of individuals or any other information that makes individuals identifiable.

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Recommended Social Work Practice

Maintaining client confidentiality is an important consideration 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.

Workers involved in any aspect of the delivery of protective services have a special responsibility to maintain the confidentiality of information that they obtain. There is a professional as well as legal responsibility.

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. 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 the court issues an order directing the release of the information or a legal guardian consents to the release.

A court order is any oral or written order from a judicial official (judge, clerk, or magistrate) which explicitly directs the release of client information. Oral orders should be documented in the client 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 his/her role to determine what response should be given to either a court order or a subpoena.

Information contained within the DSS client 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 client, guardian or caretaker. The director is to use his judgment based on

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Protective Services for Adults

state policies 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 an adult, it may be necessary to share information about the 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 complainant 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 Services Regulation as necessary to carry out their investigation and to the District Attorney's office and to local law enforcement agencies when prosecuting or conducting a criminal investigation 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
- Private Health Providers
- Private Therapists
- Department of Health and Human Services personnel responsible for licensing or approval of nursing/combination facilities, adult care homes, group homes
- Placement facilities
- 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.

Workers should take care not to reveal specific information about the adult when making collateral contacts during a protective services evaluation. The party contacted may be curious to know why the county department is seeking information about the adult. Response to such questions should be in general terms about the agency's concern for the adult and need for information to determine whether or not the agency can provide assistance. If the party questions the agency's authority to inquire about the adult, it may be helpful to explain that the law requires that the agency evaluate any situation where a person may need assistance.

Basic Principles for Adult Protective Services

1. The Right To Self-Determination is a Basic Tenet of APS

As long as adults can recognize the consequences of decisions they have made about their lives, their right to make those decisions must be respected. A disabled adult has the right to make bad choices and poor decisions, to be eccentric, to live in a filthy environment, or to refuse medical treatment.

2. Clients Should be Treated With Honesty, Caring and Respect

“Honesty” means that you should be truthful with clients about who you are and why you are there. It may not mean telling everything you know, however. You may say that a referral was made by “someone who is concerned about you” rather than giving the reporter’s name, for example.

“Respect: includes checking your practice for biases such as ageism, racism, and sexism. Are you treating older clients the same as you treat younger persons? (for example, not infantilizing or talking down to the older adult). Small courtesies, such as calling the client Ms. Smith instead of Sally, unless she invites you to use her first name, indicate respect for the client.

3. The Least Restrictive Alternative Should Be Used Whenever Possible.

Protective services should be provided with as little disruption to the client’s life as possible. Whenever possible, clients should be helped to live in the environment of their choice. Even when out-of-home placement becomes necessary, the client should be placed in the least restrictive environment which meets his needs. What is least restrictive for any particular client may change over time and should be periodically re-evaluated.

4. Give Highest Priority to the Family and Other Informal Support Systems as Resources When Appropriate

Think broadly about who constitutes the client’s “family.” Neighbors, friends, church members, etc. may be good resources, as well as blood relatives. Although family resources should be explored and used whenever possible, be sensitive to family conflicts. Placing the client with family members who do not want him is inappropriate. Families can be the problem, rather than the solution.

5. Inadequate or Inappropriate Intervention Can be More Harmful Than None At All.

An example of this assumption is the self neglecting client who is removed from a filthy environment, placed in a rest home, and dies shortly afterward.

6. Protection Of Disabled Adults Is a Shared Community Responsibility

It is essential that community agencies such as mental health, health departments, home health agencies and hospitals work together to improve the lives of disabled adults who have been abused, neglected or exploited. Cooperation is needed at every step of the APS Process, from reporting to evaluating to providing protective services. The county department social services should provide the leadership for community cooperation.

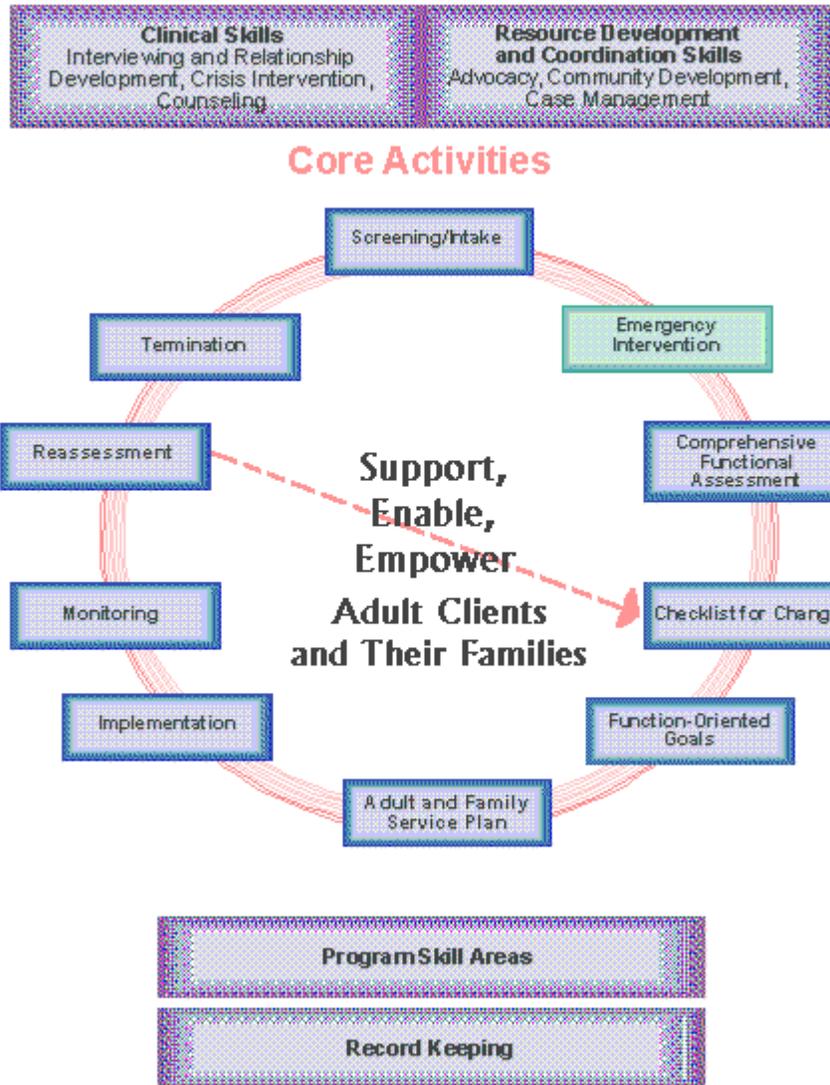
7. The Emphasis In APS Is Always On The Need For Protective Services Rather Than Investigation Of Incidents

The APS worker's primary concern is ensuring that protective services are provided to disabled adults who have been abused, neglected or exploited rather than determining whether a particular abusive incident occurred or punishing the perpetrator.

8. The Client's Confidentiality And Right To Privacy Should Always Be Respected

This includes both the legal and policy requirements for confidentiality and issues such as not intruding into areas of the client's life which may be interesting but not relevant to the APS evaluation.

The Family Assessment and Change Process



Physical Indicators of Mistreatment

1. **Burns, especially unusual location or type.**
2. **Bruises and hematomas**
 - Bilateral on upper arms can indicate shaking
 - Bilateral on soft parts of body, not over body prominences (knees and elbows). Inner arm/thigh bruises are very suspicious.
 - Clustered bruised on trunk from repeated striking.
 - Presence of old and new bruises at the same time as from repeated injuries at different stages of resolution.

Dating of Bruises

0-2 days – swollen, tender

0-5 days – red, blue

5-7 days – green

7-10 day – yellow

10-1 days – brown

2-4 weeks – clear

Bruises resembling an object or human hand

3. **Clothing inappropriate for weather, filthy, torn, too big, or small. Lack of clothing. Same clothing all the time. Shoes on the wrong feet or ill fitting.**
4. **Cigarette burns**
5. **Contractures (can indicate long-term confinement)**
6. **Cuts**
7. **Decayed teeth**
8. **Dehydration**
9. **Decubiti**
10. **Dilated pupils**
11. **Eyes red, painful, or swollen**
12. **Frequent falls**
13. **Fractures**
14. **Glasses or frames broken**
15. **Hair thin as though pulled out**

Effective Date: April 1, 2011

Last Update:

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16. **Heat exhaustion**
17. **Hypothermia**
18. **Lacerations, welts, or black eyes**
19. **Lack of prosthetic devices**
20. **Malnourishment**
21. **Odorous**
22. **Pinch marks**
23. **Puncture wounds**
24. **Scars**
25. **Scratches**
26. **Shortness of breath**
27. **Sudden weight loss or gain**
28. **Swelling of legs, ankles or joints**
29. **Tremors**
30. **Untreated medical conditions, unhealed sores, untreated injuries**
31. **Untrimmed nails, unwashed hair, unclean, unshaven**
32. **Use of physical restraints**

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Supplement B

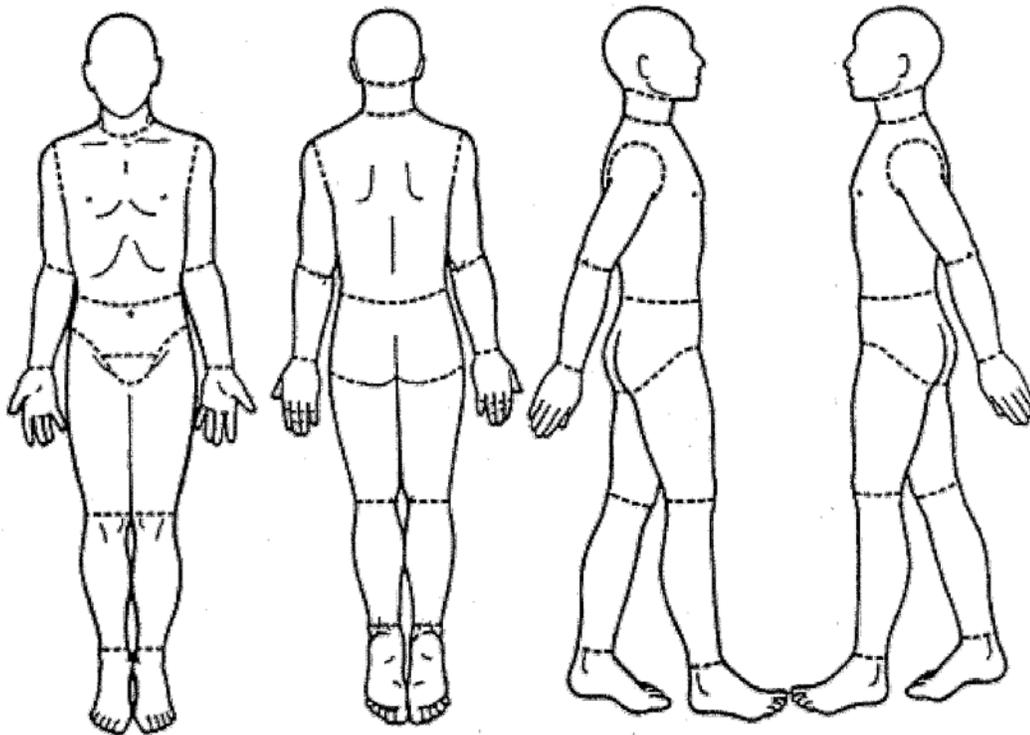
OBSERVATION OF INJURIES TO ADULT

Name _____ Age _____

Date of injury _____ Date of observation _____

Place where adult observed: _____

Indicate size, color, shape and location of injuries, skin breakdown, etc. If concerned that explanation of cause of injury is inconsistent with observations, ask, and make note of responses (verbatim, if possible). Write comments on back if necessary.



| | |
|----------------------|-------------|
| Social Worker: _____ | Date: _____ |
|----------------------|-------------|

GENOGRAMS

What is a genogram?

It is a graphic representation of "family" members and their relationships over at least three generations. It looks very much like a family tree or a genealogy chart.

How is it used?

The genogram can be used in a variety of ways; three common ones include:

1. To clearly identify who exists in "family" network in order to establish who is or might be available to provide social support to a given person.
2. To identify the medical history and patterns of behavior that may be relevant to a person's real or believed medical or psychological status.
3. To formulate hypotheses about family functioning that can be utilized in family therapy. "Families repeat themselves. What happens in one generation will often repeat itself in the next."

Why is it a useful tool?

1. It is immediately recognizable and visible in a client record.
2. It is put together with the client/family's participation, and thereby helps the client as well as the social worker to clarify issues.
3. It can be modified over time, allowing both the social worker and the family to note changes.
4. It can help clarify family relationships and feelings both horizontally and vertically.
5. It is flexible; there is no agreed upon "right way" to do it or limit to its use.

How is the genogram put together?

Tell the client and/or significant other person that you would like help in putting together a family tree so that you can understand the client's background and family relationships better.

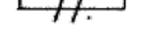
1. Start with the client or index person (see attached symbols). Ask for full name, date of birth and place of birth. Draw client/index person symbol in center of page.
2. Ask for names of the client's parents, health (if living), age or date of birth (and date of death, if deceased), current or last place of residence, and cause of death, if deceased. Ask if either parent was married more than once and obtain same information for those marriages. Add appropriate symbols to drawing.

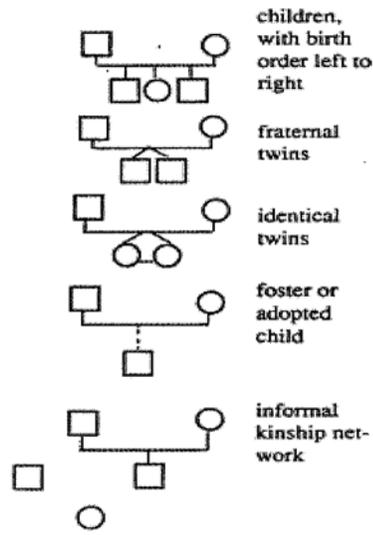
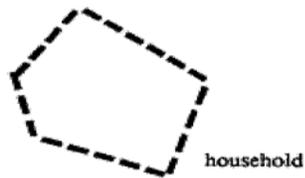
*Reprinted from "Effective Social Work Practice in Adult Services: A Core Curriculum in Geriatrics."

Supplement C

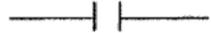
Constructing a Genogram

Symbols

-  male
-  female
-  deceased male
-  deceased female
-  index person
-  index person
-  marriage connection
-  separation
-  divorce
-  unmarried couple



Relationships

- close 
- very close or fused 
- estranged or cut off 
- poor or conflictual 
- fused and conflictual 
- distant 

ECO-MAPS

What is an eco-map?

The eco-map is a paper-and-pencil diagram of the ecological system of the client/family, the major systems, together with all their relationships, that affect and are affected by the client/family.

How is it used?

1. To identify members of the household and of the extended family, the nature of the relationships among them, and the resources they exchange with the client.
2. To identify other people and systems in the client/family's social environment and the resources exchanged with them.
3. To identify the client/family's relationships with community systems.
4. To identify present and past contributions of the client to others.
5. To identify systems from which additional resources might be available.

Why is it a useful tool?

1. It organizes a great deal of information for the client record.
2. Creating the eco-map engages the client/family in the process of assessing their relationship with the social environment.
3. It helps to identify the client's positive contributions to her environment and gaps in support from the environment and to identify and evaluate possible resources for help.
4. It can be modified over time, allowing both the social worker and the family to note changes.
5. It can be adapted to all kinds of social situations.

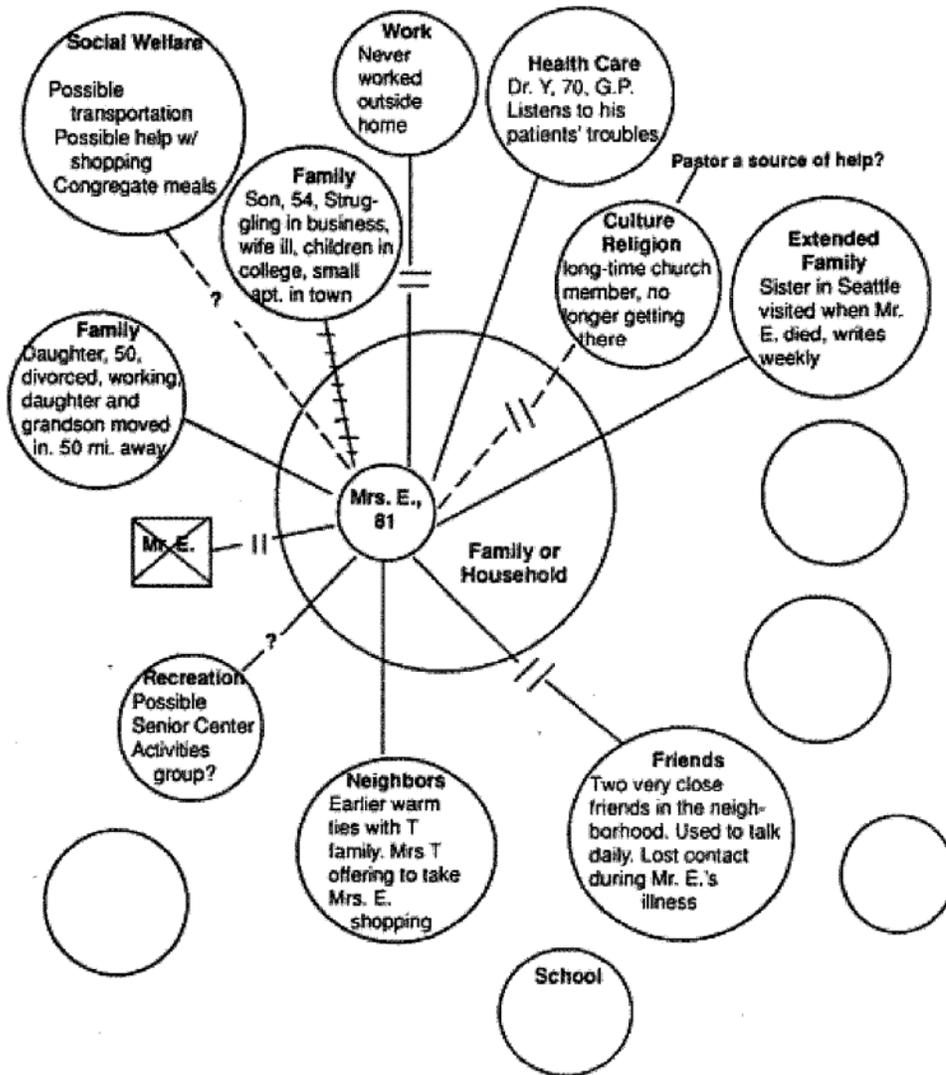
How is the eco-map put together?

1. Tell the client and/or significant other person that you would like them to help you put together a picture of the client/family's important relationships with family and the community, or of what makes up their world.
2. Start with the client's household. Household members should be mapped as in the traditional family tree, using squares to indicate males and circles to depict females. Deceased members, with an X to indicate that they are dead, can be mapped at the edge of the circle.

Eco-Map

Name: Mrs. E.
Date: 1/28/87

Recently widowed, Mrs. E. and her family are in crisis. Mrs. E. is frightened and helpless, unable to manage. IADL's and ADL's declining. When terrified at night, she calls her son at all hours. The eco-map identifies real and potential resources, areas in which Mrs. E. earlier made contributions, domains in which to seek out additional resources.



Fill in connections where they exist.
 Indicate nature of connections with a descriptive word or by drawing different kinds of lines:
 ——— for strong; - - - - for tenuous; + + + + for stressful; - - - | - - - interrupted or broken tie.
 Draw arrows along lines to signify flow of energy, resources, etc. --> --> -->
 Identify significant people and fill in empty circles as needed.

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Client: _____
 Date Completed: _____

ECONOMIC ASSESSMENT

| Monthly Income | Amount | Monthly Expenses | Amount | |
|----------------------------------|--------|--------------------|-------------------------|-------|
| Social Security | _____ | Rent | _____ | |
| SSI | _____ | Food | _____ | |
| VA | _____ | Household Supplies | _____ | |
| Retirement/Pension | _____ | Telephone | _____ | |
| Salary/Earnings | _____ | Electricity | _____ | |
| Family Contribution | _____ | Gas | _____ | |
| Other: _____ | _____ | Oil, coal, wood | _____ | |
| _____ | _____ | Water/sewer | _____ | |
| _____ | _____ | Transportation | _____ | |
| | | Laundry/clothing | _____ | |
| Other Financial Resources | Yes | No | Insurance: | |
| Medicare | _____ | _____ | Life | _____ |
| Medicaid | _____ | _____ | Health | _____ |
| Health Insurance | _____ | _____ | Other: _____ | _____ |
| Housing Subsidy | _____ | _____ | Medical--out of pocket: | |
| Food Stamps | _____ | _____ | Prescriptions | _____ |
| Other: _____ | | | Other: _____ | _____ |
| _____ | | | _____ | _____ |
| _____ | | | Other Expenses: | _____ |
| | | | _____ | _____ |
| | | | _____ | _____ |

Client's/Family's Major Financial Concerns:

FROMAJE

When used by medical students and lay interviewers, The FROMAJE test has proved to have an 80% to 90% concordance with the psychiatric diagnoses achieved independently by geropsychiatrists- The acronym provides an easily remembered approach, which is also one of breadth and brevity.

Other excellent mental status tests do exist, however, including those of Kahn and others⁵ Perlin and Butler,⁶ Pfeiffer,⁷ Blessed and others⁸, and Jacobs⁹.

The FROMAJE test is meant to serve as a guide for the primary care clinician, who may have little experience in formal mental status testing. The test emphasizes adequacy of overall mental function. The elderly person is becoming the major patient for most primary care physicians, and mental dysfunction is quite prevalent (4% to 10% of the elderly population). This regimented approach, not requiring a written text or form, is in the style of a medical approach to evaluation of clinical problems. The test may have to be repeated on different days and at different times of the day in order to reach a more reliable diagnosis.

The FROMAJE test (or any mental status examination) cannot be used well in -the presence of aphasia. Similarly, language or cultural differences Between patient and clinician will reduce the accuracy and meaningfulness of mental status testing. In addition, difficulties in hearing or vision may lead to mistaken diagnoses of dementia. The hurried interviewer may not allow adequate time (10 to 20 minutes) for the questions and answers and may inaccurately diagnose dementia.

Although the seven key parameters of mental function tested with FROMAJE are best administered as an organized test, some situations may require interspersing the questions throughout a general medical interview.

The test need not be scored, since an overall, global impression is of considerable value to the clinician. However, the inexperienced interviewer or those seeking quantifiable data may choose to apply the simple rating described. For example, the test score may be helpful in showing changes in mental status with changes in therapy. In addition, the score is helpful when multiple physicians are seeing the patient, as in a clinic setting.

The F = function parameter of FROMAJE needs special mention. Many patients with dementia (abnormalities in the AROMATIC parameters) are able to continue to function fairly well in the community and do not require institutionalization. More rarely, a patient will score quite normally on the AROMATIC questions but will be unable to function in the community.

The test is fully described as follows.

⁵ Kahn, R. L., Goldfarb, A. I., Pollack, M., and Peck, A.: Brief objective measures for the determination of mental status in the aged, *Am. J. Psychiatry* 117:326, 1960.

⁶ Perlin, S., and Butler, R. N.: Psychiatric aspects of adaptation to the aging experience. In Birren, J. E., Butler, R. N., Greenhouse, S. W., and others, editors: *Human aging, biological behavioral study*, Pub. No. (HSM) 71-90,31. Washington, D.C., 1971, U.S. Government Printing Office

⁷ Pfeiffer, E.: A short portable mental status ques. tionnaire for the assessment of organic brain deficit in elderly patients. *J. Am. Geriatr. Soc.* 23: 433,1975.

⁸ Blessed, G., Tomlinson, B. E., and Rota, M.: The association between quantitative measures of dementia and of senile change in cerebral gray matters of elderly patients, *Br. J. Psychiatry* 114: 797,1968

⁹ Jacobs, J. W.: Screening for organic mental syndromes in the medically ill, *Ann. Intern. Med.* 80:40,1971.

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From: THE CORE OF
GERIATRIC MEDICINE
SUPPLEMENT G

O = orientation

1. Time:

- a. "What day of the week is it?" (If necessary, present choices: "Is it Monday? Tuesday?")
- b. "What month is it?" ("Is it June? July?") "What is the date?"
- c. "What year is it?"

2. Place: "Where are you now?" ("Is this your apartment? Your house or hotel? A doctor's office or a hospital or nursing home?")

3. Self: "What is your name?"

Rating (points):

- 1 = Patient was generally accurate and made only minor errors in time, place, or self.
- 2 = Patient made a significant error in one area: time, place, or self.
- 3 = Patient made significant errors in two or three areas: time, place, or self.

M = memory

1. Distant:

- a. "Who was President of the United States during World War 11 and was in a wheelchair?"
- b. "What U.S. President was assassinated in the early 1960s?"
- c. "Where were you born? In what year were you born?"

2. Recent:

- a. "What did you have for breakfast today?"
- b. "Where were you yesterday?"

3. Immediate:

- a. "What did I ask you about the U.S. Presidents?"
- b. "Remember the numbers 4, 12, and 18. I will be asking you to repeat them in the next few minutes. (Minutes later.) What numbers did I ask you to remember?"

Rating (points).

- 1 = Patient was generally accurate and made only minor errors in distant, recent, or immediate memory.
- 2 = Patient made a significant error in one area: distant, recent, or immediate memory.
- 3 = Patient made a significant error in two or three areas: distant, recent, or immediate memory.

A = arithmetic

1. "Count back from 100 to 90."
2. "Subtract sevens from 100."

FROMAJE
2 1 2 2 1 1 1 = 10

A subjective overall rating of normal, or mild, moderate, or severe dementia is reached by the experienced clinician. The FROMAJE responses are recorded for later reevaluation with regard to the patient's response to therapy and/or time.

Patients with various types of aphasia (see Chapter 8) cannot be accurately evaluated by the FROMAJE scale or by any other mental status approach.

An E (emotional) rating of 3 points will produce a total score of 9 points, even if the patient scores normal (1 point) on all of the remaining FROMAJE ratings. Thus, a total score of 9 points or more may be a false positive for senile dementia, but it also serves to highlight depression:

FROMAJE
1 1 1 1 3 = 9

APPENDIX F-1

Chapter 15, Article 4A. Administrative Search and Inspection Warrants

15-27.2 Warrants to conduct inspections authorized by law. –

- A. Notwithstanding the provision of Article 4 of this Chapter, any official or employee of the state or of a unit of county or local government of North Carolina may, under the conditions specified in this section, obtain a warrant authorizing him to conduct a search or inspection of property if such a search or inspection is one that is elsewhere authorized by law, either with or without the consent of the person whose privacy would be thereby invaded, and is one for which such a warrant is constitutionally required.
- B. The warrant may be issued by any magistrate of the general court of justice, judge, clerk or assistant or deputy clerk of any court of record whose territorial jurisdiction encompasses the property to be inspected.
- C. The issuing officer shall issue the warrant when he is satisfied the following conditions are met:
 - 1. The one seeking the warrant must establish under oath or affirmation that the property to be searched or inspected is to be searched or inspected as part of a legally authorized program of inspection which naturally includes that property, or that there is probable cause for believing that there is a condition, object, activity or circumstance which legally justifies such a search or inspection or that property;
 - 2. An affidavit indicating the basis for the establishment of one of the grounds described in (1) above must be signed under oath or affirmation by the affiant;
 - 3. The issuing official must examine the affiant under oath or affirmation to verify the accuracy of the matters indicated by the statement in the affidavit;
- D. The warrant shall be validly issued only if it meets the following requirements:
 - 1. It must be signed by the issuing official and must bear the date and hour of its issuance above his signature with a notation that the warrant is valid for only 24 hours following its issuance;
 - 2. It must describe, either directly or by reference to the affidavit, the property where the search or inspection is to occur and be accurate enough in description so that the executor of the warrant and the owner or the possessor of the property can reasonably determine from it what person or property the warrant authorized an inspection of,

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3. It must indicate the conditions, objects, activities or circumstances which the inspection is intended to check or reveal;
 4. It must be attached to the affidavit required to be made-in order to obtain the warrant.
- E. Any warrant issued under this section for a search or inspection shall be valid for only 24 hours after its issuance, must be personally served upon the owner or possessor of the property between the hours of 9:00 A.M. and 8:00 P.M. and must be returned within 48 hours.
- F. No facts discovered or evidence obtained in a search or inspection conducted under authority of a warrant issued under this section shall be competent as evidence in any civil, criminal or administrative action, nor considered in imposing any civil, criminal or administrative sanction against any person, nor as a basis for further seeking to obtain any warrant, if the warrant is invalid or if what is discovered or obtained is not a condition, object, activity or circumstance which it was the legal purpose of the search or inspection to discover; but this shall not prevent any such facts or evidence to be so used when the warrant issued 2.6 not constitutionally required in those circumstances.
- G. The warrants authorized under this section shall not be regarded as search warrants for the purposes of application of Article 4 of Chapter 15 of the General Statutes of North Carolina.

**STATE OF NORTH CAROLINA
EXHIBIT "A"**

Appendix F-2

COUNTY OF ALBEMARLE

**AFFIDAVIT SUPPORTING ISSUANCE
OF ADMINISTRATIVE SEARCH WARRANT**

The undersigned, being first duly sworn, deposes and says:

1. My name is Rosalyn Pettyford and I am an employee of the Albemarle County Department of Social Services in Gillespieville, North Carolina
2. On January 25, 1991 the Department received information indicating that Ms. Suzette Roach, age 71, was in a weak and neglected condition. The reporter said that he had not seen Ms. Roach outside her house in a couple of months. He had observed Ms. Roach in her house through a window and she appeared to be in an emaciated and neglected condition. The reporter further indicated that there was a lot of trash piled up inside the house and that he believed the water pipes in the house had burst. He observed water jugs in the bathroom and a water hose going into the house from the front yard. The neighbors further reported that Suzette Roach's son recently moved out of the house and that Ms. Roach lives alone.
3. Two people familiar with Ms. Roach have reported to the Department of Social Services that Suzette Roach has been hospitalized in the past at Pine State Mental Hospital.
4. Based on the above information, and as required by N.C.G.S. 108A-103, I went to Suzette Roach's residence at 325 Salisbury Street, Gillespieville, NC on January 25, 1991 and on every day since then in order to visit with Ms. Roach. I have gone to her residence on numerous occasions at various times during the day, but have been unsuccessful at getting anyone to answer my attempts to contact her. I and officers from the Gillespieville City Police Department have knocked on the front and back doors of her residence. We also knocked on windows and called into the house through an open window requesting Ms. Roach to respond. I have also telephoned her residence at various times during the day and night at the telephone number listed in the Gillespieville telephone directory. The telephone rings, but has never been answered. Despite the above attempts. I have been unable to contact Suzette Roach to ascertain whether or not she is a disabled adult in need of protective services.
5. While at her residence as described above, I have observed through windows that trash is piled up inside the house. In addition, newspapers from the past three days are lying on her front porch, along with mail in her mailbox. There are lights on inside the house. Neither of the neighbors with whom I have spoken has observed Ms. Roach leave her house in three months.
6. In addition to the above, I have attempted to locate Suzette Roach's son, Robert Lee Roach, but have not been successful. I know of no other relative of Ms. Roach who can assist us in contacting her and gaining access into her residence.
7. The Affidavit is being given in support of a request for issuance of an Administrative Search Warrant pursuant to N.C.G.S. 15-27.2 to authorize the Department of Social Services' personnel to enter Suzette Roach's residence at 325 Salisbury Street, Gillespieville, NC for the purpose of conducting the statutorily required visit with Suzette Roach to determine whether she is a disabled adult in need of protective services.

This is the 25th day of January, 1991.

Effective Date: April 1, 2011
Last Update:

**CLIENT REFUSAL TO CONSENT TO THE
PROVISION OF PROTECTIVE SERVICES**

I, _____ have had the Protective Services to Disabled Adults Law of North Carolina explained to me by a social worker from the department of social services. I understand my needs, my living conditions and personal circumstances. I do not want the assistance of, or any intervention in my life by the department of social services, and do hereby specifically refuse to consent to the provision of any services by the department.

I have read and understand this form.

This the _____ day of _____, 20____

Client's Signature

I am unable to read so this form has been read and explained to my satisfaction prior to signing.

Client's Signature

Witnessed By:

Adult Protective Services Legal Forms

| <u>FORM NUMBER</u> | <u>FORM TITLE</u> |
|---------------------------|--|
| AOC-CV-770 | Petition for Order Authorizing Protective Services/Emergency Services/Ex Parte Emergency Services and Appointment of Guardian Ad Litem |
| AOC-CV-771 | Certificate of Service (Adult Protective Services) |
| AOC-CV-772 | Notice of Hearing in Adult Protective Services Proceedings |
| AOC-CV-773 | Order Authorizing Protective Services |
| AOC-CV-774 | Notice of Hearing in Emergency Protective Services Proceedings |
| AOC-CV-775 | Order Authorizing Emergency Services/Ex Parte Emergency Services |
| AOC-CV-776 | Petition for Order to Inspect Financial Records and to Freeze Assets |
| AOC-CV-777 | Order to Authorize Inspection of Financial Records and to Freeze Assets |
| AOC-CV-778 | Notice of Order to Authorize Inspection of Financial Records and to Freeze Assets |
| AOC-CV-779 | Certification to Financial Institution as Required by G.S. 53B-5 |
| AOC-CV-780 | Petition to Enjoin Interference with Protective Services |
| AOC-CV-781 | Notice of Hearing to Enjoin Interference with Protective Services (Consenting Disabled Adult) |
| AOC-CV-782 | Order to Enjoin Interference with Protective Services (Consenting Disabled Adult) |

NOTICE TO ADMINISTRATOR

Dear _____:

A protective services report has been received and evaluated on the resident named below.

1. Resident's name _____

2. Summary of alleged complaint _____

3. Results of Protective Services Evaluation: (check all that apply)
 a) Evidence of abuse was found.
 b) Evidence of neglect was found.
 c) Evidence of exploitation was found.
 d) No evidence of abuse, neglect or exploitation was found.
 e) The need for protective services was substantiated.
 f) The need for protective services was not substantiated.

4. General statement about how the conclusion was reached. _____

Signature _____

Date _____

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
WORKING AGREEMENT BETWEEN THE
DIVISION OF FACILITY SERVICES AND THE DIVISION OF SOCIAL SERVICES**

SUBJECT: Adult Protective Services in Nursing, Combination and Residential Care Facilities Licensed by the Division of Facility Services.

PURPOSE: According to G.S. 108A-103, the director of the county department of social services is mandated to receive and promptly evaluate reports alleging a disabled adult is in need of protective services. This includes disabled adults who reside in or are found within the county. Rules for implementation of the Adult Protective Services law by county departments of social services are established by the Social Services Commission. Development, dissemination, and interpretation of these rules are done by the Division of Social Services. The Division of Facility Services has responsibility for licensing nursing, combination, and residential care facilities for adults. This agreement establishes procedures to be followed regarding evaluation and resolution of Adult Protective Services reports on patients or residents of these facilities. These facilities include nursing and combination facilities licensed under G.S. 131E; mental health residential facilities licensed under G.S. 122C, including intermediate care facilities for the mentally retarded (ICF/MR); and adult care homes licensed under G.S. 131D.

I. Responsibilities of the County Department of Social Services

A. 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 and combination facilities; mental health residential facilities; or adult care homes. This includes reports regarding residents who are placed from other counties.

Complaints received by the county department of social services regarding general conditions or suspected violations of standards in:

1. nursing and combination facilities shall be referred to the Complaints Investigation Branch, Division of Facility Services;
2. mental health residential facilities and ICF/MRs shall be referred to the Mental Health Licensure and Certification Section, Division of Facility Services;
3. adult care homes shall be referred to the adult homes specialist for follow-up in accordance with the specialist's ongoing responsibility for supervision of these facilities.

When the county department of social services receives information alleging that a disabled adult was abused, neglected, or exploited while a resident of a facility, but the referral is not accepted as an Adult Protective Services report because the adult is not alleged to be either disabled or in need of protective services, and the adult is or was (during the alleged incident) a resident or patient of a:

1. nursing or combination facility, the county shall refer the caller to the Complaints Investigation Branch, Division of Facility Services;

Division of Aging and Adult Services
Protective Services for Adults

2. mental health residential facility or ICF/MR, the county shall refer the caller to the Mental Health Licensure and Certification Section, Division of Facility Services;
 3. adult care home, the information shall be referred to the adult homes specialist for follow-up in accordance with the specialist's ongoing responsibility for supervision of these facilities.
- B. Upon receiving a protective services report on a person living in a nursing or combination facility, mental health residential facility, or adult care home, the county director shall make a prompt and thorough evaluation to determine the need for protective services.

Evaluation of reports involving an emergency as defined in G.S. 108A-101(g) shall be initiated immediately or within 24 hours; according to the requirements of G.S. 108A-103 (d) (1-2). Evaluation of other reports shall be initiated within 72 hours, according to the requirements of G.S. 108A-103 (d)(3).

The evaluation shall include:

1. a visit to the person, which means that the person must be seen by the director or his representative. As many visits will be made 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, individuals mentioned by the disabled adult, and others identified by the county department of social services who may have information pertinent to the evaluation;
 3. medical, psychological and/or psychiatric evaluations when necessary to determine whether the adult is disabled; abused, neglected, or exploited; and in need of protective services; and to determine what services are needed.
- C. 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.
- D. The county director shall keep confidential the identity of the person making the protective services report.
- E. When the county director substantiates that an individual is an abused, neglected, or exploited disabled adult in need of protective services, authorization to provide protective services will be requested from the individual or the district court, as appropriate. When authorization is obtained, the county director shall provide or arrange for the needed services.

Division of Aging and Adult Services
Protective Services for Adults

- F. The county director shall provide the administrator of a nursing or combination facility, mental health residential facility or adult care home with a written summary of the nature of the protective services report; whether evidence of abuse, neglect or exploitation was found; and whether a need for protective services was substantiated.

The written summary to the administrator shall be limited to the following:

1. acknowledgment 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 evidence of abuse, neglect, or exploitation was found;
 4. whether 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).
- G. When evidence of abuse, neglect, or exploitation is found in the course of an evaluation:
1. in a nursing or combination facility, the county director shall notify the Complaints Investigation Branch, Division of Facility Services, immediately by telephone. During the telephone call, the county director shall say whether the need for protective services will be substantiated.
 2. in a mental health residential facility or ICF/MR, the county director shall notify the Mental Health Licensure and Certification Section, Division of Facility Services, immediately by telephone. During the telephone call, the county director shall say whether the need for protective services will be substantiated.
 3. in an adult care home, information shall be referred immediately to the adult homes specialist for follow-up in accordance with the specialist's ongoing responsibility for supervision of the home.

- H. Upon completion of the evaluation, the county director shall prepare a written report. The written report shall include:

1. the name, address, age, and condition of the adult;
2. the allegations;
3. the evaluation including the agency's findings and supporting documents (e.g. psychological, medical report);
4. the conclusions (including whether evidence of abuse, neglect, or exploitation was found, and whether the need for protective services was substantiated);
5. recommendations for action.

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The written report shall not include the identity of the person making the protective services report or the names of individuals who provide information about the disabled adult. This information shall be shared verbally with the Division of Facility Services if requested by the Division in order to carry out its investigation.

Within 30 days of completion of the evaluation the written report shall be sent to the appropriate supervisory agency as indicated below.

1. Written reports of evaluations conducted on patients in nursing and combination facilities shall be sent to the Complaints Investigation Branch, Division of Facility Services.
2. Written reports of evaluations conducted on residents of mental health residential facilities and ICF/MRs shall be sent to the Mental Health Licensure and Certification Section, Division of Facility Services.
3. Written reports of evaluations conducted on residents in adult care homes shall be sent to the adult homes specialist in the county department of social services. The adult homes specialist will review the report for licensure and resident bill of rights violations. After reviewing it, the specialist will forward any findings to the Division of Facility Services according to procedures outlined in the DHHS Adult Care Home Procedures Manual, Section 180.

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 suspects violations of licensure standards, such violations shall be reported immediately to the appropriate supervisory agency. Reports of suspected violations of standards in:

1. nursing and combination facilities shall be made to the Complaints Investigation Branch, Division of Facility Services;
2. mental health residential facilities and ICF/MRs shall be made to the Mental Health Licensure and Certification Section, Division of Facility Services;
3. adult care homes shall be made to the adult homes specialist in the county department of social services.

II. Responsibilities of the Division of Facility Services

- A. Upon receiving a written report from a county director of social services confirming that abuse, neglect, or exploitation has occurred or that abuse, neglect or exploitation has occurred and there is a need for protective services in a nursing or combination facility, mental health residential facility, ICF/MR, or adult care home, the Division of Facility Services shall determine the extent of its need for follow-up. Follow-up by the Division of Facility Services is carried out under its authority to license these facilities rather than under the Adult Protective Services Law.

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When the Division of Facility Services determines that follow-up is not needed in a mental health residential facility in terms of licensure regulations, the Division will notify the county department which submitted the written report within 10 days by letter.

When the Division of Facility Services determines that follow-up is needed in a mental health residential facility in terms of enforcement of licensure regulations, the county shall be contacted regarding the situation and plans for follow-up by the Division of Facility Services. Within thirty days of completion of its investigation, the Division of Facility Services will send a written report to the county director. The written report shall include the outcome of the investigation and corrective measures initiated.

When the Division of Facility Services determines that follow-up is needed in a nursing or combination facility, in terms of enforcement of licensure regulations, the Division of Facility Services will send a written report to the county. The written report shall include the outcome of the investigation, letter to the administrator and a report of any violations. The written report shall be posted within ten working days of the completion of the written investigation report.

When the Division of Facility Services determines that follow-up is needed in terms of enforcement of licensure regulations in adult care homes, the adult homes specialist shall be contacted in accordance with procedures outlined in the DHHS Adult Care Homes Procedures Manual, Section 180.

B. When the Division of Facility Services receives a report from a third party of alleged abuse, neglect, or exploitation and a need for protective services about a specifically named person living in a nursing or combination facility, mental health residential facility, ICF/MR, or adult care home, the person making the report (complainant) shall be informed that county departments of social services are responsible for evaluation of reports regarding adults living in facilities who may be in need of protective services. The complainant shall be referred to the department of social services in the county in which the facility is located and a follow-up telephone call shall be made immediately to the department. The following information shall be provided to the department to the extent such information is given to the Division by the complainant:

1. the name of the person alleged to be in need of protective services;
2. the name and address of the facility in which the person lives;
3. the person's age;
4. the nature and extent of the person's injury or condition resulting from abuse, neglect, or exploitation and the circumstances in which the abuse, neglect, or exploitation occurred;
5. the name, address, and telephone number of the complainant.

If the department of social services decides that the referral is not appropriate as an adult protective services report, it will notify the Division of Facility Services by the next working day.

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Protective Services for Adults

- C. Questions received or raised by the Division of Facility Services regarding the Adult Protective Services Law or regarding rules established by the Social Services Commission shall be referred to the Division of Social Services for response.
- D. In accordance with the North Carolina General Statutes, all client specific information received from county departments of social services contained in or submitted in conjunction with the required written report shall be kept confidential by the Division of Facility Services unless release of specific information is required by court order or authorized by the individual client [(G.S. 108A-80; G.S. 131D-2, and 131D-27; G.S. 131E-105(b) and 131E-124)].

III. Responsibilities of the Division of Social Services

- A. The Division of Social Services has responsibility for development of policies and procedures for the provision of adult protective services by county department of social services.
- B. The Division of Social Services has responsibility for obtaining and disseminating interpretations of the Adult Protective Services Law and rules and procedures for the provision of protective services established by the Social Services Commission.
- C. The Division of Social Services shall provide consultation and technical assistance to county departments of social services regarding the provision of Adult Protective Services in nursing and combination facilities, mental health residential facilities, ICF/Mrs., and adult care homes.

IV. Agreement of all Parties

Changes in the terms and conditions of this agreement which may be necessary shall be through formal written amendments signed by both parties. Either party may terminate this agreement upon 30 days written notice or immediately for cause.

This agreement shall begin on the date of the last signature and remain current until terminated by either party.

| | |
|---|--|
|  |  |
| Lynda McDaniel, Director | E. C. Modlin, ACSW, Director |
| Division of Facility Services | Division of Social Services |
| 2/23/01 | 2-20-01 |
| Date | Date |

Division of Aging and Adult Services
Protective Services for Adults

Appendix R

NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES

WORKING AGREEMENT BETWEEN THE
DIVISION OF SOCIAL SERVICES
AND THE
DIVISION OF MENTAL HEALTH, MENTAL RETARDATION
AND SUBSTANCE ABUSE SERVICES

Subject: Procedures for Obtaining Adult Protective Services for Individuals Requiring Medical or Surgical Treatment and Residing in Regional Mental Retardation Centers, Regional Psychiatric Hospitals and North Carolina Special Care Center

- I. Initiation of Request for Adult Protective Services by Regional Mental Retardation Centers, Regional Psychiatric Hospitals and North Carolina Special Care Center
 - A. Any duly licensed physician who is a staff member of or is under contract with the institution may initiate a request for adult protective services when in his/her opinion:
 1. The client is in need of medical or surgical treatment and delay in treatment would cause permanent damage or disability to the client; and,
 2. The client is not competent to give his consent to medical or surgical treatment; and
 3. The client does not have a legal guardian appointed pursuant to Chapter 33 or Chapter 35 and the appointment of a legal guardian would take such time as to endanger the client as defined in A. above; or, the client does not have a guardian as defined in G.S. 122-36(n). (Chapter 122-36(n) defines a guardian to include a court appointed general or testamentary guardian of the person of the client, or a spouse, parent, brother, sister, or other relative or friend if designated "closest relative" by the client at the time of his admission. The word "guardian" does not mean or include a person who files an affidavit or testifies in a proceeding in favor of involuntary commitment of the client.)
 - B. When the above requirements are met, the physician shall complete PART I of "Request for Initiation of Adult Protective Services." The information shall be complete and it shall contain:
 1. Current condition
 2. Needed intervention
 3. Probable implications if intervention is delayed including whether it is an emergency, Emergency services are services necessary to maintain a person's vital function and without which there is reasonable belief that he will suffer irreparable harm or death.
 4. Reasons for emergency request, when emergency request is made.
 - C. The physician shall make a consultation request to staff member(s) designated by the institution director to determine the competency of the client and to determine if the client has a guardian as specified in A.3. The staff member(s) shall make the determination within 24 hours. Following, the staff member(s) shall complete PART II of "Request for Initiation of Adult Protective Services." The information shall be complete and shall include:
 1. Evidence of client's competence or incompetence to make or communicate a decision concerning the procedure indicated.
 2. Indication of whether the client is mentally ill and/or mentally retarded.
 3. Indication of whether or not the client has a guardian.

The staff member(s) shall check the appropriate block in Part II based on the findings.

Effective Date: April 1, 2011
Last Update:

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Appendix R

- D. The form shall be sent to the institution director or his/her designee for review of completeness of information and appropriateness of pursuing adult protective services. If the information is incomplete, the appropriate staff members shall be notified and requested to furnish the relevant information. In a case where the client is determined to be competent, or where the client is incompetent but has a guardian, the initiating physician shall be notified within 24 hours and the procedure terminated, or the initiating physician may appeal to the institution director or his/her designee.
- E. When the review is complete, and it seems appropriate to pursue adult protective services, the material shall be forwarded to the institution director or his/her designee for final review. The department of social services director or his/her designee in the county where the institution is located shall be called advising them that they will be receiving such a request. The supporting data with cover letter shall then be forwarded to the county department of social services within 24 hours.
- F. Staff of the institution will be available to testify at any court hearing scheduled.

II. Evaluation and Processing of Request for Adult Protective Services By County Departments of Social Services

- A. When a county department of social services receives a written report of neglect from one of the regional psychiatric hospitals or regional mental retardation centers or N. C. Special Care Center, a designated staff member will initiate an investigation of the case within 72 hours of receipt of the written report of neglect. The investigation must include an assessment of the condition of the person referred, including a visit to the person and consultation with others having knowledge of the facts of the case. The worker will need to answer and document specific questions as outlined in Volume V, Chapter XVI of the Family Services Manual.
- B. After completing the investigation, if it is determined that the person needs protective services, the county director or his designee will petition the district court and request a hearing on the matter. The petition will present the need for specific medical treatment, as well as other circumstances substantiating neglect as defined in G.S. 108A-101(m), and request that an individual or organization be designated to consent for the medical treatment. If the court authorizes it, the individual or organization designated by the court will then be able to sign the consent for the medical/surgical treatment. After the court's decision is made, the director or his designee will be responsible for contacting a designated institutional staff person regarding the findings of the court. When the county director of social services is designated by the court, the director or his designee will communicate to the designated institutional staff person his consent for medical/surgical treatment. This should be done immediately after the judgment is made.
- C. If an emergency exists, the county department of social services can petition the district court for an order to provide emergency services. The court may order the provision of emergency services if it finds that: (1) a disabled adult is in need of protective services, and lacks capacity to consent to them; (2) an emergency exists within the context of G.S. 108A-101(g); 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. (I.B.3.)

III. Institutional Follow-Up

The following procedures apply when the county director of social services is designated by the court to authorize consent for medical/ surgical treatment.

- A. Upon receipt of telephone notification by the director of the county department of social services or his designee of approval for treatment, the institution director shall:

Notify the physician who instituted the referral of the approval so that arrangements can be made for treatment, and of the need to await written consent from the county department of social services prior* to initiating any medical or surgical procedure.
- B. Upon receipt of written consent from the county department of social services, the procedures approved may be initiated.

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Protective Services for Adults

Appendix R

IV. Amendments to this Agreement

This agreement may be reviewed and revised at any time at the request of either Division.

A. Eugene Douglas
Director, Division of Mental
Health/Mental Retardation and
Substance Abuse Services

J. Minnie
Director, Division of Social
Services

10/20/83
Date

11-8-83
Date

**PROCESS LOCAL DEPARTMENTS OF SOCIAL SERVICES
WILL USE TO REFER ADULT PROTECTIVE SERVICES CLIENTS
TO COMMUNITY SERVICE PROVIDERS**

Introduction

As the population of older adults increases so does the need for services for those adults. In particular is the ever-increasing need for protective services for those disabled adults who have been abused, neglected or exploited. Often what is needed in these situations are a wide range of in-home and community based services designed to improve the quality of life for these adults and to enable them to be maintained in the least restrictive environment possible.

Reporting, Evaluating and Referring Adults in Need of Services

Protective services for adults are defined by statute as “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” (General Statute 108A Article 6). The statutes require that anyone having reasonable cause to believe that a disabled adult is in need of protective services shall report such information to the director of the department of social services in the county in which the adult resides or is present. A report is appropriate if the information suggests that the adult is disabled, has been abused, neglected or exploited and is in need of protective services.

When a director of the department of social services receives such a report he must conduct a prompt and thorough evaluation to determine whether, in fact, the disabled adult has been abused, neglected or exploited, is in need of protective services and what specific services are needed to protect the individual from risk of further mistreatment.

When the county department of social services substantiates that a specific individual is in need of adult protective services, a protective services plan for that individual must be developed. If that service plan includes the need for in-home and community based services funded by the Home and Community Care Block Grant funds, then these individuals must be referred to the appropriate service providers and receive such services in priority order in accordance with the criteria set forth in this manual [The Home and Community Care Block Grant Procedures Manual for Community Services Providers].

Division of Aging and Adult Services
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The adult protective services social worker will help coordinate these services with the service provider to ensure that the service plan is carried out.

Summary of Referral Process

Following is the process which county departments of social services follow in receiving and evaluating reports. It includes the process for referrals to service providers funded by the Home and Community Care Block Grant for the purpose of providing services to older disabled adults in need of protective services.

1. The department of social services receives a report alleging that an individual is disabled; has been abused, neglected or exploited; and is in need of protective services.
2. The adult protective services social worker conducts a thorough evaluation and makes decisions regarding the need for protective services, including development of a service plan if the need for protective services is substantiated.
3. The adult protective services social worker then makes referrals to appropriate service providers in order to obtain those services identified in the service plan for the adult. The social worker should include information in the referral to the effect that the adult is receiving adult protective services and is in need of in-home or community based services (see sample referral form).
4. The social worker may share with the service provider sufficient information about the disabled older adult in order for the provider to be able to provide/arrange for appropriate services.
5. The department of social services will not be able to disclose any information about specific clients for whom they have not referred to a service provider. However, if a service provider has information alleging that an adult is disabled; has been abused, neglected or exploited; and is in need of protective services, they must notify the department of social services regarding this individual in accordance with the statutory requirements explained above.

**Adult Protective Services
Reciprocal Protocol**

I. Purpose of Reciprocal County Protocol

- A. Goal: Implementing 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 as defined in the Division of Aging and Adult Services Protective Services for Adults manual.
- B. Objective: To facilitate the assignment of those referrals with a "Reciprocal System" which matches counties having comparable levels of referrals and geographic proximity.
- C. Definitions
 - 1. Home County – the county receiving the APS report. The county where the disabled adult lives or is found.
 - 2. Reciprocal County – the county requested to conduct the APS evaluation for a home county when the administrative rules state the home county cannot conduct the evaluation or there is a conflict of interest that makes it appropriate for the home county to conduct the evaluation.

II Procedure: A request for a reciprocal 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 reciprocal county. There should also be a back-up person identified.

- A. The Home County 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 reciprocal county disagrees with the home county about the acceptance of the report, or the existence of a conflict of interest, the counties should discuss their difference of opinion. If they are unable to resolve the issue, the appropriate field staff for the home and reciprocal counties should be contacted immediately to make the final screening decision. In no case shall an APS evaluation be allowed to wait because of a dispute about the report. If there is not a timely resolution of the dispute, the home county's decision shall stand.
 - 2. Contacting the identified person (or the back-up person) in the reciprocal county, directly, with all the referral information. The home county is responsible for documenting and sharing the intake report with the reciprocal county. The time frames established in statute for initiating the evaluation remain applicable. Therefore referrals to the

Division of Aging and Adult Services
Protective Services for Adults

- reciprocal county must be made in a timely manner, allowing the reciprocal county to respond within the mandated time frames.
3. Responding to and cooperating with the reciprocal county in every way possible, providing all necessary assistance as may be requested by the reciprocal county. This may include conducting local criminal records check and making any necessary appointments for the disabled adult within the community.
 4. Making an offer of other services to the adult once the reciprocal county has conducted the evaluation and made the case decision, the case is unsubstantiated.
 5. Maintaining a log of requests for evaluation by the assigned reciprocal county. The log should contain the case name, date and reason for report; date referred to the reciprocal county, and results for the evaluation. The log will be available for review.

B. The Reciprocal County is responsible for:

1. Responding quickly to a request for assistance by the home county. Every effort should be made to begin the prompt evaluation by seeing the disabled adult within the statutory time frames.
2. Completing the thorough evaluation in a timely manner. A case decision should be made by the reciprocal county within statutory time frames. If that will not be possible, the reciprocal county should inform the home county of the reasons for the delay and document the reasons for the delay in the case record.
3. Making a referral back to the home county, if the case is not substantiated and providing information that is adequate to support the home county's offer of other services to the adult. The Written Report should be used to share this information with the home county.
4. Retaining responsibility for the case if it is substantiated. The reciprocal 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 home county. Only enough information to facilitate the coordination of services needed by the disabled adult should be shared with the home county.
5. **Documenting the case**, including the evaluation, the DAAS 5026, applicable notices, authorization for services, the protective service plans and all other pertinent documentation are the responsibility of the reciprocal county.
6. **Maintaining a log of requests for assistance** in an APS evaluation. The log will be available for review.

Section IV. Legal Alternative and Supplements to Adult Protective Services

A. Introduction

Many people can handle their affairs for most of their lives. However, some may need help because of injury, disease or frailty due to advanced age. Unfortunately, many people fail to prepare for the possibility that they may be unable to manage their financial and personal affairs. There are several legal alternatives which may be considered in determining the most appropriate method of assisting a disabled adult when and if the need arises.

This section describes a range of proceedings including the process for obtaining civil commitments and guardianship. It also addresses several methods available for assisting persons who need help with their affairs. These include powers of attorney and advance directives such as living wills and substitute payeeship. Each has a specific purpose and is appropriate only under certain conditions.

Since Adult Protective Services was developed to assist adults who have disabilities which have incapacitated them to a degree which makes them unable to take care of themselves, and who have no one able, willing, or responsible to assist them to meet their needs, it may be necessary to use these methods in providing protective services to a disabled adult. For these reasons, it is important to be knowledgeable about the information in this section. Depending on the circumstances, there may be a need to use one or a combination of methods to assist clients 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

Statutory Requirements for Voluntary Admissions and Discharges

The North Carolina Mental Health, Developmental Disabilities, and Substance Abuse laws, [G.S. 122C Part 2 Voluntary Admission and Discharges](#) address the criteria for voluntary admissions to and discharges from facilities for persons with mental illness and substance abuse problems, and to facilities for individuals with developmental disabilities for both competent and incompetent adults.

Facilities for the Mentally Ill and Substance Abusers

Competent adults may seek their own admissions. A facility may elect not to admit an adult if it determines that the adult does not need, or cannot benefit from, available services. The adult must be discharged within 72 hours of his/her own written request.

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 (i.e., guardian 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.

Facilities for Individuals with Developmental Disabilities

Competent adults may be admitted on their own application.

Incompetent adults are admitted on the guardian's application.

Statutory Requirements for Involuntary Commitments

G.S 122C-[Part 7 Involuntary Commitment](#) address 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.

Inpatient Commitment to Facilities for the Mentally Ill (G.S. 122C-Part 7)

Criteria

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;

Procedures

Anyone may petition before a clerk or assistant or deputy clerk of superior court for issuance of an order to have the individual examined by a physician or eligible psychologist. An affidavit must be filed which includes facts which justify the petition for a custody order.

If the clerk or magistrate finds reasonable grounds to believe the facts alleged in the affidavit are true he issues a custody order to a local law enforcement officer, who transports the client to a physician or psychologist for examination/evaluation. If the examiner determines that the client meets commitment criteria, the law enforcement officer transports the client to an inpatient facility, where a second examination is conducted within 24 hours.

A hearing is held in district court within 10 days of the day the client is taken into custody. If the court finds by clear, cogent and convincing evidence that the client meets the inpatient commitment criteria, it may order inpatient commitment for up to 90 days.

At the end of the initial inpatient commitment period a rehearing can be held, and a second commitment order issued for an additional period of no more than 180 days.

Rehearings can be held at the end of this second commitment period and annually thereafter.

Outpatient Commitment for the Mentally Ill

Criteria

An individual may be involuntarily committed for outpatient treatment if he is:

- **mentally ill;**
- **capable of surviving safely in the community with available supervision from family, friends or others;**
- **in need of treatment to prevent further disability or deterioration which would predictably result in dangerousness; and**
- **limited in his ability to seek voluntarily or comply with recommended treatment because of his current mental status or the nature of his illness].**

Criteria

An individual may be involuntarily committed to a facility for substance abusers if he is a substance abuser and dangerous to himself or others.

Procedures

The procedures are very similar to those for involuntary inpatient commitment for those with mental illness. A petition is filed; a custody order issued; an examination conducted; and a district court hearing held within 10 days of the day the client is taken into custody.

The court may order commitment to and treatment by the area authority or physician for up to 180 days on the initial hearing, and up to 365 additional days on a rehearing if the client continues to meet the statutory criteria. The area authority or physician to whom the client is committed determines whether the client is treated on an inpatient or outpatient basis.

State Policy

None related to Protective Services for Adults.

Recommended Social Work Practice

In some instances DSS may need to conduct an assessment of the situation and take whatever action is necessary, i.e., pursuing involuntary commitment. This may or may not be a protective services report depending on the nature of the information.

It is important when making decisions about whether a situation presents a need for involuntary commitment or a need for protective services to carefully consider all three of the screening criteria to determine what type of services are needed.

DSS often receives information that at first glance may appear to be a need for protective services but when applying the APS screening criteria the situation may really be a request for assistance.

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 is able to seek voluntary admission with some assistance or there is another person who is able, willing and responsible to seek involuntary admission for the adult.

In other situations, a report may be accepted for an APS evaluation and then information gathered during the assessment may indicate a need for commitment. This may be part of the initial plan for protection or become necessary as services are provided.

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)].

If a disabled adult has been abused, neglected or exploited and has been admitted or likely will be admitted to a (mental health facility) and will be in the hospital for a limited amount of time, the adult protective services case should remain open long enough to determine whether the adult's situation stabilizes when he returns to the county. Case planning should be coordinated with the LME and other responsible agencies in order to make sure that the disabled adult is receiving appropriate services and is free from further mistreatment.

If it is likely that a person will have an extended treatment time at the facility, a case decision should be made based on the information gathered. The protective services case should be closed. If the client later returns to the community, DSS may need to work with the hospital and mental health agencies in arranging for other services such as representative payeeship, guardianship or other services. This would be the same types of services that would be provided to other hospital patients upon discharge.

Forms pertaining to involuntary commitment proceedings can be found at [AOC](#).

C. Guardianship Proceedings

Policies Related to Guardianship can be found at:

http://www.ncdhhs.gov/aging/adultsvcs/guardian_manual.pdf.

Effective Date:

Last Update:

Recommended Social Work Practice

The issue of guardianship is comprehensively discussed in the Guardianship Manual. This material should be consulted if guardianship is being considered to assist the adult with his affairs.

Guardianship may be appropriate for adults who are incompetent and vulnerable to abuse, neglect or exploitation because of their inability to make reasonable decisions. Guardianship for such persons may prevent their becoming in need of protective services.

It is important to carefully apply the APS screening criteria to a person's request for services to determine if there are allegations of a need for protective services and therefore, an APS evaluation is required, or if the request is to assist in petitioning for adjudication of incompetence and appointment of a guardian.

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.

Consideration of whether to pursue an APS order or the appointment of a guardian should include:

- **the long term needs of the client;**
- **the urgency of the need;**
- **the expediency of the courts; and**
- **the type of court intervention which is the most appropriate for a particular client.**

Guardianship proceedings and the provision of adult protective services often are interrelated. 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 in an APS case.

One instance is as a means to provide authorization for essential services. When the evaluation indicates that the disabled adult may be incompetent and will need assistance with his affairs for an extended period of time or need 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 instead of an emergency order or a protective services order 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 physical well-being and/or assets requiring immediate intervention. Assets can be managed and utilized under a guardianship order, but can only be inspected or frozen under an APS order.

The other instance is as a goal in the protective services plan.

When an adult protective services order has been obtained authorizing services for the disabled adult, it is required that a motion be filed to conduct a review to determine if a guardianship petition should be filed during or before one of the 60 day expiration dates of an APS order. During the time frame of an APS order, it may be determined that the adult's incapacity/incompetence will be long term and therefore an extended form of authorization for decision-making will be necessary.

D. Power of Attorney

Statutory Requirements

Statutory Requirements for a General Power of Attorney

Definition

A general power of attorney is a document by which a competent adult (referred to as the principal) authorizes another designated person (referred to as the attorney-in-fact) to act for him/her and manage his/her affairs.

A general power of attorney ends if the adult becomes incompetent or dies.

Creation of a power of attorney

The use of the Statutory Short Form of General Power of Attorney is lawful and can be found [in G.S. 32A-1, Article 1](#).

Authority of a General Power of Attorney

The authority granted to the attorney-in-fact may be very broad or very limited, depending on the wishes of the adult.

The attorney-in-fact may be authorized to assume responsibility for any or all of the following:

- **real property transactions;**
- **personal property transactions;**
- **bond, share and commodity transactions;**

- **banking transactions;**
- **safe deposits;**
- **business operating transactions;**
- **insurance transactions;**
- **estate transactions;**
- **personal relationships and affairs; and/or**
- **social security, unemployment and benefits from military service (G.S. 32A-1, Article 1).**

Statutory Requirements for a Durable Power of Attorney

Definition

A durable power of attorney is a document whereby a competent adult authorizes and designates in writing another person(s) to act for him/her and manage his/her affairs.

The document is "durable" if it states that the authorization is effective after the adult becomes mentally incompetent or incapacitated.

There are two ways to indicate that a power of attorney is durable:

- **If the power of attorney is to take effect only after the adult becomes mentally incompetent or incapacitated, then a clause must be written to indicate this requirement.**
- **If a general power of attorney is to be a durable power of attorney and is to continue in effect after the incapacity or mental incompetence of the principle, a clause stating that the power of attorney will not be affected due to incapacity or incompetency must be added.**

All powers and authority outlined in the document are granted the attorney-in-fact if the durable power of attorney document has been registered in the office of the register of deeds in the appropriate county.

For the attorney-in-fact to be able to act on behalf of the adult after the adult becomes mentally incompetent or incapacitated, a durable power of attorney document must specifically state this intent.

Reporting and Record-Keeping Requirements

The attorney-in-fact is required to file a copy of the power of attorney document with the clerk of superior court within 30 days after the power of attorney is registered, subsequent to the adult's incapacity or incompetency. Also it is required that the attorney-in-fact render inventories and accountings to the clerk.

The attorney-in-fact is not required to file a copy of the power of attorney document with the clerk or make accountings to the clerk, subsequent to the adult's incapacity or incompetency, if the principle waives this requirement.

When an adult, who has executed a durable power of attorney, becomes incompetent, the attorney-in-fact must keep complete, accurate records of all property and transactions in which he acted on behalf of the adult. Inventories and accounts include inventories of the adult's property for which the attorney-in-fact is responsible and annual and final accounts of receipt and disposition of property and other transactions in behalf of the adult.

Relationship of Attorney-in-fact to Guardian

When a guardian is appointed for an incompetent adult who has a durable power of attorney, the attorney-in-fact is accountable to the guardian and to the adult.

The guardian has the same authority to revoke or amend the power of attorney that the adult would have if he were not incompetent.

Revocation

A durable power of attorney may be revoked by:

- **The death of the adult; or**
- **Registration of an instrument of revocation in the office of the register of deeds where the power of attorney has been registered.**
- **The instrument of revocation must be executed and acknowledged by the adult while he is not incapacitated or mentally incompetent; or by any person or corporation who is given such power and revocation by the principle.**

State Policy

None related to Adult Protective Services.

Recommended Social Work Practice

Most adults find thinking about and making decisions regarding their personal affairs in the event that they should become disabled or incompetent an unpleasant task. Therefore, if this does occur, there are no provisions in place for another person to be able to handle these affairs. Procedures such as involuntary commitment or guardianship are intrusive legal alternatives which must be initiated by another person on behalf of an incapacitated or incompetent adult. By contrast, a power of attorney is designated by a competent adult and can be used to instruct an attorney-in-fact to make decisions for the adult when he is no longer able to make decisions for himself.

If these instructions are not made prior to the adult becoming incompetent or unable to communicate choices, then the courts may make the decisions about who will handle the

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adult's affairs. This court appointed person may or may not have known the adult or the adult's wishes concerning the handling of his affairs.

A general power of attorney allows a competent adult to direct a person to act on his behalf. By choosing this attorney-in-fact prior to becoming incompetent, it will help to ensure that the individual's own wishes are carried out.

The APS social worker may inform a client about the advantages of a power of attorney. If it has been determined that the adult's mental capabilities are not impaired then he could be referred to an attorney.

The attorney may discuss executing a power of attorney as an advance directive to be in effect when the adult loses capacity or becomes unable to make decisions; or to extend the capabilities of a physically disabled person to manage his own affairs through a power of attorney.

G.S. 32A-1 contains a Statutory Short Form of General Power of Attorney which can be used to create a power of attorney. A different form may be used if desired. It is advisable to seek legal counsel in order to ensure that the document is properly prepared.

G.S. 32A does not define incapacity or mental incompetence, nor is there any statutory requirement regarding who determines that an adult is incapacitated or incompetent.

In the absence of statutory guidance, the attorney-in-fact may receive documentation of an adult's incapacity or incompetence by obtaining a statement from a physician or psychologist who has evaluated the adult's condition. This will help in deciding when the authority of the attorney-in-fact, outlined in a durable power of attorney document, begins.

It is also important to check with the register of deed's office to see if the document has been registered, if the adult has become incapacitated or incompetent.

If there is an APS report being made regarding mistreatment by an attorney-in-fact, the APS screening criteria should be applied before conducting a thorough evaluation to determine if the disabled adult is in need of protective services.

Just because a person has given another person the right to handle their affairs, the right to be protected from abuse, neglect or exploitation has not been delegated.

The worker may need to focus on making determinations regarding any alleged mistreatment and obtaining other authorizations such as guardianship to intervene on behalf of the disabled adult. It may be necessary to assist the disabled adult with having the power of attorney revoked if the disabled adult is not incapacitated or incompetent.

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If the disabled adult is thought to be incompetent or incapacitated, the 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 power of attorney revoked.

An APS order can not revoke a power of attorney. However, the court can order, through an APS order, that essential services be obtained or provided by DSS. This may be in conflict with services that the attorney-in-fact has or has not provided or obtained. It would then be up to the attorney-in-fact to bring this to the attention of the court, if desired.

For example: if the attorney-in-fact has refused to appropriately place an adult and this is causing the adult to be abused, neglected or exploited, then the APS order could allow DSS to place the adult in a facility against the wishes of the attorney-in-fact.

It is often very difficult to prove that an attorney-in-fact acted outside the realm of the wishes of the principal. Courts find it difficult to prosecute or revoke a designated power of attorney without due cause when the power of attorney document gives the attorney-in-fact unlimited authorization.

The lack of specificity in a power of attorney document is often problematic. The limits on the authority of the attorney-in-fact over the person or the person's property are not always clear. It is important to read the power of attorney document thoroughly to determine the scope of the attorney-in-fact's authority, if this authority has been questioned. The attorney-in-fact designated in a durable power attorney document can consent to the provision of adult protective services if the disabled adult lacks the capacity to consent.

E. Advance Directives

North Carolina has two methods for competent adults to communicate decisions about their medical care in the event they should become 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.

Statutory Requirements

Declaration of a Desire for a Natural Death

Public policy in North Carolina recognizes that an individual's rights include the right to a peaceful and natural death and that an individual has the right to control those decisions including the decision to have extraordinary means withheld or withdrawn in instances of terminal conditions. Statutory provisions for the right to a natural death are found in G.S. 90, Article 23.

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 can not 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.

Health Care Power of Attorney

Any person who is 18 years old or older and has an understanding of and capacity to make and communicate health care decisions may designate a health care power of attorney.

Authority of a Health Care Power of Attorney

The health care power of attorney allows a competent adult (the principal) to designate an individual (the health care agent) to make medical decisions for him if he cannot make them himself. The health care agent's authority can be as broad or limited as the principal chooses. The authority which can be given to the agent includes all powers the individual himself would have, including the power to consent to a doctor's giving, withholding or stopping any medical treatment, service or diagnostic procedure, including life-sustaining procedures.

Effectiveness and Duration

The health care power of attorney becomes effective when the doctor designated in the document determines that the principal lacks sufficient understanding or capacity to make or communicate health decisions.

The principal may revoke the health care power of attorney at any time, as long as he is able to make and communicate medical care decisions. The revocation becomes effective once it is communicated to every agent named and the attending physician.

The principal can recommend a future guardian of the person in the document. The clerk of court shall make this appointment except if good cause is shown not to do so. The health care power of attorney is no longer effective when a guardian is appointed by the clerk of court for the principal.

If the principal has designated both a durable power of attorney and a health care agent with health care powers, the health care agent's power is superior regarding health care matters.

The health care power of attorney may be incorporated into a Declaration of a Desire for a Natural Death (A Living Will) (G.S. 32A-25).

Statutory form

The use of the form outlined in 32A-25.1 in the creation of a health care power of attorney is lawful. This document gives the person broad powers to make health care decisions for the individual, including the power to consent to the doctor not giving treatment or stopping treatment necessary to keep the individual alive.

State Policy for Advanced Directives

None related to Adult Protective Services.

Recommended Social Work Practice

An advance directive, made while a person is still competent, has the force of a decision made by a competent adult, and thus must be honored in the same way. Any advance communication made by a competent adult regarding that person's affairs is better than nothing because it presents the "best evidence" of a person's wishes.

Like the Power of Attorney, the use of advance directives are also preventative. They enable individuals to make choices to identify someone they want to carry out their decisions when they become incapable of doing so.

The health care agent is limited to health care decisions only. This person cannot conduct business transactions or personal affairs of any other type.

A health care agent's authority regarding health care decisions takes precedence over a durable power of attorney's authority.

The health care agent also does not have the right to mistreat a disabled adult. It is important to appropriately apply the screening criteria should a report be made alleging mistreatment by a health care agent authorized in a health care power of attorney.

If a health care agent appointed in a health care power of attorney becomes unable to make or communicate decisions about the principal's health care, then the person delegating the power of attorney may be seen to be without someone willing, able and responsible to obtain

essential services for him. It may be appropriate to obtain a protective services order to be able to provide appropriate medical services for the disabled adult.

Information pertaining to living wills can be found [Guide for North Carolinians for information regarding a living will.](#)

[Health Care Power of Attorney document](#)

F. Substitute Payee

There are different types of substitute payee. These include protective payee and representative payee.

Statutory Requirements

G. S. 108A-37 addresses the procedures for obtaining personal representatives for mismanaged public assistance.

G. S. 108A-38 addresses the procedures for protective and vendor payments.

State Policy for Protective Payee

Requirements and procedures for appointment of a protective payee can be found in Division of [Social Services Work First Manual](#) Payment Rules for Payees, Work First Manual, Section 205.

Federal Statutory Requirements for Representative Payee

<http://ssa.gov/payee/faqrep.htm>

State Policies

Copies of 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 any of the above mentioned federal administrative agencies if evidence of exploitation occurs by someone acting as a representative payee for a disabled adult.

Recommended Social Work Practice

Individuals may need assistance with decisions regarding their finances. This may not constitute a need for protective services. Again, it is important to appropriately apply the APS screening criteria to make this determination.

If an evaluation is conducted and the need for protective services is substantiated, then goals of the APS case may include having a payee appointed by the federal agency administering the benefit payment. This payee may be DSS or another responsible person.

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For example, when the disabled adult has been exploited because he was not able to manage his money, but can manage himself, and guardianship is not the least restrictive alternative for this individual, then obtaining a representative payee may be the appropriate plan for this client (i.e.; an adult with an intellectual disability with moderate functioning can live independently but can not manage his financial affairs).

In an unsubstantiated case, it may be appropriate for a referral to be made to the federal administrative agency recommending that a payee be found to manage the person's benefits.

An APS court order may contain recommendations that the individual receive a representative payee when the disabled adult lacks capacity and needs someone to manage finances only.

The appointment of a representative payee may be appropriate for an adult who is unable to make decisions about his person or his finances. If the adult is incompetent, then the least restrictive alternative may be the appointment of a limited guardian of the person with a payee maintaining the person's finances.

V. Provision of Services with Federal and State Funds

A. Introduction

This section describes the circumstances under which funds administered by the Division of Social Services may be used to support the provision of protective services for adults. It includes the scope of activities which may be funded, as well as client eligibility criteria and required documentation.

B. Provision of Protective Services for Adults

Statutory Requirements

G.S. 108A-103(a) requires that county departments of social services receive and evaluate reports of disabled adults who are in need of protective services. G.S. 108A-101(n) defines the words protective services to mean those services which are necessary to protect the disabled adult from abuse, neglect or exploitation and includes the evaluation and mobilization of essential services.

Through the authority in G.S. 143B-153, the North Carolina Social Services Commission has established rules and regulations for the provision of services for adults with funds administered by the Division of Social Services.

State Policy

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.

Definition of Protective Services

Protective services for adults are services provided to correct or prevent further abuse, neglect, exploitation or hazardous living conditions of individuals who meet the target population.

The following services must be available to disabled adults as appropriate in response to adult protective services reports:

- **acceptance and evaluation of reports of the need of individuals for protective services;**

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- **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;**
- **arranging for the provision of medical, legal and other services as needed and appropriate;**
- **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 needed as 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.**

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.**

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 be not 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.

Recommended Social Work Practice

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 Section III of 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.

Effective Date:
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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, petitioning for guardianship or other legal remedies, 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.

Conditions of Eligibility

Statutory Requirements

G.S. 108A-102 and 103 require that an individual be alleged to be a disabled adult; who has been abused, neglected, or exploited; and is in need of protective services in order to receive an evaluation to determine what services are needed.

State Policy

Conditions of eligibility include basic eligibility criteria applicable to the program or funding source under which the service is made available, and conditions of need specified in the target population for the service requested, as set forth in 10 NCAC 71R. Procedures for applying eligibility criteria in order to reach an eligibility decision are set forth in the Requirements for the Provision of Services Manual.

Eligibility Criteria

In order for an individual to be determined eligible to receive services funded under the Social Services Block Grant, it must be established that the adult is eligible on the basis of need as specified in the target population for the service requested.

Individuals may be determined to be eligible for protective services for adults if it is determined that they are in need of the service and are in the specific target population.

An assessment of need shall be required for services provided on the basis of need without regard to income and funded under the Social Services Block Grant. The determination of need is met when the client's situation fits the criteria contained in the target population.

In instances where a protective services report is received and substantiated on an adult who is receiving other services, the person's eligibility for other services must continue to be on the basis of income and service specific criteria.

If the adult becomes ineligible for those services during the first 12 months of protective services, consideration may be given to the need for those services provided in support of the protective services plan.

In such instances, if the services are needed in conjunction with protective services, they may be provided without regard to income during the remainder of the first 12 months of protective services. The record must specify why the services cannot be continued under the previous eligibility category and why the services are needed in conjunction with protective services.

Period of Eligibility

Once the initial date of eligibility is established and documented, the eligibility determination is valid for services provided without regard to income for as long as need for the service continues.

Redetermination of eligibility for services must be made at least every twelve months except for services provided without regard to income, the service shall continue until determined no longer appropriate.

When other services are needed in conjunction with protective services and continue to be needed past the 12 months eligibility period, any income criteria or fee requirements applicable to specific services being provided must be applied.

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, SIS Client Entry Form](#). 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.

The Report to the Adult Protective Services Register (DSS-5026), Section I, Items 1-8, must be completed when an adult protective services report is received. This documents the receipt of the report.

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.

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.

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.

Only the beginning date of eligibility is required to be documented when services are available without regard to income. This documentation must be made on the DSS-5027.

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.

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 such 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**

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- **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.**

Recommended Social Work Practice

Individuals for whom intake activities are conducted, which do not result in an adult protective services report, do not require the initiation of a SIS Client Entry Form, a Report to the Adult Protective Services Register, a determination of eligibility, a client ID number, or a client record.

County departments of social services are responsible, however, for documenting necessary information obtained during intake in accordance with law and policy, (i.e., the name of the disabled adult and their caretaker; the nature and extent of the disabled adult's condition; and whether or not there is a need for protective services).

A family member or any other personal representative cannot sign the application authorizing protective services. Consent must be given by a client who has the capacity to consent or other legal authorization such as a court order or the consent of a guardian must be obtained.

Any service provided in conjunction with protective services should support and facilitate the mobilization of essential services.

Service Information System

Refer to [SIS User's Manual](#)

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VI. 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 a number of administrative issues be addressed in designing a service delivery system which responds appropriately to disabled adults in need of protection. In addition, the nature of this service is such that ongoing involvement and support at all levels of administration are essential.

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 and the use of community resources. It may be used by administrative staff in organizing, operating and evaluating the agency's adult protective services program. It also provides the policy and social work practice guidelines regarding inter-county cooperation. Information about agency coordination with state mental health institutions is also addressed in this section.

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 adult protective services clients.

Staff/Supervisor Ratio

One of the primary considerations in organizing adult protective services staff is the worker/supervisor ratio. Two key components in determining the ratio for a particular agency are scope of responsibility of the supervisor and availability of the supervisor to individual 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 also is 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.

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.

Social Worker Qualifications

The social worker needs to be knowledgeable of adult protective services law and policy and services/resources available in the community for disabled adults. An understanding of how adult protective services interfaces with other services and programs is also 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, therefore, 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 clients 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 client;
- ability to use basic legal knowledge when 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 client;
- ability to "shift gears" from supportive casework to authoritative casework (and to know when to shift); and
- ability to be a creative and assertive service provider in tapping resources which meet the disabled adult's needs.

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 workers.

The Division provides programmatic training for workers responsible for any aspect of adult protective services. This training curriculum, "Basic Skills in Adult Protective Services" is an orientation to the law and policy governing APS and is recommended for intake workers, adult services workers, on-call workers as well as APS supervisors and social workers. Advanced APS trainings are also available. A detailed [training calendar](#) is available.

Caseload Organization and Size

It is important to consider the number of reports and types of cases received by a county when assessing the organization of the APS program, especially when deciding how many cases to assign to a particular worker and how many workers to assign to a supervisor.

The number of complicated, unstable cases, such as those under evaluation, verses the less complicated, more stable maintenance cases receiving ongoing services as part of the protective plan, also affects a worker's caseload manageability.

At the request of the NC Association of County Directors of Social Services Adult Services Committee, a work group was formed in 2010 and tasked with evaluating the current recommended caseload size for Adult Protective Services. APS caseload recommendations were last reviewed in 1997. At that time the recommended caseload size was for a full-time APS social worker to manage 25 total cases – 10 on-going evaluations and 15 on-going planning and mobilization. Based on the recommendations made by the 2010 work group and accepted by the NCACDSS 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

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.

Intake Activities

Responsibility to receive reports should be assigned to staff who are highly skilled in interviewing.

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Staff should know the screening criteria as laid out 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.

Staff should also be aware of other community resources and services to be able to make appropriate referrals if the information given does not meet the criteria for adult protective services. If agency organization is such that the staff member who receives the report does not conduct the evaluation, the agency should ensure that procedures are in place so that referrals are transferred expediently to the APS supervisor for response.

After-Hours, Weekend and Holiday Coverage

Arrangements should be made for twenty-four hour coverage to receive calls and take appropriate action.

At all times response must be initiated by the agency within the mandated immediate, 24-hour and 72-hour time frames.

Workers providing after-hours coverage need the skills and knowledge necessary to conduct APS evaluations including those skills necessary to provide crisis intervention.

The agency should consider preparing an "after hours packet" which contains 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.

Agency Written Policies and Procedures for the Provision of Protective Services

Local agency policies may be established to provide guidance 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 in a particular case;
- 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; and
- 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;

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- setting up case records;
- notifying DHSR, DMA, 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; and
- other procedures that would provide clear expectations of the workers and smooth operation of the delivery system.

D. 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.

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 client. DSS has a responsibility for providing leadership in the education of other agencies regarding their role and mandates in APS.

Assistance With Evaluating the Report

Due to the complex nature of clients' situations, it is imperative that APS workers have input from other disciplines for the purpose of evaluating each client's needs and facilitating coordinated service delivery.

Section III of this manual addresses law 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 clinics, and other public or private agencies.

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 actually

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providing the necessary services. Services from other agencies such as adult day services, home delivered meals, home health 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 other provider in order to develop a protective services plan for the client.

Formal Relationships

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.

Memorandum of Understanding

Written agreements should be initiated by management, include the procedures for referrals, and should outline the responsibilities of both parties for client 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.

Appendix C, included in this section, shows an example of a memorandum of understanding

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 client information with several other professionals in the community, and have the benefit of other's knowledge and experience in developing service plans and resolving client problems.

Guidance for developing an APS/Elder Abuse MDT is available at:

http://www.ncdhhs.gov/aging/adultsvcs/EldAbs_complete.pdf

E. Working with the Court and Law Enforcement

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 clients 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 volatile cases which may require legal action.

Court Officials

Social workers need to understand the procedures of the court system and the appropriate use of those procedures.

Court officials should be familiar with APS staff, their role, and the types of problems presented in APS cases.

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.

Law Enforcement

APS social workers should be knowledgeable of the realm of services available through law enforcement and how and when to access their services when involved in a dangerous or emergency situation.

Law enforcement officials should be familiar with the DSS and which workers are responsible for APS. It is important that law enforcement understand the nature of APS and why their assistance may be needed with particular case situations.

District Attorney

Section III of this manual addresses law 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 particular 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.

F. Inter-County Cooperation

Reports Regarding County Officials

Section III of this manual addresses APS reports which constitute a conflict of interest.

G. Reports in Residential Care Facilities

Section III of this manual contains policy and guidance regarding APS in nursing, combination or residential care facilities. The DSS in the county where the facility is located has primary responsibility for providing protective services to adults in those facilities. For further discussion refer to that section.

When a Disabled Adult Moves to Another County

Section III of this manual contains policy and guidance regarding confidentiality issues when the disabled adult moves from one county to another. It contains information about the sharing of information when the adult has consented to the provision of APS. It also addresses policy regarding the information that can be shared without client consent when one county is providing protective services under court order.

Response Time Key to Protection

The focus of Adult Protective Services is on the protection of the disabled adult. Often the response time is the key element to this protection. In order to ensure that disabled adults receive the services they need in the most expedient manner, the county where the disabled adult is physically located at the time of the report should be the county to respond and initiate the evaluation.

H. Access to Information in the Adult Protective Services Register

Statutory Requirement

None.

State Policies

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.

Access to the Adult Protective Services Register is restricted to department of social services

- **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**
- **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.**

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- **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**
- **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. 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:**
 - **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;**
 - **a description of how the study will be conducted and how the findings will be used;**
 - **a presentation of the individual's credentials; and**
 - **a description of how the individual will safeguard the information.**

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

Recommended Social Work Practice

An extensive description of how to complete and use the APS Register is contained in the [Adult Protective Services Register Users Manual](#). The eight management reports that are generated monthly can be utilized as an administrative tool for planning.

I. Coordination with DHHS Schools, Institutions and Divisions

Coordination with DHHS Schools, Institutions and Divisions

DHHS Directive Number III-5 (formerly known as Directive 61)

DHHS DIRECTIVE NUMBER III-5 instructs staff of DHHS schools, institutions and divisions to report abuse, neglect and exploitation of disabled adults to county DSSs according to our

state's reporting law. The Directive can be found at <http://info.dhhs.state.nc.us/olm/manuals/oos/dir/man/DirIII-05a.htm>.

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 designated 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

Section III of this manual contains policy and social work practice for conducting evaluations in state operated healthcare facilities.

Working Agreement

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.

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APPENDIX A

CHECKLIST
 CHARACTERISTICS OF ADULT PROTECTIVE SERVICES WORKERS

This checklist has been developed as a guide to consider in examining the agency's practice in selecting new workers, planning orientation, and assessing the knowledge base and potential training needs of the current workers and supervisors. Any areas identified as weaknesses should be addressed as training needs and not necessarily viewed as deficiencies. This checklist may also be incorporated into regular reviews of worker performance

| | YES | NO |
|---|-------|-------|
| Respect for client right to self-determination (non-judgmental) | _____ | _____ |
| Ability to deal with an unpleasant situation(s) | _____ | _____ |
| Ability to deal with a crisis situation(s) | _____ | _____ |
| Good verbal communication skills | _____ | _____ |
| Ability to take a leadership role and work well with others | _____ | _____ |
| Has experience working with other agencies/disciplines | _____ | _____ |
| Good written communication skills | _____ | _____ |
| Organized and meets deadlines | _____ | _____ |
| Motivated to work with population served by adult protective services | _____ | _____ |
| Good client interviewing skills | _____ | _____ |
| Knowledge of problems of elderly and handicap ad population, especially as relates to functional and physical limitations | _____ | _____ |
| Knowledge of protective services law and policy | _____ | _____ |
| Knowledge of court system and ability to utilize appropriately | _____ | _____ |
| Knowledge of community resources and ability to utilize appropriately | _____ | _____ |
| Knowledge understanding and respect for confidentiality | _____ | _____ |
| Ability to mobilize other services (ex. law enforcement) in an appropriate manner in a crisis/emergency | _____ | _____ |
| Ability to motivate clients to participate in decision making process | _____ | _____ |
| Ability to utilize both directive and non-directive social work methods as the situation dictates | _____ | _____ |
| Ability to advocate for clients' needs and be assertive and creative in obtaining resources | _____ | _____ |
| Ability to partialize problems | _____ | _____ |
| Ability to develop case plans based on needs identified in evaluation | _____ | _____ |
| Ability to conduct multidimensional evaluation of client | _____ | _____ |
| Ability to empathize with the client and to begin working with them "where they are" | _____ | _____ |

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MEMORANDUM of UNDERSTANDING
for
EVALUATION of NEGLECT AND ABUSE of DISABLE ADULTS
BETWEEN ALBEMARLE COUNTY DEPARTMENT of SOCIAL SERVICES AND
ALBEMARLE COUNTY HEALTH DEPARTMENT

The purpose of this working agreement as set forth herein is to specify the responsibilities and activities of the Albemarle County Health Department and the Albemarle County Department of Social Services for participation in the delivery of Adult Protective Services. This is done in accordance with General Statutes 108A-103(b). Furthermore, the Albemarle County Department of Social Services and the Albemarle County Health Department shall coordinate their efforts to identify adults at-risk of abuse and neglect and to assist families and/or caretakers with their problems to prevent separation and further abuse or neglect.

- A. The responsibility to reduce abuse and neglect shall be fulfilled by the joint efforts of the Albemarle County Department of Social Services and the Albemarle County Health Department.
- B. The Supervisor, Adult Services Unit, shall submit in writing a request for nursing assessments of clients during the "Evaluation Stage" to the Albemarle County Health Department. This request shall include personal identification data (name, date of birth, age, race), time frame for visit and name of parent or caretaker, if applicable. The request shall state the alleged problem and status of the neglect or abuse evaluation, and shall be appropriately signed, by the Supervisor, Adult Services. This request shall be made to the Nursing Director or her designee.
- C. The person assigned by the Albemarle County Health Department to provide the nursing assessment shall be a licensed RN.
- D. The duties, responsibilities, and services performed by the RN shall be subject to all conditions of the North Carolina Nurse Practice Act and shall be in accordance with state statutes, policies, and procedures of the Albemarle County Department of Social Services and the Albemarle County Health Department. The RN, if subpoenaed, will testify in any court proceedings resulting from the evaluation. Immunity from liability for services rendered is covered in general statute 108-102(c).
- E. Appropriate records and reports shall be completed and maintained by designated staff member of each agency in accordance with established policies and procedures. Reports of nursing assessments shall be submitted in writing within forty-eight (48) hours to the Director of Social Services or his designee. Confidentiality shall

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otherwise be practiced by the Albemarle County Health Department and the Department of Social Services. There shall be no compensation for services provided.

- F. The nursing assessment shall include, in detail, a description of physical findings, shall document circumstances of injuries as reported to her by those in attendance, and shall render professional opinion for further medical examination if indicated. The RN may interpret the medical report to the Adult Services Supervisor or designee at the Department of Social Services upon request.
- G. The responsibilities of the Albemarle County Department of Social Services in the joint evaluation of an abuse or neglect complaint pertaining to a disabled adult shall be as follows:
1. The assigned Protective Services for Adult social worker will discuss the case with the Adult Services Supervisor and will determine the need for a home visit with the Health Department nurse/family nurse practitioner.
 2. The supervisor writes a request letter and/or calls the Nursing Director or her designee and requests a home visit and assessment.
 3. The Adult Protective Services social worker and the RN establish an appointment time for joint home visits within an agreed upon time frame.
 4. The Adult Protective Services social worker will share appropriate background information regarding the case with the RN before the home visit.
 5. The Adult Protective Services social worker serves as the lead person in the evaluation with the RN as a support.
 6. The Adult Protective Services social worker will request that the licensed facility administrator, or family member in a private home, allow the evaluation to take place based on the authority given the agency in the Adult Protective Services law.
 7. The Adult Protective Services social worker will remain with the RN during the evaluation or visit to a private home or facility.
 8. The Adult Protective Services social worker will obtain a medical release signed by the client, if the client is mentally alert/competent.
 9. The Adult Protective Services social worker may request that the RN interpret nursing notes in nursing home records specifically related to the situation being evaluated.

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10. The Adult Protective Services social worker will discuss with the RN any recommendations for further medical action indicated by the examination of the patient.
11. The Adult protective Services social worker will report the findings of the nursing assessment to the Department of Social Services Adult Services Unit Supervisor

This agreement shall continue hereto from year to year unless terminated by a 30 day written notice and the mutual agreement of both parties. This agreement may be amended by written consent of both parties and amendments shall be attached to this agreement and be made a part thereof.

Sebastian Melmouth, Director
Albemarle County
Department of Social Services

Oscar Wilde, Director
Albemarle County
Health Department

Date

Date

Effective Date:
Last Update:

Adult Services Caseload Work group

March 2011

A Recommendation for APS caseload size



Adult Services Current Caseload Size Recommendations



Caseload Size Recommendations

Overview

At the request of the NC DSS Director's Association Adult Services Committee, a work group was formed and tasked with evaluating the current recommended caseload sizes for each of the Adult Services program areas. Current caseload recommendations for Adult Protective Services were last reviewed in 1997. The anecdotal consensus is that the adult protective services and guardianship case management populations have evolved to be more complex involving multiple contributing factors to abuse, neglect and exploitation, as well as higher level needs, therefore additional staff time is required to manage and assess. After collecting information from counties regarding the number of full time employees performing adult services functions, opinions about manageable caseload sizes, evaluation of 5026 data and fiscal year 2009 Adult Services survey data, the adjacent listed recommendations are made.

Introduction

We acknowledge that during the current economic climate that a decrease in the recommended caseload size could result in an increased financial impact for both the county and state as it relates to the potential need for additional staff. The benefits of a lower caseload size to both the adult who needs protection and their families are great. The goal of the adult protective services system is to ensure the safety, protection and well-being of adults with disabilities. These goals cannot be met however without sufficient time for social workers to spend with the adult and families. With a lower caseload size, a social worker is able to be less crisis driven in their work and more able to serve the client and family through best practice. "Larger caseload sizes can also attribute to staff turnover, resulting in both direct and indirect costs. Direct costs include separation costs (for example, costs associated with termination processes, separation pay, unemployment tax), rehire costs (for example, advertising job vacancies, pre-employment activities), and training costs (for example, formal and on-the-job training). Indirect costs include lower staff morale, lower productivity, and lower well-being of clients who had rapport with the worker they lost (Graef & Hill, 2000)." The recommendation from this workgroup is a combined caseload of fifteen which is a more conservative number in comparison to the caseload recommendation proposed by the Vulnerable Adult Protection System study of twelve cases per worker for those that perform Adult Protective Services evaluations and maintain Planning and Mobilization cases.

Recommendations

Caseload Size

- APS caseload size of 15 for each Full Time Equivalent APS Employee per month
 - Ratio of 2:3 (40/60% split) for a blended caseload size equivalent to 6 APS evaluations (202) and 9 ongoing planning and mobilization (204)

- Calculation of FTE for APS Evaluations

(same formula applies for Intake and Planning & Mobilization)

Total SIS Code 202 minutes for 3 highest APS reporting months totals 12,000 minutes

- ▪ 12,000 divided by 60 = 200 hours
- ▪ 200 hours X 4 = 800 hours/year
- ▪ 800 divided by 1408 = .57 = 57% of an FTE for APS Evaluation.

5026

- Education and clarification for social work staff and supervisors on the impact of data collection resulting from thorough and accurate completion of the 5026.
- To remove the maximum limit of three identified disabilities on the 5026 to allow for capturing all related disabilities



Method of Determination

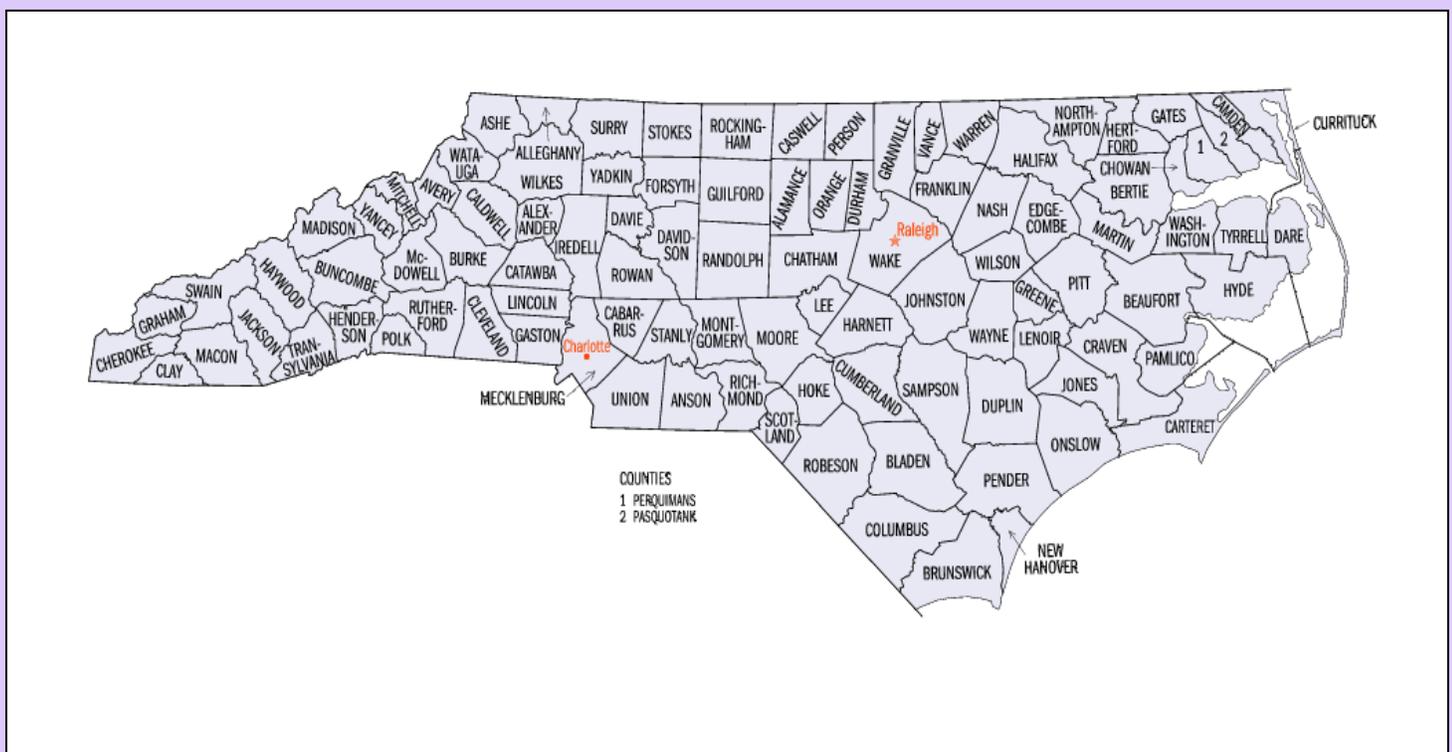
The workgroup initiated a survey (Attachment A) on August 6, 2010 that was sent to all 100 counties via the Listserv in an effort to inquire about how many full time equivalent employees each county has performing the work in each service area. These areas include intake, adult protective services, planning and mobilization services, guardianship case management, adult care home case management, special assistance, at-risk case and in-home aide case management. The survey also helped determine the areas where counties identified a need for further evaluation of an appropriate caseload size.

The resultant survey answers (Attachment B) revealed that the majority of the forty-two respondent counties were in agreement that the Adult Protective Services and Guardianship case management services caseload size recommendations were in need of further evaluation for a decreased caseload size.

Additionally, the workgroup inquired of eight states in close proximity of North Carolina regarding their current caseload sizes. The states varied in the manner in which they performed and responded to Adult Protective Services cases. Currently, none of the states contacted have a statutorily defined caseload size. (Attachment C)

The review and calculations from the 2009 Adult Services survey data yield an estimated caseload size of 8.90 cases per full time equivalent employee performing adult protective services evaluations per month across the state. This average is arrived at by using the reported full time equivalent data for each county that is outlined in the survey results. The average caseload size per worker per month across the state performing Planning and Mobilization cases is calculated to be 7.05. This calculation is arrived at by dividing the total number of substantiated cases for the state in 2009 that totals 1901 by the sum of full time equivalent employees that were reported by counties to be performing planning and mobilization cases which totaled 22.46 and then divided by the twelve months.

The above calculations equate to an estimated combined caseload of 15 cases as the work of two full time equivalent employees. The recommendation of this workgroup is still a conservative recommendation of one full time equivalent per 15 cases.



Caseload Description

Recognizing that not all counties perform Adult Protective Services duties the same, the following outlines proposed caseload sizes based on the recommended Adult Protective Services combined caseload size of 15 which includes evaluations and planning and mobilization cases.

To calculate what a pure evaluation or planning and mobilization caseload size would be based on the ratio of a 40/60% split of a combined recommended caseload size of 15; the following equation is used:

6 APS evaluations =40%
 9 Planning and Mobilization cases= 60%
 15 Total Combined Caseload

APS Evaluations Only

$6(60\%) = 3.60$
 $6+3.60 = 9.60$ (rounded to 10.0)

Planning & Mobilization Cases Only

$9(40\%) = 3.60$
 $9+3.60 = 12.60$ (rounded to 13.0)

Estimates for Blended Service Caseloads

For counties where one full time equivalent employee performs multiple Adult Services job responsibilities, the following caseload estimates are calculated.

The calculation of the employees' percentage of time from day sheets will assist in determining what percentage of the full time equivalent is dedicated to individual service areas. (See formula on left)

30% Guardianship (SIS code 107)
 50% APS Evaluations (SIS code 202)
 20% Planning and Mobilization (SIS code 204)

Calculation below is the number of cases recommended per service multiplied by the percentage of time spent performing that service per month

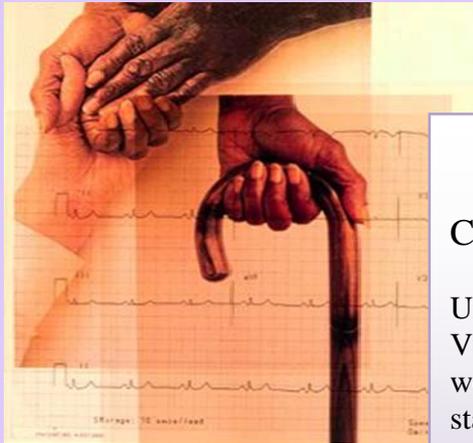
30*30% Guardianship = 9 cases
 10*50% APS Evaluations = 5 evaluations
 13*20% Planning and Mobilization Cases = 2.6 (rounded to 3.0) cases

Calculation of FTE for APS

Evaluations(same formula can be applied to all service areas)

Total SIS Code 202 minutes for 3 highest APS reporting months totals 12,000 minutes

- ▪ 12,000 divided by 60 = 200 hours
 - ▪ 200 hours X 4 = 800 hours/year
 - ▪ 800 divided by 1408 = .57
- = 57% of an FTE for APS Evaluation.



Conclusion

Until the time that legislation is passed in support of the Vulnerable Adult Protective System, a lower caseload size would allow counties to be progressive and prepared to meet the staffing needs of the VAPS recommendation of twelve cases per worker by moving from the current recommendation of twenty-five cases per worker to fifteen. A lower caseload recommendation enables social work staff to more adequately address and meet the needs of some of our most vulnerable adults.

Reference:

Graef, M. I., & Hill, E. L. (2000). Costing child protective services staff turnover. *Child Welfare, 75*, 517-533.

APS Caseload Recommendation Workgroup Participants

Counties: Bladen, Buncombe, Mecklenburg, and Wayne

State Representatives: Nancy Warren, Laura Cockman and Kathy McDonald