

# Obtaining a Court Order for the Provision of Protective and Emergency Services for a Disabled Adult

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It is the duty of the director of a county department of social services (DSS) in North Carolina to receive and evaluate reports of abuse, neglect, and exploitation of disabled adults and to take appropriate action as required by law. G.S. 108A-14(a)(14). Upon receipt of a report, DSS will conduct an initial review of the report (commonly referred to as “screening the report”) to determine whether the person who is the subject of the report is (1) a disabled adult; (2) in need of protective services; and (3) subject to abuse, neglect, or exploitation. *See* G.S. 108A-103(a). If the report is screened in because it meets these criteria, DSS is required to make a prompt and thorough evaluation to further determine whether the disabled adult is in need of protective services and what services are needed. *Id.* If DSS substantiates the report and the need for protective services, then DSS will immediately provide or arrange for the provision of protective services, provided that the disabled adult consents. G.S. 108A-104(a). If the adult lacks the capacity to consent to protective services, DSS may seek a court order authorizing the provision of protective services. G.S. 108A-105(a). If the court enters a protective services order, the order may authorize the provision of protective services for up to sixty days. The order may be extended by the court for an additional sixty days for good cause. G.S. 108A-105(c).

If there is reasonable cause to believe that (a) the disabled adult in need of protective services lacks capacity to consent to services, (b) an emergency exists, and (c) there is no other person authorized by law or order to give consent who is available and willing to arrange for emergency services, then DSS may pursue an order for emergency services either in conjunction with or in lieu of an order for protective services. G.S. 108A-106(a). If the court enters an emergency services order, the order may authorize the provision of emergency services for up to and including fourteen days. G.S. 108A-106(b). The order for emergency services may be obtained *ex parte* (meaning without notice to the disabled adult) if (1) the grounds described in (a) through (c) above exist, (2) there is a likelihood that the disabled adult may suffer irreparable injury or death if the emergency order is delayed, and (3) reasonable attempts have been made to locate interested parties and secure from them emergency services or their consent to DSS’s provision of such services. G.S. 108A-106(d).

This flow chart is intended to assist county DSS directors, social workers, and attorneys as well as court officials and others working in the area of adult protective services (APS) in understanding the procedure applicable to adult protective services court proceedings, including proceedings to obtain an order for protective services, an order for emergency services, and an *ex parte* order for emergency services.

## Key Definitions

- 1 **“Disabled adult”** means any person 18 years of age or over or any lawfully emancipated minor who is present in the state of North Carolina and who is physically or mentally incapacitated due to an intellectual disability, cerebral palsy, epilepsy, or autism; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances. G.S. 108A-101(d).
- 2 **“Emergency”** refers to a situation where (1) the disabled adult is in substantial danger of death or irreparable harm if protective services are not provided immediately; (2) the disabled adult is unable to consent to services; (3) no responsible, able, or willing caretaker is available to consent to emergency services; and (4) there is insufficient time to utilize the procedure provided in G.S. 108A-105. G.S. 108A-101(g).
- 3 **“Protective services”** means services provided by the State, or by other government or private organizations or individuals, which are necessary to protect the disabled adult from abuse, neglect, or exploitation. They shall consist of evaluation of the need for service and mobilization of essential services on behalf of the disabled adult. G.S. 108A-101(n).
- 4 A **“disabled adult”** shall be **“in need of protective services”** if that person, due to their physical or mental incapacity, is unable to perform or obtain for themselves essential services and if that person is without able, responsible, and willing persons to perform or obtain for them essential services. G.S. 108A-101(e). **“Essential services”** are those social, medical, psychiatric, psychological, or legal services necessary to safeguard the disabled adult’s rights and resources and to maintain the physical or mental well-being of the individual. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, and protection from exploitation. The words “essential services” shall not include taking the person into physical custody without their consent except as provided for in G.S. 108A-106 and in Chapter 122C of the General Statutes. G.S. 108A-101(i).
- 5 **“Emergency services”** are those services necessary to maintain the person’s vital functions and without which there is a 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).
- 6 An **“Authorized Magistrate”** is a magistrate who (1) is authorized by the chief district court judge to hear an ex parte petition and enter an ex parte order authorizing emergency services and (2) determines that at the time the party is seeking the ex parte order (a) the district court is not in session and (b) a district court judge is not and will not be available to hear the request for an ex parte order. G.S. 108A-106.2(a).

## Grounds for APS Orders

If a county DSS director reasonably determines that a disabled adult is being abused, neglected, or exploited and lacks capacity to consent to protective services, the director may petition the court for (1) an order authorizing the provision of protective services (“Order for Protective Services”) and/or (2) an order for the provision of emergency services (“Order for Emergency Services”). An order for emergency services may be obtained ex parte (without notice to the disabled adult) in certain circumstances outlined below (“Ex Parte Order for Emergency Services”).

### ORDER FOR PROTECTIVE SERVICES

May be ordered when there is clear, cogent, and convincing evidence that the adult

- is a disabled adult,
- is in need of protective services, and
- lacks capacity to consent to protective services.

The order may include the designation of an individual or organization to be responsible for performing or obtaining essential services on behalf of the disabled adult or otherwise consenting to protective services on the disabled adult’s behalf. G.S. 108A-105.

### ORDER FOR EMERGENCY SERVICES

May be ordered when there is reasonable cause to believe that

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

The court shall order only such emergency services as are necessary to remove the conditions creating the emergency. G.S. 108A-106(a), (b).

### EX PARTE ORDER FOR EMERGENCY SERVICES

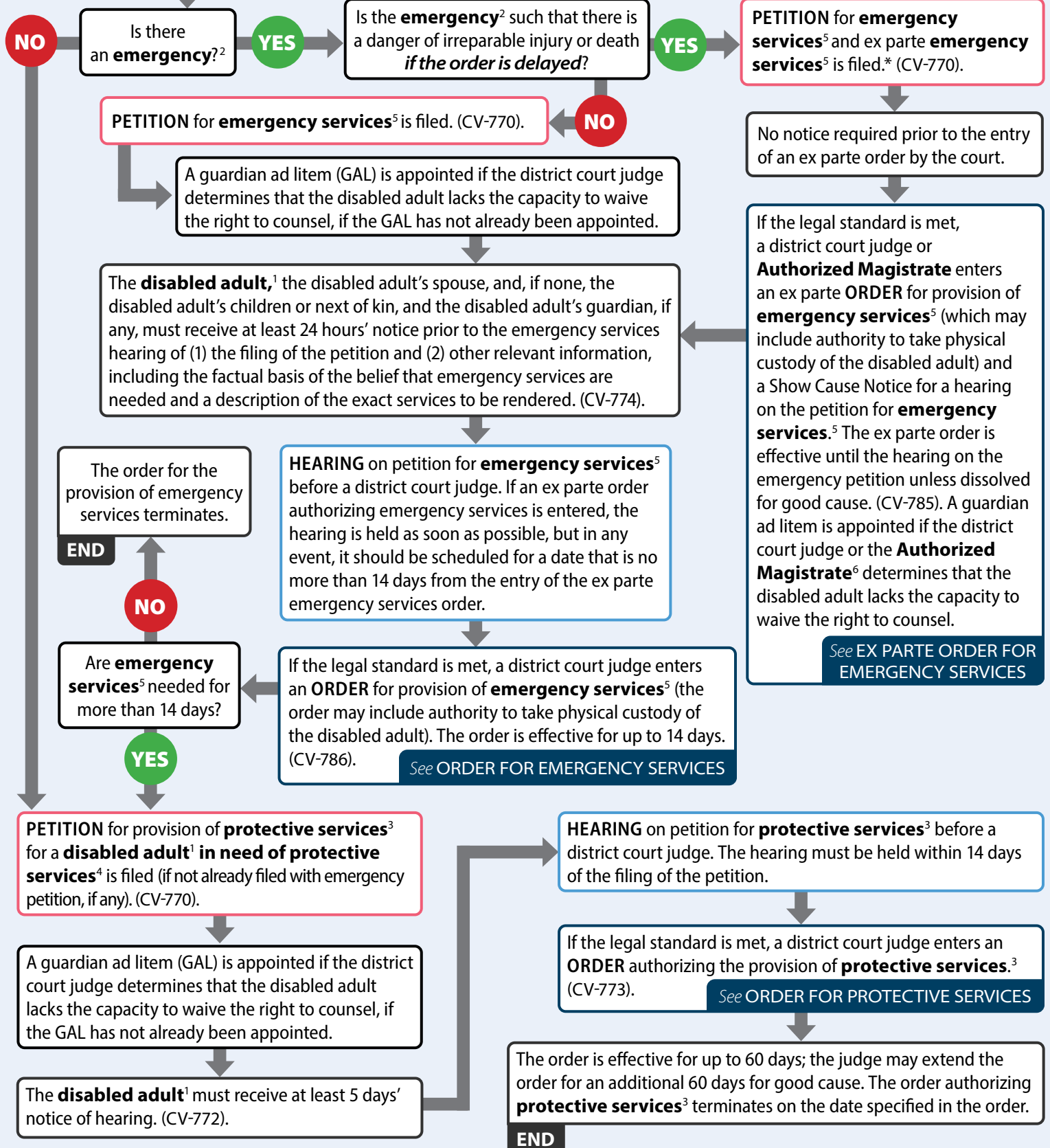
May be ordered when there is reasonable cause to believe that

- a disabled adult lacks capacity to consent and is in need of protective services,
- an emergency exists,
- no other person authorized by law or order to give consent for the person is available and willing to arrange for emergency services,
- there is a likelihood that the disabled adult may suffer irreparable injury or death if such order were to be delayed, and
- reasonable attempts have been made to locate interested parties and to secure from them such services or their consent to the petitioner’s provision of such services.

The court shall order only such emergency services as are necessary to remove the conditions creating the emergency. The ex parte order for emergency services must contain a show-cause notice to each person entitled to notice of the petition for emergency services directing them to (1) appear immediately or at any time up to and including the time for the hearing of the petition for emergency services and (2) show cause, if any exists, for the dissolution or modification of the ex parte order. G.S. 108A-106(d).

**START HERE**

**SUBSTANTIATED REPORT** by DSS of abuse, neglect, or exploitation of a **disabled adult**<sup>1</sup> in need of **protective services**<sup>4</sup> who (1) lacks capacity to consent and (2) has no authorized surrogate decision-maker to consent for them.



\*The petition seeking an ex parte order authorizing emergency services may be filed with the magistrate after hours when the clerk's office is closed. G.S. 108A-106.1.



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