

## **Adult Protective Services and Guardianship Relevant Statutes and Regulations**

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### **Title 10A NC Administrative Code Chapter 71**

SUBCHAPTER 71B – Guardianship Services

## Chapter 108A: Social Services

### Article 1

#### **§ 108A-14. Duties and responsibilities.**

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

...

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

...

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

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

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

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

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

### Article 6.

#### **§ 108A-99. Short title.**

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

#### **§ 108A-100. Legislative intent and purpose.**

Determined to protect the increasing number of disabled adults in North Carolina who are abused, neglected, or exploited, the General Assembly enacts this Article to provide protective services for such persons. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

#### **§ 108A-101. Definitions.**

(a) The word "abuse" means the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health.

(b) The word "caretaker" shall mean an individual who has the responsibility for the care of the disabled adult as a result of family relationship or who has assumed the responsibility for the care of the disabled adult voluntarily or by contract.

(c) The word "director" shall mean the director of the county department of social services in the county in which the person resides or is present, or his representative as authorized in G.S. 108A-14.

(d) The words "disabled adult" shall mean any person 18 years of age or over or any lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated due to mental retardation, cerebral palsy, epilepsy or autism; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances.

(e) A "disabled adult" shall be "in need of protective services" if that person, due to his physical or mental incapacity, is unable to perform or obtain for himself essential services and if that person is without able, responsible, and willing persons to perform or obtain for his essential services.

(f) The words "district court" shall mean the judge of that court.

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

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

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

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

(k) The word "indigent" shall mean indigent as defined in G.S. 7A-450.

(l) The words "lacks the capacity to consent" shall mean lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including but not limited to provisions for health or mental health care, food, clothing, or shelter, because of physical or mental incapacity. This may be reasonably determined by the director or he may seek a physician's or psychologist's assistance in making this determination.

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

(n) The words "protective services" shall mean services provided by the State or other government or private organizations or individuals which are necessary to protect the disabled adult from abuse, neglect, or exploitation. They shall consist of evaluation of the need for service and mobilization of essential services on behalf of the disabled adult. (1973, c. 1378, s. 1; 1975, c. 797; 1979, c. 1044, ss. 1-4;

1981, c. 275, s. 1; 1985, c. 589, s. 34; 1987, c. 550, s. 24; 1989, c. 770, s. 29; 1991, c. 258, s. 2; 2007-177, s. 4.)

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

(a) Any person having reasonable cause to believe that a disabled adult is in need of protective services shall report such information to the director.

(b) The report may be made orally or in writing. The report shall include the name and address of the disabled adult; the name and address of the disabled adult's caretaker; the age of the disabled adult; the nature and extent of the disabled adult's injury or condition resulting from abuse or neglect; and other pertinent information.

(c) Anyone who makes a report pursuant to this statute, who testifies in any judicial proceeding arising from the report, or who participates in a required evaluation shall be immune from any civil or criminal liability on account of such report or testimony or participation, unless such person acted in bad faith or with a malicious purpose. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

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

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

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

(c) The director may contract with an agency or private physician for the purpose of providing immediate accessible medical evaluations in the location that the director deems most appropriate.

- (d) The director shall initiate the evaluation described in subsection (a) of this section as follows:
- (1) Immediately upon receipt of the complaint if the complaint alleges a danger of death in an emergency as defined in G.S. 108A-101(g).
  - (2) Within 24 hours if the complaint alleges danger of irreparable harm in an emergency as defined by G.S. 108A-101(g).
  - (3) Within 72 hours if the complaint does not allege danger of death or irreparable harm in an emergency as defined by G.S. 108A-101(g).
  - (4) Repealed by Session Laws 2000, c. 131, s. 1.

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

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

(a) If the director determines that a disabled adult is in need of protective services, he shall immediately provide or arrange for the provision of protective services, provided that the disabled adult consents.

(b) When a caretaker of a disabled adult who consents to the receipt of protective services refuses to allow the provision of such services to the disabled adult, the director may petition the district court for an order enjoining the caretaker from interfering with the provision of protective services to the disabled adult. The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and consents to the receipt of protective services and that the caretaker refuses to allow the provision of such services. If the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and consents to the receipt of protective services and that the caretaker refuses to allow the provision of such services, he may issue an order enjoining the caretaker from interfering with the provision of protective services to the disabled adult.

(c) If a disabled adult does not consent to the receipt of protective services, or if he withdraws his consent, the services shall not be provided. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

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

(a) If the director reasonably determines that a disabled adult is being abused, neglected, or exploited and lacks capacity to consent to protective services, then the director may petition the district court for an order authorizing the provision of protective services. The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and lacks capacity to consent to them.

(b) The court shall set the case for hearing within 14 days after the filing of the petition. The disabled adult must receive at least five days' notice of the hearing. He has the right to be present and represented by counsel at the hearing. If the person, in the determination of the judge, lacks the capacity to waive the right to counsel, then a guardian ad litem shall be appointed pursuant to G.S. 1A-1, Rule 17, and rules adopted by the Office of Indigent Defense Services. If the person is indigent, the cost of representation shall be borne by the State.

(c) If, at the hearing, the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and lacks capacity to consent to protective services, he may issue an order authorizing the provision of protective services. This order may include the designation of an individual or organization to be responsible for the performing or obtaining of essential services on behalf of the disabled adult or otherwise consenting to protective services in his behalf. Within 60 days from the appointment of such an individual or organization, the court will conduct a review to determine if a petition should be initiated in accordance with Chapter 35A; for good cause shown, the court may extend the 60 day period for an additional 60 days, at the end of which it shall conduct a review to determine if a petition should be initiated in accordance with Chapter 35A. No disabled adult may be committed to a mental health facility under this Article.

(d) A determination by the court that a person lacks the capacity to consent to protective services under the provisions of this Chapter shall in no way affect incompetency proceedings as set forth in Chapters 33, 35 or 122 of the General Statutes of North Carolina, or any other proceedings, and incompetency proceedings as set forth in Chapters 33, 35, or 122 shall have no conclusive effect upon the question of capacity to consent to protective services as set forth in this Chapter. (1973, c. 1378, s. 1; 1975, c. 797; 1977, c. 725, s. 3, 1979, c. 1044, s. 5; 1981, c. 275, s. 1; 1985, c. 658, s. 2; 1987, c. 550, s. 25; 2000-144, s. 36.)

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

(a) Upon petition by the director, a court may order the provision of emergency services to a disabled adult after finding that there is reasonable cause to believe that:

- (1) A disabled adult lacks capacity to consent and that he is in need of protective service;
- (2) An emergency exists; and
- (3) No other person authorized by law or order to give consent for the person is available and willing to arrange for emergency services.

(b) The court shall order only such emergency services as are necessary to remove the conditions creating the emergency. In the event that such services will be needed for more than 14 days, the director shall petition the court in accordance with G.S. 108A-105.

(c) The petition for emergency services shall set forth the name, address, and authority of the petitioner; the name, age and residence of the disabled adult; the nature of the emergency; the nature of the disability if determinable; the proposed emergency services; the petitioner's reasonable belief as to the existence of the conditions set forth in subsection (a) above; and facts showing petitioner's attempts to obtain the disabled adult's consent to the services.

(d) Notice of the filing of such petition and other relevant information, including the factual basis of the belief that emergency services are needed and a description of the exact services to be rendered shall be given to the person, to his spouse, or if none, to his adult children or next of kin, to his guardian, if any. Such notice shall be given at least 24 hours prior to the hearing of the petition for emergency intervention; provided, however, that the court may issue immediate emergency order ex parte upon finding as fact (i) that the conditions specified in G.S. 108A-106(a) exist; (ii) that there is likelihood that the disabled adult may suffer irreparable injury or death if such order be delayed; and (iii) that reasonable attempts have been made to locate interested parties and secure from them such services or their consent to petitioner's provision of such service; and such order shall contain a show-cause notice to each person upon whom served directing such person to appear immediately or at any time up to and including the time for the hearing of the petition for emergency services and show cause, if any exists, for the dissolution or modification of the said order. Copies of the said order together with such other appropriate notices as the court may direct shall be issued and served upon all of the interested parties designated in the first sentence of this subsection. Unless dissolved by the court for good cause shown, the emergency order ex parte shall be in effect until the hearing is held on the petition for emergency services. At such hearing, if the court determines that the emergency continues to exist, the court may order the provision of emergency services in accordance with subsections (a) and (b) of this section.

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

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

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

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

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

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

(g) No petitioner shall be held liable in any action brought by the disabled adult if the petitioner acted in good faith. (1975, c. 797; 1981, c. 275, s. 1; 1985, c. 658, s. 3.)

**§ 108A-107. Motion in the cause.**

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

**§ 108A-108. Payment for essential services.**

At the time the director, in accordance with the provisions of G.S. 108A-103 makes an evaluation of the case reported, then it shall be determined, according to regulations set by the Social Services Commission, whether the individual is financially capable of paying for the essential services. If he is, he shall make reimbursement for the costs of providing the needed essential services. If it is determined that he is not financially capable of paying for such essential services, they shall be provided at no cost to the recipient of the services. (1975, c. 797; 1981, c. 275, s. 1.)

**§ 108A-109. Reporting abuse.**

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

**§ 108A-110. Funding of protective services.**

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

**§ 108A-111. Adoption of standards.**

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

**Article 6A.**

**§ 108A-112. Legislative intent and purpose.**

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

**§ 108A-113. Definitions.**

As used in this Article, the following definitions apply:

(1) Customer. - A person who is a present or former holder of an account with a financial institution.

- (2) Disabled adult. - An individual 18 years of age or older or a lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated as defined in G.S. 108A-101(d).
- (3) Financial exploitation. - The illegal or improper use of a disabled adult's or older adult's financial resources for another's profit or pecuniary advantage.
- (4) Financial institution. - A banking corporation, trust company, savings and loan association, credit union, or other entity principally engaged in lending money or receiving or soliciting money on deposit.
- (5) Financial record. - An original of, a copy of, or information derived from a record held by a financial institution pertaining to a customer's relationship with the financial institution and identified with or identifiable with the customer.
- (6) Investigating entity. - A law enforcement agency investigating alleged financial exploitation of a disabled adult or an older adult, or a county department of social services investigating alleged financial exploitation of a disabled adult.
- (7) Law enforcement agency. - Any duly accredited State or local government agency possessing authority to enforce the criminal statutes of North Carolina.
- (8) Older adult. - An individual 65 years of age or older.
- (9) Promptly. - As soon as practicable, with reasonable allowance to be made for the time required to retrieve older data or records that are not readily or immediately retrievable due to their current storage media. (2013-337, s. 4.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Upon the issuance of a subpoena pursuant to G.S. 108A-116, the investigating entity shall immediately provide the customer with written notice of its action by first-class mail to the customer's last known address, unless an order for delayed notice is obtained pursuant to subsection (b) of this section. The notice shall be sufficient to inform the customer of the name of the investigating entity that has obtained the subpoena, the financial records subject to production pursuant to the subpoena, and the purpose of the investigation.

(b) An investigating entity may include in its application for a subpoena pursuant to G.S. 108A-116 a request for an order delaying the customer notice required pursuant to subsection (a) of this section. The court issuing the subpoena may order a delayed notice in accordance with subsection (c) of this section if it finds, based on affidavit or oral testimony under oath or affirmation before the issuing court, that all of the following conditions are met:

- (1) The investigating entity is investigating a credible report that the adult is being or has been financially exploited.
- (2) There is reason to believe that the notice will result in at least one of the following:
  - a. Endangering the life or physical safety of any person.
  - b. Flight from prosecution.
  - c. Destruction of or tampering with evidence.
  - d. Intimidation of potential witnesses.
  - e. Serious jeopardy to an investigation or official proceeding.
  - f. Undue delay of a trial or official proceeding.

(c) Upon making the findings required in subsection (b) of this section, the court shall enter an ex parte order granting the requested delay for a period not to exceed 30 days. If the court finds there is reason to believe that the notice may endanger the life or physical safety of any person, the court may order that the delay be for a period not to exceed 180 days. An order delaying notice shall direct that:

- (1) The financial institution not disclose to any person the existence of the investigation, of the subpoena, or of the fact that the customer's financial records have been provided to the investigating entity for the duration of the period of delay authorized in the order;
- (2) The investigating entity deliver a copy of the order to the financial institution along with the subpoena that is delivered pursuant to G.S. 108-116(b); and
- (3) The order be sealed until otherwise ordered by the court.

(d) Upon application by the investigating entity, further extensions of the delay of notice may be granted by order of a court in the county of residence of the disabled adult or older adult customer whose financial records are being subpoenaed, upon a finding of the continued existence of the conditions set forth in subdivisions (1) and (2) of subsection (b) of this section, and subject to the requirements of

subsection (c) of this section. If the initial delay was granted for a period not to exceed 30 days, the delay may be extended by additional periods of up to 30 days each and the total delay in notice granted under this section shall not exceed 90 days. If the initial delay was granted for a period not to exceed 180 days, the delay may be extended by additional periods of up to 180 days each and may continue to be extended until the court finds the notice would no longer endanger the life or physical safety of any person.

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

## Chapter 14: Criminal Law

### **§ 14-32.3. Domestic abuse, neglect, and exploitation of disabled or elder adults.**

(a) Abuse. - A person is guilty of abuse if that person is a caretaker of a disabled or elder adult who is residing in a domestic setting and, with malice aforethought, knowingly and willfully: (i) assaults, (ii) fails to provide medical or hygienic care, or (iii) confines or restrains the disabled or elder adult in a place or under a condition that is cruel or unsafe, and as a result of the act or failure to act the disabled or elder adult suffers mental or physical injury.

If the disabled or elder adult suffers serious injury from the abuse, the caretaker is guilty of a Class F felony. If the disabled or elder adult suffers injury from the abuse, the caretaker is guilty of a Class H felony.

A person is not guilty of an offense under this subsection if the act or failure to act is in accordance with G.S. 90-321 or G.S. 90-322.

(b) Neglect. - A person is guilty of neglect if that person is a caretaker of a disabled or elder adult who is residing in a domestic setting and, wantonly, recklessly, or with gross carelessness: (i) fails to provide medical or hygienic care, or (ii) confines or restrains the disabled or elder adult in a place or under a condition that is unsafe, and as a result of the act or failure to act the disabled or elder adult suffers mental or physical injury.

If the disabled or elder adult suffers serious injury from the neglect, the caretaker is guilty of a Class G felony. If the disabled or elder adult suffers injury from the neglect, the caretaker is guilty of a Class I felony.

A person is not guilty of an offense under this subsection if the act or failure to act is in accordance with G.S. 90-321 or G.S. 90-322.

(c) Repealed by Session Laws 2005-272, s. 1, effective December 1, 2005, and applicable to offenses committed on or after that date.

(d) Definitions. - The following definitions apply in this section:

- (1) Caretaker. - A person who has the responsibility for the care of a disabled or elder adult as a result of family relationship or who has assumed the responsibility for the care of a disabled or elder adult voluntarily or by contract.
- (2) Disabled adult. - A person 18 years of age or older or a lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated as defined in G.S. 108A-101(d).
- (3) Domestic setting. - Residence in any residential setting except for a health care facility or residential care facility as these terms are defined in G.S. 14-32.2.
- (4) Elder adult. - A person 60 years of age or older who is not able to provide for the social, medical, psychiatric, psychological, financial, or legal services necessary to safeguard the person's rights and resources and to maintain the person's physical and mental well-being.

**§ 14-112.2. Exploitation of an older adult or disabled adult.**

(a) The following definitions apply in this section:

- (1) Disabled adult. - A person 18 years of age or older or a lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated as defined in G.S. 108A-101(d).
- (2) Older adult. - A person 65 years of age or older.

(b) It is unlawful for a person: (i) who stands in a position of trust and confidence with an older adult or disabled adult, or (ii) who has a business relationship with an older adult or disabled adult to knowingly, by deception or intimidation, obtain or use, or endeavor to obtain or use, an older adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the older adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the older adult or disabled adult.

(c) It is unlawful for a person to knowingly, by deception or intimidation, obtain or use, endeavor to obtain or use, or conspire with another to obtain or use an older adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the older adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or benefit someone other than the older adult or disabled adult. This subsection shall not apply to a person acting within the scope of that person's lawful authority as the agent for the older adult or disabled adult.

(d) A violation of subsection (b) of this section is punishable as follows:

- (1) If the funds, assets, or property involved in the exploitation of the older adult or disabled adult is valued at one hundred thousand dollars (\$100,000) or more, then the offense is a Class F felony.
- (2) If the funds, assets, or property involved in the exploitation of the older adult or disabled adult is valued at twenty thousand dollars (\$20,000) or more but less than one hundred thousand dollars (\$100,000), then the offense is a Class G felony.
- (3) If the funds, assets, or property involved in the exploitation of the older adult or disabled adult is valued at less than twenty thousand dollars (\$20,000), then the offense is a Class H felony.

(e) A violation of subsection (c) of this section is punishable as follows:

- (1) If the funds, assets, or property involved in the exploitation of the older adult or disabled adult is valued at one hundred thousand dollars (\$100,000) or more, then the offense is a Class G felony.
- (2) If the funds, assets, or property involved in the exploitation of the older adult or disabled adult is valued at twenty thousand dollars (\$20,000) or more but less than one hundred thousand dollars (\$100,000), then the offense is a Class H felony.
- (3) If the funds, assets, or property involved in the exploitation of the older adult or disabled adult is valued at less than twenty thousand dollars (\$20,000), then the offense is a Class I felony.

(f) If a person is charged with a violation of this section that involves funds, assets, or property valued at more than five thousand dollars (\$5,000), the district attorney may file a petition in the pending criminal proceeding before the court with jurisdiction over the pending charges to freeze the funds, assets, or property of the defendant in an amount up to one hundred fifty percent (150%) of the alleged value of funds, assets, or property in the defendant's pending criminal proceeding for purposes of restitution to the victim. The standard of proof required to freeze the defendant's funds, assets, or property shall be by clear and convincing evidence. The procedure for petitioning the court under this subsection shall be governed by G.S. 14-112.3.

**§ 14-112.3. Asset freeze or seizure; proceeding.**

(a) For purposes of this section, the term "assets" includes funds and property as well as other assets that may be involved in a violation of G.S. 14-112.2.

(b) Whenever it appears by clear and convincing evidence that any defendant is about to or intends to divest himself or herself of assets in a manner that would render the defendant insolvent for purposes of restitution, the district attorney may make an application to the court with jurisdiction over the pending charges to freeze or seize the assets of the defendant. Upon a showing by clear and convincing evidence in the hearing, the court shall issue an order to freeze or seize the assets of the defendant in the amount calculated pursuant to G.S. 14-112.2(f). The procedure for petitioning the court under this section shall be governed by G.S. 1A-1, Rule 65, except as otherwise provided in this section.

(c) At any time after service of the order to freeze or seize assets, the defendant or any person claiming an interest in the assets may file a motion to release the assets.

(d) In any proceeding to release assets, the burden of proof shall be by clear and convincing evidence and shall be on the State to show that the defendant is about to, intends to, or did divest himself or herself of assets in a manner that would render the defendant insolvent for purposes of restitution. If the court finds that the defendant is about to, intends to, or did divest himself or herself of assets in a manner that would render the defendant insolvent for purposes of restitution, the court shall order the assets frozen or held until further order of the court. The rules of evidence that apply to this proceeding are the rules that would apply in a proceeding pursuant to G.S. 1A-1, Rule 65.

(e) If the prosecution of the charge under G.S. 14-112.2 is terminated by voluntary dismissal by the State or if a judgment of acquittal is entered, the court shall vacate the order to freeze or seize the assets.

(f) Any person holding any interest in the frozen or seized assets may commence a separate civil proceeding in the manner provided by law.

**Chapter 122C: Mental Health, Substance Abuse,  
and Developmental Disabilities Act of 1985**

**§ 122C-66. Protection from abuse and exploitation; reporting. (as amended by [S.L. 2015-36](#))**

(a) An employee of or a volunteer at a facility who, other than as a part of generally accepted medical or therapeutic procedure, knowingly causes pain or injury to a client is guilty of a Class A1 misdemeanor. Any employee or volunteer who uses reasonable force to carry out the provisions of G.S. 122C-60 or to protect himself or others from a violent client does not violate this subsection.

(a1) An employee of or a volunteer at a facility who borrows or takes personal property from a client is guilty of a Class 1 misdemeanor. Any employee or volunteer who uses reasonable force to carry out the provisions of G.S. 122C-60 or to protect himself or others from a violent client does not violate this subsection.

(b) An employee of or a volunteer at a facility who witnesses or has knowledge of a violation of subsection (a), subsection (a1), or of an accidental injury to a client shall report the violation or accidental injury to authorized personnel designated by the facility. No employee making a report may be threatened or harassed by any other employee or volunteer on account of the report. Violation of this subsection is a-Class 1 misdemeanor.

(b1) The employee of or a volunteer at a facility who witnesses a client become a victim of a violation of Article 7A or Article 26 of Chapter 14 of the General Statutes shall report the allegations within 24 hours after witnessing the violation to one of the following: (i) the department of social services in the county where the facility serves the client; (ii) the district attorney in the district where the facility serves

the client; or (iii) the appropriate local law enforcement agency in the city or county where the facility serves the client. A violation of this section is a Class A1 misdemeanor. No employee making a report may be threatened or harassed by any other employee or volunteer on account of the report.

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

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

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

(f) Except for reports made pursuant to subsection (b1) of this section, the facility shall investigate or provide for the investigation of all reports made under the provisions of this section.

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

## **10A NC Administrative Code Chapter 71 – Adult and Family Support**

### **Subchapter 71A – Protective Services for Adults**

#### **SECTION - .0100 - GENERAL**

##### **10A NCAC 71A .0101 INTRODUCTORY STATEMENT**

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

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

##### **10A NCAC 71A .0102 DEFINITIONS**

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

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

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

*History Note: Authority G.S. 143B-153; S.L. 1999-334;  
Temporary Adoption Eff. September 28, 1999;  
Eff. July 17, 2000.*

## **SECTION .0200 - ACCEPTANCE AND EVALUATION OF PROTECTIVE SERVICES REPORTS**

### **10A NCAC 71A .0201 ACCEPTANCE OF REPORTS**

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

(b) The department of social services shall make arrangements for 24 hour coverage to receive calls and take appropriate action.

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

*History Note: Authority G.S. 108A-103; 143B-153;  
Eff. November 1, 1983;  
Amended Eff. December 1, 1991; July 1, 1990;  
Temporary Amendment Eff. December 12, 1995;  
Amended Eff. April 1, 1997.*

### **10A NCAC 71A .0202 RECEIPT OF ORAL REPORT**

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

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

### **10A NCAC 71A .0203 REPORTS REGARDING COUNTY OFFICIALS**

(a) When a report is received alleging abuse, neglect or exploitation of a disabled adult by a social services board member, department of social services staff member, county commissioner, or the county manager, the county department shall notify the regional office immediately. The regional office will assign the report to another county department for evaluation.

(b) In addition to specified instances in (a) of this Rule in which reports must be assigned to another county, the county department shall consult the regional office whenever it seems that evaluation of a report may present the appearance of a conflict of interest.

(c) If the evaluation does not substantiate the report, the department which conducted the evaluation will refer the case back to the county of residence so that alternative services may be offered.

(d) If the evaluation substantiates the report, the agency which conducted the evaluation will seek authorization for services, including petitioning the court when necessary. The petition shall be filed in the county of residence and shall include the reason for filing by an agency in another county.

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

medical, psychological or other examinations and legal services incurred by the county which conducted the evaluation.

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

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

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

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

**10A NCAC 71A .0205 INITIATION OF EVALUATION**

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

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

**10A NCAC 71A .0206 STEPS IN EVALUATION**

The complete evaluation shall include:

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

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

**10A NCAC 71A .0207 FOCUS OF EVALUATION**

The evaluation must determine:

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

- (4) whether or not the adult lacks the capacity to consent to protective services.

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

#### **10A NCAC 71A .0208 CONDUCTING A THOROUGH EVALUATION**

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

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

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

#### **10A NCAC 71A .0209 SUBSTANTIATION OF THE REPORT**

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

(b) A report is substantiated when:

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

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

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

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

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

When the evaluation of the report indicates that the allegations are not substantiated, an offer shall be made to the individual of any available and appropriate agency services. The 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.

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

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

(a) When the evaluation of a report indicates that the allegations are substantiated and the disabled adult is capable of making responsible decisions and refuses the receipt of protective services, the worker must

respect that decision and terminate contact with the adult. Prior to doing so, the worker shall explain the services available to the adult and that the adult may call the agency to request assistance, if needed.

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

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

## **SECTION .0400 - PAYMENT FOR ESSENTIAL SERVICES**

### **10A NCAC 71A .0401 ESSENTIAL SOCIAL SERVICES**

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

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

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

### **10A NCAC 71A .0402 ESSENTIAL MEDICAL SERVICES**

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

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

## **SECTION .0500 - RESIDENTIAL CARE FACILITIES**

### **10A NCAC 71A .0501 GENERAL REQUIREMENT**

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

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

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

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

**10A NCAC 71A .0502 NOTICE TO ADMINISTRATOR**

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

(b) The county director shall provide the administrator of a nursing, combination, or residential care facility with a written summary of the nature of the protective services report, whether or not evidence of abuse, neglect or exploitation was found, and whether or not a need for protective services was substantiated. The written summary to the administrator shall be limited to the following:

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

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

**10A NCAC 71A .0503 REPORT TO REGULATORY AGENCIES**

(a) A copy of the written report required by Rule .0901 of this Subchapter shall be sent to the Division of Health Service Regulation, within 30 days of completion of the evaluation. If the identity of the person making the protective services report and the names of individuals who provide information about the disabled adult are needed by the Division of Health Service Regulation in order to carry out an investigation, that information shall be shared verbally with the Division on request.

(b) When evidence of financial exploitation is found in Medicaid - funded facilities, the county department of social services shall send a copy of the written report to the Division of Medical Assistance, as well as to the Division of Health Service Regulation.

(c) When, in the course of an evaluation, evidence of abuse, neglect or exploitation is found, the county director shall notify the Division of Health Service Regulation immediately by telephone. In addition the county director shall inform the Division of Health Service Regulation as to whether or not the need for protective services will be substantiated.

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

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

**10A NCAC 71A .0504 INTER-COUNTY COORDINATION**

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

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

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

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

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

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

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

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

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

## **SECTION .0700 - INTER-COUNTY RESPONSIBILITY**

### **10A NCAC 71A .0701 COOPERATION IN COMPLETING EVALUATIONS**

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

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

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

(a) If a disabled adult who moves to another county has consented to the provision of protective services and no court order is involved, the county department providing protective services shall ask the disabled adult to consent for information to be shared with the department in the new county of residence. If the adult does not consent, the department providing protective services shall not share information with the department in the new county of residence. If the adult consents, the department shall notify the department in the new county of residence of the disabled adult's situation. The department in the new county of residence shall contact the disabled adult to determine whether or not protective services continue to be needed and, if so, if the disabled adult consents to their provision.

(b) If the department in the original county of residence has been providing protective services under a court order, the department shall file a motion in the court to be relieved of responsibility because the disabled adult has moved to another county. The department shall make a protective services referral to the department in the new county of residence. The department in the new county of residence shall evaluate the adult's current situation to determine whether or not protective services are needed and, if so, shall request authority to provide services.

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

## **SECTION .0800 - CONFIDENTIALITY**

### **10A NCAC 71A .0801 COLLATERAL CONTACTS**

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

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

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

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

- (1) the complainant's name and the names of individuals who have knowledge of the situation of the disabled adult may be given verbally to the Division of Health Service Regulation when requested by that agency in order to carry out its investigation, and
- (2) to the District Attorney's office and to law enforcement agencies which are prosecuting or conducting a criminal investigation of alleged abuse, neglect or exploitation of a disabled adult.

*History Note: Authority G.S. 108A-103; 143B-153;  
Eff. November 1, 1983;  
Amended Eff. December 1, 1991;  
Temporary Amendment Eff. December 12, 1995;  
Amended Eff. April 1, 1997.*

**10A NCAC 71A .0803 SPECIFIC FINDINGS**

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

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

**10A NCAC 71A .0804 REFERRAL TO ANOTHER COUNTY**

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

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

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

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

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

**10A NCAC 71A .0806 ADULT PROTECTIVE SERVICES REGISTER**

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

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

- (1) the county department of social services,
  - (A) in order to identify whether an adult who is the subject of an Adult Protective Services evaluation has been previously reported and evaluated under G.S. 108A, Article 6 in any county in the state; or
  - (B) in order to share client specific information with an out-of-state protective services agency to assure that protective services will be made available to an adult previously served in North Carolina as quickly as possible for the purpose of preventing further abuse, neglect or exploitation; or
  - (C) in order to share client specific information with law enforcement agencies to assure that protective services will be made available to an adult as quickly as possible;
- (2) the Division of Social Services staff,
  - (A) in order to perform duties pertinent to managing and maintaining the Register and monitoring, auditing, evaluating or facilitating the administration of other state and federal programs regarding Adult Protective Services based on information in the Register, or
  - (B) in order to share client specific information with an out-of-state protective services agency to assure that protective services will be made available to an adult previously served in North Carolina as quickly as possible for the purpose of preventing further abuse, neglect or exploitation; and
- (3) individuals who receive approval to conduct studies of cases in the Adult Protective Services Register.
  - (A) Such approval must be requested in writing to the Director, Division of Social Services. The written request will specify and be approved on the basis of:
    - (i) an explanation of how the findings of the study have potential for expanding knowledge and improving professional practices in the area of prevention, identification and treatment of adult abuse, neglect and exploitation;
    - (ii) a description of how the study will be conducted and how the findings will be used;
    - (iii) a presentation of the individual's credentials; and
    - (iv) a description of how the individual will safeguard the information.
  - (B) Access will be denied when in the judgment of the Director the study will have minimal impact on either knowledge or practice.

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

## SECTION .0900 - DOCUMENTATION AND REPORTS

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

(a) Written reports shall be completed when:

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

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

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

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

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

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

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

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

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

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

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

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

### 10A NCAC 71A .0904 EMERGENCY PETITION TO COURT

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

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

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

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

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

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

**10A NCAC 71A .0906 REPORT TO DISTRICT ATTORNEY**

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

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

**10A NCAC 71A .0907 REPORT TO THE COMPLAINANT**

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

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

**10A NCAC 71A .0908 CASE RECORD**

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

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

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

## Chapter 35A: Incompetency and Guardianship

### [Article 4](#)

#### **§ 35A-1207. Motions in the cause.**

(a) Any interested person may file a motion in the cause with the clerk in the county where a guardianship is docketed to request modification of the order appointing a guardian or guardians or consideration of any matter pertaining to the guardianship.

(b) The clerk shall treat all such requests, however labeled, as motions in the cause.

(c) A movant under this section shall obtain from the clerk a time, date, and place for a hearing on the motion, and shall serve the motion and notice of hearing on all other parties and such other persons as the clerk directs as provided by G.S. 1A-1, Rule 5 of the Rules of Civil Procedure, unless the clerk orders otherwise.

(d) If the clerk finds reasonable cause to believe that an emergency exists that threatens the physical well-being of the ward or constitutes a risk of substantial injury to the ward's estate, the clerk may enter an appropriate ex parte order to address the emergency pending disposition of the matter at the hearing. (1987, c. 550, s. 1.)

#### **§ 35A-1208. Authority for health care decisions.**

(a) A guardian of the person or general guardian of an incompetent adult may petition the Clerk, in accordance with G.S. 32A-22(a), for an order suspending the authority of a health care agent, as that term is defined in G.S. 32A-16(2).

(b) A guardian of the person or general guardian of an incompetent adult may not revoke a Declaration, as that term is defined in G.S. 90-321.

### [Article 5.](#)

#### **§ 35A-1213. Qualifications of guardians.**

(a) The clerk may appoint as guardian an adult individual, a corporation, or a disinterested public agent. The applicant may submit to the clerk the name or names of potential guardians, and the clerk may consider the recommendations of the next of kin or other persons.

(b) A nonresident of the State of North Carolina, to be appointed as general guardian, guardian of the person, or guardian of the estate of a North Carolina resident, must indicate in writing his willingness to submit to the jurisdiction of the North Carolina courts in matters relating to the guardianship and must appoint a resident agent to accept service of process for the guardian in all actions or proceedings with respect to the guardianship. Such appointment must be approved by and filed with the clerk, and any agent so appointed must notify the clerk of any change in the agent's address or legal residence. The clerk shall require a nonresident guardian of the estate or a nonresident general guardian to post a bond or other security for the faithful performance of the guardian's duties. The clerk may require a nonresident guardian of the person to post a bond or other security for the faithful performance of the guardian's duties.

(c) A corporation may be appointed as guardian only if it is authorized by its charter to serve as a guardian or in similar fiduciary capacities. A corporation shall meet the requirements outlined in Chapters 55 and 55D of the General Statutes. A corporation will provide a written copy of its charter to the clerk of superior court. A corporation contracting with a public agency to serve as guardian is required to attend

guardianship training and provide verification of attendance to the contracting agency. A corporation shall not be appointed as guardian for any individual to whom it provides mental health, developmental disabilities, or substance abuse services for compensation as part of a contractual or other arrangement with a local management entity (LME), including an LME that has been approved to operate the 1915(b)/(c) Medicaid Waiver.

(d) A disinterested public agent who is appointed by the clerk to serve as guardian is authorized and required to do so; provided, if at the time of the appointment or any time subsequent thereto the disinterested public agent believes that his role or the role of his agency in relation to the ward is such that his service as guardian would constitute a conflict of interest, or if he knows of any other reason that his service as guardian may not be in the ward's best interest, he shall bring such matter to the attention of the clerk and seek the appointment of a different guardian. A disinterested public agent who is appointed as guardian shall serve in that capacity by virtue of his office or employment, which shall be identified in the clerk's order and in the letters of appointment. When the disinterested public agent's office or employment terminates, his successor in office or employment, or his immediate supervisor if there is no successor, shall succeed him as guardian without further proceedings unless the clerk orders otherwise.

(e) Notwithstanding any other provision of this section, an employee of a treatment facility, as defined in G.S. 35A-1101(16), may not serve as guardian for a ward who is an inpatient in or resident of the facility in which the employee works; provided, this subsection shall not apply to or affect the validity of any appointment of a guardian that occurred before October 1, 1987.

(f) An individual who contracts with or is employed by an entity that contracts with a local management entity (LME) for the delivery of mental health, developmental disabilities, and substance abuse services may not serve as a guardian for a ward for whom the individual or entity is providing these services, unless the individual is one of the following:

- (1) A parent of that ward.
- (2) A member of the ward's immediate family, a licensed family foster care provider, or a licensed therapeutic foster care provider who is under contract with a local management entity (LME) for the delivery of mental health, developmental disabilities, and substance abuse services and is serving as a guardian as of January 1, 2013. For the purposes of this subsection, the term "immediate family" is defined as a spouse, child, sibling, parent, grandparent, or grandchild. The term also includes stepparents, stepchildren, stepsiblings, and adoptive relationships.
- (3) A biologically unrelated individual who was serving on March 1, 2013, as a guardian without compensation for guardianship services.

#### Article 8.

#### **§ 35A-1240. Applicability of Article.**

This Article applies only to guardians of the person, including general guardians exercising authority as guardian of the person. (1987, c. 550, s. 1.)

#### **§ 35A-1241. Powers and duties of guardian of the person.**

(a) To the extent that it is not inconsistent with the terms of any order of the clerk or any other court of competent jurisdiction, a guardian of the person has the following powers and duties:

- (1) The guardian of the person is entitled to custody of the person of the guardian's ward and shall make provision for the ward's care, comfort, and maintenance, and shall, as appropriate to the ward's needs, arrange for the ward's training, education, employment, rehabilitation or habilitation. The guardian of the person shall take

reasonable care of the ward's clothing, furniture, vehicles, and other personal effects that are with the ward.

- (2) The guardian of the person may establish the ward's place of abode within or without this State. In arranging for a place of abode, the guardian of the person shall give preference to places within this State over places not in this State if in-State and out-of-State places are substantially equivalent. The guardian also shall give preference to places that are not treatment facilities. If the only available and appropriate places of domicile are treatment facilities, the guardian shall give preference to community-based treatment facilities, such as group homes or nursing homes, over treatment facilities that are not community-based.
- (3) The guardian of the person may give any consent or approval that may be necessary to enable the ward to receive medical, legal, psychological, or other professional care, counsel, treatment, or service; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority granted in the health care power of attorney unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208. The guardian shall not, however, consent to the sterilization of a mentally ill or mentally retarded ward unless the guardian obtains an order from the clerk in accordance with G.S. 35A-1245. The guardian of the person may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest. The guardian may petition the clerk for the clerk's concurrence in the consent or approval.

(b) A guardian of the person is entitled to be reimbursed out of the ward's estate for reasonable and proper expenditures incurred in the performance of his duties as guardian of the ward's person.

(c) A guardian of the person, if he has acted within the limits imposed on him by this Article or the order of appointment or both, shall not be liable for damages to the ward or the ward's estate, merely by reason of the guardian's:

- (1) Authorizing or giving any consent or approval necessary to enable the ward to receive legal, psychological, or other professional care, counsel, treatment, or service, in a situation where the damages result from the negligence or other acts of a third person; or
- (2) Authorizing medical treatment or surgery for his ward, if the guardian acted in good faith and was not negligent. (1987, c. 550, s. 1; 2003-13, s. 4; 2007-502, s. 9.)

#### **§ 35A-1242. Status reports for incompetent wards.**

(a) Any corporation or disinterested public agent that is guardian of the person for an incompetent person, within six months after being appointed, shall file an initial status report with the clerk and submit a copy of the initial status report to the designated agency, if there is one. Such guardian shall file a second status report with the clerk one year after being appointed, and subsequent reports annually thereafter. The clerk may order any other guardian of the person to file status reports. If a guardian required by this section to file a status report is employed by the designated agency, the guardian shall file any required status report with the clerk and submit a copy of the status report to the designated agency.

(a1) Each status report shall include all of the following:

- (1) A report or summary of recent medical and dental examinations of the ward by one or more physicians and dentists. In instances when the guardian has made diligent but unsuccessful attempts to secure this information, the guardian shall include in the status report an explanation and documentation of all actions taken to attempt to secure this information.

- (2) A report on the guardian's performance of the duties set forth in this Chapter and in the clerk's order appointing the guardian.
- (3) A report on the ward's residence, education, employment, and rehabilitation or habilitation.
- (4) A report of the guardian's efforts to restore competency.
- (5) A report of the guardian's efforts to seek alternatives to guardianship.
- (6) If the guardian is a disinterested public agent or corporation, a report of the efforts to identify alternative guardians.
- (7) The guardian's recommendations for implementing a more limited guardianship, preserving for the ward the opportunity to exercise rights that are within the ward's comprehension and judgment.
- (8) Any additional reports or information required by the clerk.

(a2) The guardian may include in each status report additional information pertaining to the ward's best interests.

(b) Each status report shall be filed (i) under the guardian's oath or affirmation that the report is complete and accurate so far as the guardian is informed and can determine or (ii) with the signature of a disinterested, competent witness to a statement by the guardian that the report is complete and accurate so far as the guardian is informed and can determine. Status reports filed with the signature of a disinterested, competent witness shall include the full name, address, and telephone number of the witness.

(b1) The clerk shall make status reports submitted by corporations or disinterested public agents available to the Director, or the Director's designee, of the Division of Aging and Adult Services within the Department of Health and Human Services. The Director, or the Director's designee, shall review the status reports in connection with the Department's regular program of oversight for these categories of guardians.

(c) A clerk or designated agency that receives a status report shall not make the status report available to anyone other than the guardian, the ward, the court, or State or local human services agencies providing services to the ward.

(d) The clerk, on the clerk's own motion, or any interested party, may file a motion in the cause pursuant to G.S. 35A-1207 with the clerk in the county where the guardianship is filed to request modification of the order appointing the guardian or guardians or for consideration of any matters contained in the status report. (1987, c. 550, s. 1; 2014-100, s. 12D.4(b).)

**§ 35A-1243. Duties of designated agency.**

(a) Within 30 days after it receives a status report, the designated agency shall certify to the clerk that it has reviewed the report and shall mail a copy of its certification to the guardian.

(b) At the same time, the designated agency may:

- (1) Send its written comments on the report to the clerk, the guardian, or any other person who may have an interest in the ward's welfare;
- (2) Notify the guardian that it is able to help the guardian in the performance of his duties;
- (3) Petition the clerk for an order requiring the guardian to perform the duties imposed on him by the clerk or this Article if it appears that the guardian is not performing those duties;
- (4) Petition the clerk for an order modifying the terms of the guardianship or the guardianship program or plan if it appears that such should be modified;
- (5) Petition the clerk for an order removing the guardian from his duties and appointing a successor guardian if it appears that the guardian should be removed for cause;
- (6) Petition the clerk for an adjudication of restoration to competency; or

(7) Petition the clerk for any other appropriate orders.

(c) If the designated agency files such a petition, it shall cause the petition to be signed and acknowledged by the officer, official, employee, or agent who has personal knowledge of the facts set forth in the petition, and it shall set forth all facts known to it that tend to support the relief sought by the petition.

(d) The clerk shall take appropriate action upon the petition in accordance with other provisions or requirements of this Chapter. (1987, c. 550, s. 1.)

**§ 35A-1244. Procedure to compel status reports.**

If a guardian of the person fails to file a status report as required, or renders an unsatisfactory report, the clerk shall, on his own motion or the request of an interested party, promptly order the guardian to render a full and satisfactory report within 20 days after service of the order. If, after due service of the order, the guardian does not file such report, or obtain further time in which to file it, on or before the return day of the order, the clerk may remove him from office or may issue an order or notice to show cause for civil or criminal contempt as provided in Chapter 5A of the General Statutes. In such proceedings, the defaulting guardian may be held personally liable for the costs of the proceeding, including the costs of service of all notices or motions incidental thereto, or the amount of the costs of the proceeding may be deducted from any commissions due to the guardian of the person. Where a corporation or disinterested public agent is guardian of the person, the president or director or person or persons having charge of the guardianship for the corporation or agency, or the person to whom the duty of making status reports has been assigned by the corporation or agency, may be proceeded against as herein provided as if he or they were the guardian personally, provided, the corporation or agency itself may also be fined and/or removed as guardian for such failure or omission. (1987, c. 550, s. 1.)

**§ 35A-1245. Procedure to permit the sterilization of a mentally ill or a mentally retarded ward in the case of medical necessity.**

(a) A guardian of the person shall not consent to the sterilization of a mentally ill or mentally retarded ward unless an order from the clerk has been obtained in accordance with this section.

(b) If a mentally ill or mentally retarded ward needs to undergo a medical procedure that would result in sterilization, the ward's guardian shall petition the clerk for an order to permit the guardian to consent to the procedure. The petition shall contain the following:

(1) A sworn statement from a physician licensed in this State who has examined the ward that the proposed procedure is medically necessary and not for the sole purpose of sterilization or for the purpose of hygiene or convenience.

(2) The name and address of the physician who will perform the procedure.

(3) A sworn statement from a psychiatrist or psychologist licensed in this State who has examined the ward as to whether the mentally ill or mentally retarded ward is able to comprehend the nature of the proposed procedure and its consequences and provide an informed consent to the procedure.

(4) If the ward is able to comprehend the nature of the proposed procedure and its consequences, the sworn consent of the ward to the procedure.

(c) A copy of the petition shall be served on the ward personally. If the ward is unable to comprehend the nature of the proposed procedure and its consequences and is unable to provide an informed consent, the clerk shall appoint an attorney to represent the ward in accordance with rules adopted by the Office of Indigent Defense Services.

(d) Should the ward or the ward's attorney request a hearing, a hearing shall be held. Otherwise, the clerk may enter an order without the appearance of witnesses. If a hearing is held, the guardian and the ward may present evidence.

(e) If the clerk finds the following, the clerk shall enter an order permitting the guardian to consent to the proposed procedure:

- (1) The ward is capable of comprehending the procedure and its consequences and has consented to the procedure, or the ward is unable to comprehend the procedure and its consequences.
- (2) The procedure is medically necessary and is not solely for the purpose of sterilization or for hygiene or convenience.

(f) The guardian or the ward, the ward's attorney, or any other interested party may appeal the clerk's order to the superior court in accordance with G.S. 1-301.2(e).

## **Title 10A NC Administrative Code – Chapter 71**

### Subchapter 71B – Guardianship Services

#### **10A NCAC 71B .0101 DISINTERESTED PUBLIC AGENT AS GUARDIAN**

(a) When a disinterested public agent is appointed to serve as a guardian by the clerk of superior court, the appointed disinterested public agent is authorized and required to serve as guardian in accordance with the "Clerk's Order" and in accordance with the "guardian or guardians letters of appointment" issued pursuant to G.S. 35A-1210 through 1216.

(b) When a disinterested public agent is appointed as guardian, he shall carry out the following responsibilities in addition to duties identified in G.S. 35A-1210 through 1216:

- (1) after July 1, 1985, he shall have received or must obtain training as described in Rule .0102 of this Subchapter on the responsibilities of a guardian;
- (2) he shall see the ward as frequently as needed and appropriate and shall have contact related to the ward no less than once every 90 days;
- (3) he shall allow the ward to exercise independent decision making and to assume as much responsibility and independence as is reasonable considering the ward's abilities, limitation, functioning capability and scope of the guardianship;
- (4) when he ceases to qualify as a disinterested public agent, the guardian shall notify the clerk of superior court who will then appoint a successor guardian;
- (5) when the ward appears to be no longer incompetent, the guardian shall petition the clerk of superior court for restoration to competency; and
- (6) if a designated agency has not been appointed, the guardian shall petition the clerk of superior court for a designated agency to be appointed to receive status reports.

*History Note:* Authority G.S. 35A-1216;  
Eff. July 1, 1984;  
Amended Eff. November 1, 1989.

#### **10A NCAC 71B .0102 TRAINING REQUIREMENTS**

Any disinterested public agent appointed as guardian must have completed training provided or approved by the Department of Health and Human Services concerning the powers and responsibilities of a guardian. A disinterested public agent must complete the training prior to or within one year of the appointment as guardian.

*History Note:* Authority G.S. 35A-1216;  
Eff. July 1, 1984.