

Disclosing Protective Services Information

A Guide for North Carolina Social Services Agencies

2015

Aimee N. Wall



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Preface

Confidentiality laws are confusing. There are probably too many of them. They overlap, intersect, contradict, and duplicate. At the School of Government, I have the privilege of working with state and county social services officials who are doing critical and difficult work in their communities protecting children and vulnerable adults. They often contact me and my colleagues with questions about confidentiality: May I disclose information in this particular situation? To this particular person? For this particular purpose?

I've studied these laws for years, yet rarely am I able to answer these questions immediately. I usually need to go back to each of the applicable laws and apply them to the facts presented. Sometimes there is a definitive answer to the question. Many times, however, the answer is "it depends" or "maybe." While that is unsatisfying to hear, it is simply the state of the law.

My goal in writing this book and compiling a database of social services confidentiality laws was not to answer all of these questions in black and white. Instead, my goal was simply to make it easier for the social services attorneys and staff to find the answers to the disclosure questions they confront every day.

I want to thank my former School of Government colleagues John Saxon and Janet Mason for paving the way on this challenging topic. Several of my current colleagues wade through the quagmire of confidentiality law with me on a daily basis, and I am so grateful to be able to share ideas—both good and bad—with Mark Botts, Sara DePasquale, and Jill Moore as we work together to answer questions and craft solutions.

This work, particularly the Social Services Confidentiality Law database, would not have been possible without the assistance of Jeffrey Austin. I thank him for his thorough research and extraordinary attention to detail. Angie Stephenson and Rajeev Premakumar with the North Carolina Department of Justice and Nancy Warren with the North Carolina Division of Aging and Adult Services were also extremely helpful with reviewing drafts and providing feedback. Finally, and most importantly, I want to thank my husband and children for their patience and support as I completed this project.

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Under North Carolina law, the government—through the county department responsible for social services—has a duty to provide protective services to any “disabled adult” who has been abused, neglected, or exploited financially.¹ A disabled adult is a person who

- is age eighteen or older or is a legally emancipated minor,

1. N.C. GEN. STAT. (hereinafter G.S.) §§ 108A-103 to -108.

- is present in the state, and
- is physically or mentally incapacitated.²

Any person who suspects that a disabled adult needs services to protect him or her from abuse, neglect, or financial exploitation must submit an oral or written report to the county department of social services (DSS).³ Upon receiving the report, DSS is required to conduct an evaluation to determine whether the disabled adult is in need of services and, if so, what services are needed. DSS must then take steps to ensure that the services are provided.⁴ Needed services will vary from person to person but could include, for example, providing medical care or food, finding adequate shelter, and protecting the person from mistreatment or financial exploitation.

This chapter is designed to answer only one question:

When may DSS disclose identifiable adult protective services (APS) information without authorization?

The chapter will first provide an overview of the legal landscape in this area. It will then discuss how to interpret and apply the combination of federal and state laws, including G.S. 108A-80, in several key areas related to the administration of APS programs.

2. G.S. 108A-101(d). According to the state law, the physical or mental incapacity must be due to “mental retardation, cerebral palsy, epilepsy or autism; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or 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.”

3. G.S. 108A-102. New reporting requirements related to residents in certain facilities go into effect December 1, 2015. See Aimee N. Wall, *Adult Protective Services: A New Reporting Requirement*, COATES’ CANONS: NC LOCAL GOVERNMENT LAW BLOG (June 23, 2015), canons.sog.unc.edu/?p=8142.

4. A detailed discussion of the adult protective services (APS) law is beyond the scope of this book. See G.S. Chapter 108A, Article 6 (general laws governing abuse, neglect, and financial exploitation of disabled adults) and Article 6A (specific laws related to financial exploitation).

Overview of the Legal Landscape

Confidentiality of APS information is governed primarily by state law.⁵ The first laws to consider are the overarching state statute, Section 108A-80 of the North Carolina General Statutes (hereinafter G.S.), and the accompanying regulations in Chapter 69 of the North Carolina Administrative Code (hereinafter NCAC). As discussed in Chapter 2, these state laws require DSS to protect client information but allow it to disclose information without authorization in several circumstances, including

- to the state for purposes of supervision and reporting,
- to other county departments of social services,
- to other governmental entities for purposes of accountability and administration,
- to schools for education-related purposes,
- pursuant to a court order,
- to researchers, and
- in order to comply with other state and federal laws.

In addition to G.S. 108A-80 and the NCAC Chapter 69 regulations, there are several state regulations in NCAC Chapter 71A that specifically address confidentiality of APS information.⁶ These regulations create heightened protection for certain types of information and expressly allow or require disclosure in certain situations. All of these additional regulations are discussed in more detail below.

5. The state and counties receive some federal funding to support APS programs through the Social Services Block Grant. 42 U.S.C. § 1397 *et seq.* This funding does not appear to impose any legal duties on the state or the counties to protect the confidentiality of information collected or maintained by APS programs. The federal Older Americans Act does include a limited reference to confidentiality. 42 U.S.C. § 3027(a)(12)(C). According to staff at the NC Division of Aging and Adult Services, North Carolina does not rely on this funding source for DSS administration of APS programs. Email from Nancy Warren, NC Division of Aging and Adult Services (May 26, 2015) (on file with author). As a result, those confidentiality requirements are not incorporated into the analysis in this chapter. If the federal funding sources for county APS programs change, it is possible that federal confidentiality laws will need to be evaluated and considered as part of the analysis.

6. N.C. ADMIN. CODE (hereinafter NCAC) title 10A, ch. 71A.

Information with Heightened Protection

Identity of the Reporter and Others with Information

As mentioned above, state law requires that all people report to DSS suspected abuse, neglect, or exploitation of a disabled adult. Pursuant to G.S. 108A-80, the identity of the reporter and the information provided by the reporter are confidential and may only be disclosed when authorized or required by law. A state regulation, however, specifically allows DSS to disclose the reporter's identity in three specific situations:⁷

- when a court orders disclosure,⁸
- to the Division of Health Service Regulation⁹ when division staff request information to carry out an investigation, and
- to the district attorney's office or law enforcement officials involved with a criminal investigation of alleged abuse, neglect, or exploitation.¹⁰

The same rules apply to the identity of any other person who provides information to DSS in the course of an investigation.

Because this regulation provides somewhat heightened protection for the identity of the reporter and others with information, it overrides any of the other regulations in Chapter 69 that allow disclosure without authorization, such as the provisions allowing disclosures for research.

Specific Findings

When DSS receives a report of abuse, neglect, or exploitation, it will conduct a comprehensive evaluation of the disabled adult and document its findings. If DSS finds evidence of abuse, neglect, or exploitation, or if the subject of the evaluation was or is a resident of a facility (such as an adult care home), the

7. 10A NCAC 71A .0802.

8. This is consistent with the provision in the Chapter 69 regulations authorizing disclosure pursuant to a court order. 10A NCAC 69 .0505. There is no definition of the term "court order" in the Chapter 71A regulations; therefore, it is reasonable to rely on the definition used in the Chapter 69 regulations. *See* 10A NCAC 69 .0101 ("... written document from a judicial official which directs explicitly the release of client information").

9. The Division of Health Service Regulation is responsible for oversight of medical, mental health, and adult care facilities as well as emergency medical services and local jails.

10. 10A NCAC 71A .0802.

agency will prepare a written report of the evaluation, which must include the following:

- the name, address, age, and condition of the adult;
- the allegations (but not the identity of the reporter);
- the evaluation, including the agency's findings, and supporting documents, which include any psychological or medical reports;
- conclusions; and
- recommendations for action.¹¹

These records are all confidential under G.S. 108A-80. In addition, a regulation in Chapter 71A appears to provide heightened confidentiality protection for "specific findings" included in the agency's evaluation report.¹² According to these regulations, DSS may disclose findings only in the following circumstances:

- pursuant to the disabled adult's authorization;¹³
- pursuant to a court order;
- to other persons or agencies as necessary to provide protective services;¹⁴
- to the district attorney or law enforcement agencies upon request, but only if evidence of abuse, neglect, or exploitation is found;¹⁵
- to federal, state, and law enforcement agencies when the results of the protective services evaluation indicate violations of other laws enforced by those agencies;¹⁶ and

11. 10A NCAC 71A .0901(b). The report form provided by the State Division of Aging and Adult Services includes a section entitled "APS Findings and Conclusions." See *Written Report of Adult Protective Services Evaluation* (Aug. 6, 2013), www.ncdhhs.gov/aging/adultsvcs/afs_aps_tool.htm.

12. 10A NCAC 71A .0803.

13. It is not clear whether the authorization of a disabled adult's legal representative (such as a guardian) would be sufficient. Because the Chapter 71A regulations are silent in this regard but the Chapter 69 regulations expressly allow it, one could argue that the legal representative is not allowed to authorize disclosure of this particular category of information. Compare 71A NCAC .0803 with 10A NCAC 69 .0403.

14. The regulations provide that this type of disclosure is at the discretion of DSS. They also state that this disclosure is expressly allowed without the authorization of the disabled adult or the adult's caretaker.

15. 10A NCAC 71A .0803.

16. 10A NCAC 71A .0806.

- to certain agencies within the North Carolina Department of Health and Human Services (NC DHHS) when DSS has substantiated a report of abuse, neglect, or exploitation.¹⁷

Because these regulations provide heightened protection for this particular category of information—specific findings—the other disclosures allowed by the Chapter 69 regulations are not permissible.¹⁸ For example, DSS should not disclose specific findings to researchers or governmental entities for the purposes of accountability and administration of programs other than APS.

DSS may still disclose specific findings consistent with the Chapter 69 regulations that allow disclosure pursuant to authorization or a court order and to the state and other counties in the context of providing protective services. Those types of disclosures are also consistent with the Chapter 71A regulations governing specific findings.

The Chapter 69 regulations also allow disclosure when necessary to comply with other laws. While the Chapter 71A regulations do not expressly include that language, it would still be appropriate for DSS to comply with a federal or state statute that requires disclosure.

Financial Records and Reports Received from Financial Institutions

In cases involving financial exploitation of a disabled adult, DSS has the authority to obtain copies of records from financial institutions.¹⁹ Those records are subject to heightened confidentiality protections. The statute provides:

All produced copies of the disabled adult's or older adult's financial records . . . 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.²⁰

17. 10A NCAC 71A .0806.

18. 10A NCAC 69 .0201 ("Whenever there is inconsistency between federal or state statutes or regulations specifically addressing confidentiality issues, the agency shall abide by the statute or regulation which provides more protection for the client.").

19. G.S. Chapter 108A, Article 6A. See Aimee N. Wall, *Financial Exploitation of Older Adults and Disabled Adults: An Overview of North Carolina Law*, SOCIAL SERVICES LAW BULLETIN No. 43 (Oct. 2014).

20. G.S. 108A-116(d).

Because of this requirement, DSS should not disclose financial records collected as part of a financial exploitation investigation unless directed to do so by the court.

Interestingly, G.S. 108-116 also extends this heightened confidentiality protection to “any information obtained pursuant to the duty to report found in G.S. 108A-115.”²¹ The reporting requirement referenced in the law directs financial institutions and their officers and employees to report suspected financial exploitation of a disabled adult to DSS. This requirement is redundant because another, earlier statute already requires such reporting.²² One could argue, though, that the more specific, later enacted statute affording heightened protection should apply to all information in the report as well as to the financial records obtained whenever DSS receives a report from a financial institution (or its employees or officers).²³ The heightened protection would not apply to the information DSS receives in a report of suspected financial exploitation if it is received from a person who is not connected to the financial institution.

21. *Id.*

22. G.S. 108A-102 (“Any person having reasonable cause to believe that a disabled adult is in need of protective services shall report such information to the director.”); G.S. 108A-101(n) (defining “protective services” to 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.”). The other reporting requirement was added to the law in 2013. S.L. 2013-337.

23. The newer reporting requirement in G.S. 108A-115 is more expansive than the older reporting requirement in G.S. 108A-102. It requires reports related to any person sixty-five years of age or older regardless of whether the adult is disabled. Also, it requires reports to be made to law enforcement officials and also to trusted individuals identified by the adult, if any. That more expansive body of information is certainly subject to the heightened confidentiality protection in G.S. 108A-116(d), but because it will not be part of DSS’s adult protective services record, it is beyond the scope of this discussion.

Specific Types of Disclosures

Disclosure to Law Enforcement Officials

Providing protective services to adults often requires close collaboration between DSS and law enforcement agencies. State law reflects the importance of this relationship—it includes several specific provisions that either require or allow DSS to share APS information with law enforcement officials.

Mandatory and Discretionary Notification

DSS is required to notify the district attorney if it finds evidence indicating that a disabled adult has been abused, neglected, or exploited.²⁴ This notification must be in writing and must include the same information that is provided in the written report of evaluation described above. Typically, the reports will not include the identity of the reporter.

There is often heightened concern about the confidentiality of health-related information. Because state law specifically *requires* the disclosure of psychological and medical reports, DSS will be able to disclose that type of information unless the information is subject to the federal substance abuse confidentiality regulations. For further discussion of the disclosure of health information, see Chapter 5.

The mandatory notification requirement discussed above applies after an APS investigation is complete. However, DSS is allowed to contact the district attorney or law enforcement officials immediately after receiving the initial report if there is reason to believe that physical harm to the disabled adult may occur. In this situation, DSS is allowed to share with officials information that would otherwise be confidential, including most health information.²⁵ The agency may also provide law enforcement officials information from the Adult Protective Services Register “to assure that protective services will be made available to an adult as quickly as possible.”²⁶

24. G.S. 108A-109.

25. DSS would not have the authority to disclose information subject to the federal substance abuse confidentiality law. See the discussion in Chapter 5.

26. 10A NCAC 71A .0806(b)(1)(C).

Responding to a Request

As mentioned above, “specific findings” are subject to heightened protection under the Chapter 71A regulations. If, however, the district attorney or a law enforcement official requests information to help with a criminal investigation or prosecution of abuse, neglect, or exploitation, DSS is required to provide a copy of the specific findings.²⁷ Presumably, if DSS found evidence of abuse, neglect, or exploitation, it would have already provided the district attorney with a copy of the written report of evaluation, which includes the specific findings. There may, however, be circumstances in which DSS does not provide such a notification or a law enforcement official is seeking information independently for an investigation. In these instances, it is clear that DSS may provide either the district attorney or a law enforcement official with the evaluation upon request.

Identity of the Reporter or Others with Information

As discussed above, the law provides heightened confidentiality protections for the identity of the person who filed a protective services report and the identity of any person who provided information to DSS in the course of its investigation. DSS is allowed to disclose the identities of these individuals to the district attorney or to law enforcement officials if those officials are prosecuting or conducting a criminal investigation related to the alleged abuse, neglect, or exploitation.²⁸

Court Order

If a court orders DSS to disclose APS information—including the agency’s specific findings—to a district attorney or law enforcement official, DSS must comply with that order.²⁹ The definition of “court order” is broad and includes “any oral order from a judge or a written document from a judicial official” that explicitly directs the release of client information.³⁰ This definition includes a search warrant. Because there is clear authority for

27. 10A NCAC 71A .0803.

28. 10A NCAC 71A .0802.

29. 10A NCAC 69 .0505 (allowing disclosure pursuant to a court order); 10A NCAC 71A .0803 (allowing disclosure of specific findings in response to a court order).

30. 10A NCAC 69 .0101. See Chapter 2 for a discussion of the need for any such order to be written rather than oral.

DSS to disclose APS information to district attorneys and law enforcement officials upon request in the context of a prosecution or investigation of alleged abuse, neglect, or exploitation, it is unlikely that such officials will need to seek a court order in those cases. There may be other types of criminal investigations, however, that could result in a court order being issued.

Violations of Other Laws

If an APS evaluation reveals information suggesting violations of statutes, rules, or regulations other than the laws governing abuse, neglect, and exploitation of disabled adults, DSS is allowed—but not required—to send a copy of the written report of evaluation to the appropriate federal or state law enforcement agencies.³¹ For example, although DSS’s authority is limited to abuse, neglect, and exploitation of *disabled* adults, the criminal laws address not only disabled adults but also *older* adults.³² If DSS concludes that an older adult is not disabled but still may have been abused, neglected, or exploited, it may share a copy of the written report of evaluation with law enforcement officials.

Disclosure to Another County or to the State for the Purpose of Providing Protective Services

As discussed above, there is broad authority to share “specific findings” without the disabled adult’s permission with other people or agencies, including agencies in other counties or states, to the extent necessary to provide protective services to the adult.³³ In addition to this broad authority, Chapter 71A includes additional provisions that apply when the adult moves from one county to another. If the adult is receiving court-ordered protective services at the time of the move, the first county must make a referral to the second county.³⁴ The first county is allowed to share information related to the services and the need for services with the second county without the adult’s

31. 10A NCAC 71A .0805.

32. G.S. 14-32.3 (domestic abuse or neglect of disabled or elder adults; includes adults over age sixty); G.S. 14-112.2 (financial exploitation of disabled and older adults; includes adults over age sixty-five).

33. The regulations provide that this type of disclosure is at the discretion of DSS. They also state that this disclosure is expressly allowed without the authorization of the disabled adult or the adult’s caretaker.

34. 10A NCAC 71A .0702(b).

permission. If the second county asks for information, the first county is required to share it.³⁵ If the disabled adult is receiving protective services pursuant to his or her own consent at the time of the move, rather than pursuant to a court order, the first county must ask the adult's permission to share information with the second county.³⁶

DSS is also allowed to share information from the Adult Protective Services Register with protective services or law enforcement agencies in other states "to assure that protective services will be made available to an adult previously served in North Carolina as quickly as possible . . ."³⁷

Disclosure to Collateral Contacts

When DSS is conducting an evaluation to determine whether protective services are needed, the agency will likely interview people who may have information about the disabled adult's situation. Those people, referred to as "collateral contacts," may be curious about the investigation or ask questions about the adult's situation. The state regulations anticipate these contacts and imply that some very limited information sharing with them is allowed.³⁸ DSS must be careful not to share too much information because all of the information DSS is acquiring is protected by G.S. 108A-80. The state manual expands on the concept of sharing with collateral contacts by explaining that the county's response to such inquiries "should be in general terms about the agency's concern for the adult and need for information to determine whether or not the agency can provide assistance."³⁹

35. 10A NCAC 71A .0804.

36. 10A NCAC 71A .0702(a).

37. 10A NCAC 71A .0806(a)(1).

38. 10A NCAC 71A .0801 ("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.").

39. Division of Aging and Adult Services, *Protective Services for Adults*, page III-58 (eff. date Apr. 1, 2011), https://ncdhhs.s3.amazonaws.com/s3fs-public/documents/files/APS_Manual.pdf.

Disclosure to Comply with Mandatory Reporting and Notification Requirements

Several laws require DSS to disclose APS information at various points in time. The burden is on DSS to initiate the following disclosures:

- *Notice to reporter (complainant).* When DSS receives a report of suspected abuse, neglect, or exploitation, the agency will conduct an evaluation. At the conclusion of the evaluation, the agency is required to immediately notify the person who filed the report about the outcome.⁴⁰ The notification must state whether the report was substantiated and whether services are being provided, but it must not include specific findings of the evaluation. DSS must document when and how (oral or written) it provided this required notice.⁴¹
- *APS register.* DSS is required to submit certain information to the Adult Protective Services Register, which is maintained by NC DHHS. The information submitted to the register by the counties is confidential.⁴²
- *Residential facilities.* If the person who is the subject of the APS report is in a residential care facility, such as a nursing home, DSS is required to provide specific information to the facility's administrator after conducting the evaluation.⁴³

40. 10A NCAC 71A .0202. At the time of the report, DSS should ask the reporter if he or she wants to receive this notification orally or in writing.

41. 10A NCAC 71A .0907.

42. 10A NCAC 71A .0806.

43. 10A NCAC 71A .0502.

Relevant Statute

North Carolina General Statutes

§ 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).)

Relevant Regulations
North Carolina Administrative Code
TITLE 10A—HEALTH AND HUMAN SERVICES
CHAPTER 71—ADULT AND FAMILY SUPPORT
SUBCHAPTER 71A—PROTECTIVE SERVICES FOR ADULTS

SECTION .0500—RESIDENTIAL CARE FACILITIES

10A NCAC 71A .0501 GENERAL REQUIREMENT

(a) In accordance with provisions of G.S. 108A103 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. 131D2 shall be followed up by the adult home specialist in accordance with the specialist's ongoing responsibility for supervision of these facilities.

10A NCAC 71A .0502 NOTICE TO ADMINISTRATOR

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

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

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

10A NCAC 71A .0503 REPORT TO REGULATORY AGENCIES

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

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

(c) When, in the course of an evaluation, evidence of abuse, neglect or exploitation is found, the county director shall notify the Division of Health Service Regulation immediately by telephone. In addition the county director shall inform the Division of Health Service Regulation as to whether 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. 131D2 shall be made to the adult home specialist in the county department of social services.

**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.

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. 108A101(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.

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.

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

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

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

10A NCAC 71A .0803 SPECIFIC FINDINGS

Specific findings of the evaluation shall be kept confidential and shall not be released without consent of the disabled adult or court order, except that the department of social services at its discretion may share information about the adult with other

persons or agencies without the adult or caretaker's consent to the extent necessary to provide protective services. When evidence of abuse, neglect, or exploitation is found, and upon request of the district attorney or law enforcement agencies, such information shall be sent to help with a criminal investigation or prosecution of abuse, neglect or exploitation.

10A NCAC 71A .0804 REFERRAL TO ANOTHER COUNTY

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

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

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

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.

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.

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.

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.