

Overview of State and Federal Agencies Involved with North Carolina's Elder Protection System¹

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¹ Excerpt from forthcoming publication by Meredith Smith and Aimee Wall, UNC School of Government (draft).

I. State Agencies

a. N.C. Department of Health and Human Services

The North Carolina Department of Health and Human Services (DHHS) is a state agency with an expansive mission that encompasses many programs, divisions, and offices that are involved with providing services to and protecting older adults.² Of the sixteen service divisions within the agency, five have a significant role in supporting older adults.

Table 1. Overview of Selected DHHS Divisions Involved with Elder Protection

DHHS DIVISION	ROLE
Aging and Adult Services	Oversees adult protective services (APS) and other aging programs provided by county departments of social services and area agencies on aging; administers the long-term care ombudsman program and the state-county special assistance program
Health Service Regulation	Responsible for regulation and oversight of health care facilities such as hospitals, nursing homes, and adult care homes
Medical Assistance (Medicaid)	Manages administration of health insurance program that is available to many low-income and disabled adults
Mental Health, Substance Abuse, and Developmental Disabilities	Oversees regional managed care program providing publicly funded services, primarily funded through Medicaid
Social Services	Oversees administration of economic services programs relied upon by older adults, such as food and nutrition services (e.g., food stamps, energy assistance)

Other divisions and offices involved with protecting the safety and welfare of older adults include public health, rural health, services for the deaf and hard of hearing, and services for the blind. Rather than provide detailed information about the roles of each of these divisions within

² The agency’s mission statement provides: “In collaboration with our partners, DHHS provides essential services to improve the health, safety and well-being of all North Carolinians.” Its vision statement goes further to explain that the agency intends to advance “innovative solutions that foster independence, improve health and promote well-being for all North Carolinians.” N.C. Dep’t of Health & Human Servs., *Mission | Vision*, NCDHHS.GOV, <https://www.ncdhhs.gov/about/dhhs-mission-vision-values-and-goals/mission-vision>.

DHHS, the discussion below highlights several specific and important functions that may overlap or intersect regularly with other components of the state's elder protection system.

Each area of work comes equipped with different bodies of law, including different tools and processes designed to support compliance with laws and policies. For example, a particular agency may, in the case of elder abuse, be able to impose a fine or other financial penalty, take action on a facility or individual license or permit, or require a regulated entity or person to take corrective action within a specified period. Many types of inspection reports and penalties are public record and may be available upon request.

1. Supervision of County Social Services Agencies

North Carolina operates a state-supervised, county-administered system to deliver social service programs, including adult services. In this model, local social services agencies take on the primary role of day-to-day program administration. The state provides supervision, direction, and support to the local agencies.³ For adult services, including adult protective services (APS) and guardianship by a county department of social services (DSS), the state's Division of Aging and Adult Services (DAAS) provides oversight and supervision for the county departments providing direct services. Supervision includes developing policies and forms, offering training, collecting data, and compliance monitoring. In most situations, other components of the elder protection system will work directly with a county DSS but occasionally it may be appropriate and necessary to contact the DAAS for assistance as well.

2. Regulation of Long-Term Care Facilities

An older adult may be the subject of physical, emotional, or sexual abuse or neglect while a resident in a long-term care facility. Consider the following examples.

- A resident with Alzheimer's disease may be seriously injured after leaving the facility unsupervised.
- A resident may be sexually or physically abused by another resident or by a member of the staff.
- Staff may not administer pain medication as ordered or provide appropriate wound care, causing the resident to suffer unnecessarily.

DHHS has a role in both (1) trying to prevent this type of harm and (2) investigating and penalizing facilities where such harm has or may have occurred.

On the prevention side, DHHS's Division of Health Service Regulation (DHSR) is responsible for licensure and certification of nursing homes, adult care homes, and facilities for individuals with intellectual disabilities, developmental disabilities, mental illness, and substance abuse issues. These facilities must apply for a license, pass inspections, and be approved before

³ See SOC. SERVS. REG'L SUPERVISION & COLLABORATION WORKING GROUP, STAGE ONE FINAL REPORT (UNC School of Government, Mar. 2018), <https://www.sog.unc.edu/resources/microsites/social-services/reports>.

serving patients. During this process, the government agency's role is to determine whether the facility complies with all applicable federal and state laws and policies, including the applicable resident "bill of rights." After a license is issued, the facility remains subject to regular inspections and oversight by the government.⁴ For example, DHSR has the authority to inspect most adult care homes at any time and is required to do so at least annually.⁵ County departments of social services (DSS) are required to work with DHSR to support this oversight function.⁶ If problems are identified in the course of standard oversight and monitoring, the agency will work with the facility to remedy the problem, impose fines, or take action on the facility's license.⁷

⁴ G.S. 131D-2.11(a).

⁵ G.S. 131D-2.11(a), (a1). DHSR may waive an annual inspection for an adult care home that achieved the highest performance rating the previous year; however, the agency must inspect the adult care home at least once every two years. *Id.* § 131D-2.11(a1).

⁶ G.S. 131D-2.11(b).

⁷ See G.S. 131D-34(a).

Table 2. Key Terms: Adult Care Home vs. Nursing Home

TERM	DEFINITION
Adult Care Home⁸	<ul style="list-style-type: none"> • A facility that provides twenty-four-hour personal care services, such as eating, dressing, bathing, toileting, and grooming, to two or more residents • Medical care is usually occasional or incidental, with supervised administration of medication⁹ • Adult care homes that provide care to two to six unrelated residents are referred to as “family care homes”
Nursing Home¹⁰	<ul style="list-style-type: none"> • A facility that provides nursing or convalescent care for three or more persons • Nursing homes generally provide care for people who are not sick enough to require general hospital care but who require nursing care to address chronic or rehabilitative needs • The general term “nursing home” encompasses more specific types of facilities, such as skilled nursing and intermediate care facilities
Combination Home¹¹	<ul style="list-style-type: none"> • A facility may be a “combination home” that offers various levels of care, including both adult care home services and nursing home services

If DHSR or DSS receives a complaint regarding a licensed facility, an investigation must be initiated with certain timeframes.¹² For adult care homes, the county DSS will be responsible for conducting the investigation. This investigation is in addition to any adult protective services (APS) process that DSS may initiate. If DSS finds a violation, the agency will inform both the facility and DHSR of the violation, what corrective action must be taken, and a date by which the violation must be corrected.¹³ DSS may request assistance from DHSR in resolving complaints.¹⁴ If the complaint involves a nursing home, DHSR rather than the county DSS will be responsible

⁸ G.S. 131D-2.1(3) (definition of “adult care home” in the context of adult care home regulation); 131E-101(1) (definition of “adult care home,” in contrast to definition of “nursing home”).

⁹ G.S. 131D-2.2(a). There is an exception for when a physician certifies that appropriate care can be provided on a temporary basis to meet the resident's needs and prevent unnecessary relocation. *Id.* Adult care homes also do not care for (1) individuals who are dependent on ventilators, (2) individuals whose physician certifies that placement is no longer appropriate, (3) individuals whose health needs cannot be met in the specific adult care home as determined by the residence, and (4) such other medical and functional care needs as the Medical Care Commission determines cannot be properly met in an adult care home. *Id.*

¹⁰ G.S. 131E-101(6).

¹¹ G.S. 131E-101(1a).

¹² G.S. 131D-26(a1) (adult care homes); 131E-124(a1) (nursing homes).

¹³ G.S. 131D-26(b).

¹⁴ G.S. 131D-26(c).

for conducting the investigation.¹⁵ DHSR must reply to the complaint within a reasonable time, which must not exceed sixty days.¹⁶

DHSR has the authority to take action if it finds that a facility is out of compliance with applicable laws, including the residents' bill of rights.¹⁷ The penalty DHSR may impose depends on the severity of the violation committed.¹⁸ For example, in the context of adult care homes, the agency has the authority to

- revoke, suspend, or summarily suspend a license;¹⁹
- require a court-appointed temporary manager for the facility;²⁰ and
- impose an administrative penalty, which may include a corrective action plan and fines up to \$20,000 for each violation and up to \$1,000 each day the violation continues beyond the specified deadline.²¹

Penalties will vary based on the severity of the violation. The most severe violations (known as Type A violations) are those that result in or create a substantial risk²² of death or serious physical harm, abuse, neglect, or exploitation.²³ Less severe violations (known as Type B violations) include those that are detrimental to the health, safety, or welfare of any resident but do not create a substantial risk that death or serious physical harm, abuse, neglect, or exploitation will occur.²⁴

¹⁵ G.S. 131E-124(a).

¹⁶ *Id.*

¹⁷ G.S. 131D-34 (adult care homes); 131E-124 (nursing homes).

¹⁸ G.S. 131D-34.

¹⁹ G.S. 131D-2.7; -29.

²⁰ G.S. 131D-34(a)(3).

²¹ G.S. 131D-34(a) (adult care homes); 131E-129 (nursing homes).

²² Substantial risk means the risk of an outcome that is substantially certain to materialize if immediate action is not taken. G.S. 131D-34(2b).

²³ G.S. 131D-34(a)(1), (1a).

²⁴ G.S. 131D-34(a)(2).

Table 3. Examples of Violations in Adult Care Homes

VIOLATION	EXAMPLE
Type A	<ul style="list-style-type: none"> • “A confused resident who is not properly supervised, wanders away from the facility and as a result, his or her safety is endangered or the resident suffers serious physical harm.” • "A wrong medication is given to a resident by facility staff which has the strong potential of adversely affecting the resident or the resident suffers serious physical harm.”
Type B	<ul style="list-style-type: none"> • “Several resident[s] have orders to receive over the counter pain medications every morning but on one morning, staff forget to give the residents the medication. The residents suffer no ill consequence from the missed doses and subsequent doses are given as ordered.” • "The facility's pest management program is not effective and insects are noted in a couple of resident rooms on one out of two halls in the facility.”

Source: N.C. Div. of Health Serv. Regulation (DSHR), Adult Care Licensure Sec., *Adult Care Home Violations and Penalties*, “Regarding Adult Care Home Inspections,” NCDHHS.gov, <https://info.ncdhhs.gov/dhsr/acls/adultcarehomefines.html>.

In addition to filing a complaint with DHSR, a resident of a facility (or the resident’s legal representative) may file a civil action for injunctive relief to enforce the applicable bill of rights.²⁵

3. Long-Term Care Ombudsman Program

The Long-term Care Ombudsman Program provides another avenue for promoting the well-being of older adults who are residents in long-term care facilities, including both nursing homes and adult care homes.²⁶ One purpose of the Ombudsman Program is to advocate on behalf of residents of long-term care facilities.²⁷ There is a State Ombudsman located within the DHHS Division of Aging and Adult Services and Regional Ombudsmen throughout the state in each of the Area Agencies on Aging.²⁸ In 2016, the state’s program reported receiving 3,769 complaints and closing almost 2,000 cases.²⁹

²⁵ G.S. 131D-28 (adult care homes); 131E-123 (nursing homes).

²⁶ G.S. 143B, Art. 3, Pt. 14D.

²⁷ G.S. 143B-181.15. *See also* DHHS, ADULT HOME AND NURSING HOME LONG TERM CARE ADVISORY COMMITTEES (CACs): THE ESSENTIAL GUIDE 1 (June 2009). https://files.nc.gov/ncdhhs/documents/files/CAC_Essential_Guide.pdf. A list of State and Regional Ombudsman contact information may be accessed online. *See* DHHS, Long Term Care Ombudsman (Advocacy for Residents in Long Term Care Facilities), NCDHHS.GOV, <https://www.ncdhhs.gov/assistance/adult-services/long-term-care-ombudsman> (last visited Aug. 12, 2019).

²⁸ G.S. 143B-181.17; -181.18(3a).

²⁹ Data is from U.S. Department of Health and Human Services, Administration for Community Living’s *AGing Integrated Database (AGID)*, “State Profiles,”

Upon receiving a complaint, the ombudsman will typically attempt to resolve the problem using informal techniques such as mediation, conciliation, and persuasion.³⁰ If those methods are unsuccessful, the ombudsman will refer the matter to DHSR if the complaint relates to an adult care home or nursing home.³¹ The ombudsman has the authority to³²

- enter any long-term care facility at any time during regular visiting hours, or at any other time when access may be required by the circumstances to be investigated, and may have related authority to obtain access to any resident;
- communicate privately and confidentially with residents of the facility, individually or in groups; and
- access residents' files, records, and other information.³³

The ombudsman must identify himself or herself as such to the resident about whom a complaint was filed. The resident may be unable to or may refuse to communicate with the ombudsman, but that does not diminish the authority of the ombudsman to gather information about the complaint.³⁴ The resident has the right to participate in planning any actions proposed by the ombudsman and ultimately retains the right to approve or disapprove any proposed action.³⁵

If the subject of the complaint involves suspected abuse, neglect, or exploitation, the Regional Ombudsman may only notify the Adult Protection Services (APS) section of the county department of social services (DSS) after obtaining either the written informed consent of the resident or authorization by the State Ombudsman.³⁶ This is an exception to the general APS reporting obligations discussed in Chapter 2.

Another way the State Ombudsman works to promote quality of care in both nursing homes and adult care homes is through community advisory committees (CACs).³⁷ Members of each CAC serve as representatives of the State Ombudsman.³⁸ A CAC exists in each county where there is an adult care home or nursing home.³⁹ The CAC works to serve the best interests of the

<https://agid.acl.gov/StateProfiles/Profile/Compare/?id=35&compareid=109&variable=7&years=2016> (last visited Aug. 12, 2019).

³⁰ G.S. 143B-181.21(a).

³¹ G.S. 143B-181.21(b).

³² G.S. 143B-181.20(a).

³³ Access is allowed as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. §§ 3001 *et seq.*, and regulations promulgated thereunder, and under procedures established by the State Ombudsman pursuant to G.S. 143B-181.18(6).

³⁴ G.S. 143B-181.20(b).

³⁵ G.S. 143B-181.20(c).

³⁶ G.S. 143B-181.20(f).

³⁷ G.S. 131D-31 (adult care home CAC); 131E-128 (nursing home CAC).

³⁸ G.S. 131D-31 (adult care home CAC); 131E-128 (nursing home CAC).

³⁹ G.S. 131D-31(b)(1) (adult care homes); 131E-128(b)(1) (nursing homes).

residents, assist persons who have grievances with the facility, and attempt to facilitate the resolution of grievances at the local level.⁴⁰

4. Health Care Personnel Registry

Doctors, nurses, and some other health care personnel are subject to regulation by their professional licensing boards. Any suspected misconduct can be reported directly to those boards, which have the authority to take disciplinary action.⁴¹ In addition, an individual may be charged with a crime for failing to comply with the standards that apply to his or her profession.⁴²

Many staff working in health care facilities are not licensed and not subject to the same type of oversight as the personnel listed above. Therefore, DHHS maintains a registry of “health care personnel” who have been found by the agency to have committed certain types of misconduct in a health care facility.⁴³ The term “health care facility” is defined broadly to include hospitals, adult care homes, nursing homes, home health care agencies, and agencies providing in-home aide. Examples include

- neglect or abuse of a resident in a health care facility or upon a person who is receiving home care or hospice care;
- misappropriation of a resident’s property, including home care and hospice care patients;
- diversion of drugs belonging to a patient or client of a health care facility; and
- fraud against a patient or client for whom the employee is providing services.⁴⁴

In addition, the registry includes any personnel who have been *accused* of misconduct if DHHS “has screened the allegation and determined that an investigation is required.”⁴⁵ The law provides opportunities for personnel to challenge their placement on the registry and, in limited circumstances, request removal from the registry.

This registry includes “health care personnel,” which is defined to mean “any unlicensed staff of a health care facility that has direct access to residents, clients, or their property.”⁴⁶ It

⁴⁰ G.S. 131D-32(e) (adult care home); 131E-128(h)(1) (nursing home).

⁴¹ See, e.g., G.S. 90-14 (Medical Board); -171.37 (Board of Nursing); see also N.C. Med. Bd., *Resources & Information*, “Filing a Complaint with the NC Medical Board,” NCMEDBOARD.ORG, <https://www.ncmedboard.org/resources-information/consumer-resources/complaint-process> (last visited Aug. 12, 2019).

⁴² See, e.g., G.S. 90-18 (crime to practice medicine or surgery without a license); -171.45 (crime to fail to comply with the Nursing Practice Act).

⁴³ G.S. 131E-256; Title 10A, Subchapter 130 of the North Carolina Administrative Code (N.C.A.C.).

⁴⁴ G.S. 131E-256(a)(1).

⁴⁵ G.S. 131E-256(a)(2).

⁴⁶ G.S. 131E-256(c).

also includes nurse aides, who are also included on a separate registry.⁴⁷ Health care facilities are required to (1) notify DHHS of potential misconduct within twenty-four hours of the facility becoming aware of it, (2) investigate the circumstances, and (3) promptly report to DHHS about the findings of the investigation.⁴⁸ Facilities are also required to check the Health Care Personnel Registry before hiring health care personnel.⁴⁹ Federal and state law prohibit facilities from hiring a nurse's aide or medication aide who has a substantiated finding against him or her on a registry.⁵⁰

b. Other State Agencies

In addition to the N.C. Department of Health and Human Services (DHHS), there are several other state agencies involved with elder protection. Each has a unique area of emphasis and different powers and duties. It is helpful for other components of the elder protection system to have an understanding of the scope of authority for each agency because it may be necessary to collaborate with one or more in order to provide the best possible protection to an older adult. Below is a brief overview of the elder protection role played by three key state agencies: the Department of Justice, the Secretary of State, and the Department of Insurance.

1. Department of Justice

A key civil function of the North Carolina Department of Justice (DOJ) is protecting consumers, including older adults, from frauds and scams. DOJ does this primarily through public education and responding to consumer complaints. In 2018, one-fifth of the approximately 20,000 consumer complaints received related to elder fraud.

⁴⁷ G.S. 131E-255.

⁴⁸ G.S. 131E-256(g); 10A N.C.A.C. 130, § .0102.

⁴⁹ G.S. 131E-256(d2).

⁵⁰ 42 U.S.C. § 1395i-3(g)(1)(C); *id.* § 1396r(g)(1)(C); 42 C.F.R. § 483.35(d)(4) (nurse aides); G.S. 131E-270 (medication aides).

Table 4. Common Scams Targeting Older Adults under DOJ Authority

TYPE	THE SCAMMER . . .
Sweetheart	<ul style="list-style-type: none"> • Creates a fake online profile, posing as someone working out of state or overseas • Develops a friendship with the older adult which, in turn, develops into a romantic relationship and, in some cases, a marriage proposal • Asks the older adult to wire money immediately to help with a financial crisis
Home Repair	<ul style="list-style-type: none"> • Comes to the older adult’s house • Identifies unnecessary repairs that need to be made to the roof, driveway, or other parts of the house • After starting the work, may identify more and more repairs or problems, such as toxic mold • Collects series of payments from the older adult • Disappears before the work is complete or completes shoddy repairs
IRS	<ul style="list-style-type: none"> • Calls the older adult demanding payment of a bogus tax bill • States that the adult will be sent to jail unless the payment is made immediately through a wire transfer or debit card • May require the adult to stay on the phone while completing the wire transfer
Grandparent	<ul style="list-style-type: none"> • Calls the older adult claiming to be a grandchild or a friend of a grandchild • Asks the older adult to wire money immediately to pay for medical care or get the grandchild out of jail
Lottery	<ul style="list-style-type: none"> • Calls the older adult and says that the adult won the lottery or a contest • Asks the older adult to wire money to cover fees and taxes so that the adult can claim the winnings

DOJ has the authority to investigate corporations and persons who do business in the state in violation of law, such as those related to unfair competition and unfair and deceptive trade practices. In response to a complaint, the agency will typically contact the business for a response and may work to resolve the dispute directly. It may also refer the complaint to another state or federal agency or to a local prosecutor. In some cases, DOJ may suggest that the consumer consult a private attorney or file a small claims action.

If DOJ identifies a pattern of illegal business practices, it may file a civil lawsuit in the name of the State on behalf of all North Carolina consumers against a corporation and any of the corporate officers, agents, and employees. In the civil action, DOJ may seek to recover money and property for victims, cancellation of contracts, civil money damages, and attorneys’ fees.

In addition to this role in consumer protection, DOJ also takes the lead on investigating potential fraud involving the Medicaid program. Examples of potential signs of this type of fraud include

- a patient being pressured to receive unnecessary or excessive services,
- a patient's medical records being altered,
- a medical provider claiming to provide services for free, and
- a medical provider dispensing excessive amounts of controlled substances.⁵¹

DOJ is able to both criminally prosecute those involved with fraud and also pursue a civil suit to recover program funds.

Information maintained by DOJ may be useful to assist other components of the elder protection system, such as local prosecutors and adult protective services.

2. Secretary of State

The N.C. Secretary of State (SOS) has specific authority related to the regulation and oversight of the securities industry and of charities.

Example

Bob, an 82-year-old widower, receives a call from an unknown investment broker. The broker explains that he is reaching out to a small group of people to offer an opportunity to get in on a new investment. He describes it as a “once-in-a-lifetime opportunity.” Bob thinks the broker sounds really bright and trustworthy. He’s excited about growing his retirement nest egg. The broker persuades Bob to transfer \$5,000 to an investment account the same day.

Example

Linda receives a letter asking her to donate money to raise funds to feed local children. She writes a check for \$200 and mails it to the organization. She later finds out that the charity does not exist.

The SOS plays a role in trying to prevent the types of fraud discussed in the examples above through education. The agency also registers investment salespersons, advisors, securities, and charities. A consumer who has questions about a particular opportunity may contact the SOS to learn about the organization or individual offering the opportunity.

If someone has a negative experience with a regulated individual, organization, or entity, he or she can file a consumer complaint with the SOS. While the agency is not able to represent

⁵¹ N.C. Dep’t of Just., Att’y Gen., *How to Spot Medicaid Fraud & Abuse*, NCDOJ.gov, <http://ncdoj.gov/responding-to-crime/health-fraud> (last visited Oct. 16, 2019).

individuals or recover money for private persons, it does have the authority to enforce the state laws regulating these activities and individuals.

The SOS also maintains a voluntary online registry of advance health care directives. The registry is password-protected and allows a family member or doctor to access the directives of an individual once the individual has given the family member/doctor the correct file number and password. Alternatively, an individual may keep a registry card containing that information in a location where it can be found in the event it is needed by a family member, caregiver, or medical professional.

3. Department of Insurance

The N.C. Department of Insurance (DOI) regulates the insurance industry, which encompasses all types of insurance, such as health, life, long-term care, disability, homeowners, and auto insurance, and oversees collection agencies, among other duties. The DOI assists consumers with questions about insurance and the filing of claims. It also investigates complaints and allegations of insurance fraud. In 2016, the agency's Criminal Investigation Division handled more than 4,500 cases and recovered in excess of \$4.8 million.

Example

After a big hailstorm, a roofing company representative knocks on Dan's door. The representative explains that his company can inspect the roof, repair it, and get reimbursed from Dan's homeowner's insurance. Dan, who is 85 years old, signs paperwork authorizing the company to collect directly from his insurer. The company never repairs his roof.

Example

An insurance agent contacts Mary, who is 82 years old, and explains that she can use her existing insurance policy's cash value to pay for a newer policy. In order to generate a commission, the agent "may 'twist' the truth and 'churn' a new, 'better' or 'cheaper' policy to the customer. This new policy may, in fact, have less favorable terms or fewer benefits. This is illegal."⁵²

⁵² N.C. DEP'T OF INS. CRIM. INVESTIGATIONS UNIT, INSURANCE FRAUD: RECOGNIZE IT. REPORT IT. PROTECT YOURSELF., http://ncdoi.com/Publications/Insurance%20Fraud%20in%20North%20Carolina_CIF1.pdf.

Table 5. Which State Agency Should an Older Adult Call for Assistance?

TYPE OF COMPLAINT	AGENCY	CONTACT
Consumer fraud or scam	DOJ	<ul style="list-style-type: none"> • (919) 716-6000 • (877) 5-NO-SCAM (only N.C. calls) • (919) 716-0058 (Spanish) • www.ncdoj.gov
Securities (investment) professionals; Securities (investment) offerings; Charities	SOS	<ul style="list-style-type: none"> • (800) 688-4507 • www.sosnc.gov
Insurance fraud	DOI	<ul style="list-style-type: none"> • (919) 807-6840 • (888) 680-7684 (only N.C. calls) • reportfraud@ncdoi.gov • www.ncdoi.gov
Medicaid recipient fraud	DHHS	<ul style="list-style-type: none"> • (800) 862-7030 • (877) DMA-TIP1 (362-8471)
Medicaid provider fraud	DOJ	<ul style="list-style-type: none"> • (919) 881-2320
Tax fraud	Revenue	<ul style="list-style-type: none"> • (800) 232-4939 • www.ncdor.gov

c. Area Agencies on Aging

The federal government provides funding to the states to establish Area Agencies on Aging (AAA). North Carolina has sixteen of these regional agencies in place, which are co-located with the regional Councils of Government.⁵³ Each agency is home to a regional Long-Term Care Ombudsman, described above. In addition, each agency plays an important role in its community by working with local officials and others to identify needs of older adults in the community and then contracting with service providers to meet those needs. The Land of Sky AAA describes its role as promoting

the highest level of well being of older adults and their families by partnering with organizations to provide a comprehensive system of opportunities, services, and

⁵³ A DHHS contact list for North Carolina Area Agencies on Aging is available online at <https://files.nc.gov/ncdhhs/documents/files/aging/AAA-Locations.pdf> .

protective services. The AAA is a leader and catalyst in helping older adults in our four county region lead more independent, vibrant lives. As part of a national network of aging agencies established by the Older Americans Act, we work to strengthen home and community care for older adults.⁵⁴

An AAA may have contracts with organizations that provide home meal delivery or congregate meals, transportation services, adult day care services, recreation, or wellness activities. AAAs are also involved with advocacy for older adults in the community, both individually and collectively. Except for the ombuds program, each agency is involved with different types of programs and services.

Agency staff or contractors who interact with older adults may identify suspected elder abuse and report it to adult protective services and law enforcement. The agency may also be able to help other components of the elder protection system identify resources and supports within the community to improve the quality of life for an older adult who has been abused.

II. Federal Agencies

In 2010, Congress enacted a law that established the Elder Justice Coordinating Council (EJCC).⁵⁵ The EJCC is housed in the U.S. Department of Health and Human Services (DHHS) and is required to include representatives from “each Federal department or agency or other governmental entity identified by [DHHS] as having responsibilities, or administering programs, relating to elder abuse, neglect, and exploitation.”⁵⁶ The EJCC includes representation from approximately sixteen different federal agencies and programs.

Membership of the Federal Elder Justice Coordinating Council⁵⁷

- Department of Health and Human Services (chair of council)
- Consumer Financial Protection Bureau
- Corporation for National and Community Service
- Federal Trade Commission
- Department of Agriculture
- Department of Housing and Urban Development
- Department of the Interior
- Department of Justice

⁵⁴ LAND OF SKY REGIONAL COUNCIL, <http://landofsky.org/aaa.html> (last visited Aug. 12, 2019).

⁵⁵ 42 U.S.C. § 1397k(b)(1).

⁵⁶ *Id.*

⁵⁷ U.S. Dep’t of Health & Hyman Servs., Admin. for Cmty. Living, Fall 2018 EJCC Meeting, “Elder Justice Coordinating Council Membership List” (last modified Mar. 29, 2019), <https://acl.gov/programs/elder-justice/fall-2018-ejcc-meeting>.

- Postal Inspection Service
- Department of Labor
- Social Security Administration
- Department of the Treasury
- Department of Veterans Affairs
- Securities and Exchange Commission

A full overview of the role of each agency is beyond the scope of this manual, but below are brief overviews of the roles played by five key agencies that may interact more frequently with components of North Carolina’s elder protection system.

a. U.S. Department of Health and Human Services

The U.S. Department of Health and Human Services (US DHHS) is involved in funding and supporting quite a few initiatives focused on elder abuse. For example, the agency provides support and funding to

- states for training, education, and coalition-building;
- the National Center for Elder Abuse, which provides information, training, and consultation for professionals involved with elder protection;
- the National Center on Law and Elder Rights, which provides tools and support for legal and aging provider organizations;
- organizations providing legal services to older adults;
- states, in the form of grants, to support adult protective services (APS) programs;
- states for the operation of their long-term care ombudsman programs; and
- researchers examining topics related to elder abuse.⁵⁸

In 2016, US DHHS worked with a wide range of professionals to develop “Voluntary Consensus Guidelines for State APS Systems.”⁵⁹ The guidelines are intended to “provide a core set of principles and common expectations for APS programs, and to encourage consistency in the policies and practices of APS across the country.”⁶⁰

US DHHS also recently started gathering data from states on adult mistreatment on a voluntary basis. The new database is called the National Adult Mistreatment Reporting System (NAMRS) and it began receiving data submissions from states in 2017. It is described as “aspirational” because many states, including North Carolina, do not have robust electronic APS systems and therefore are not able to contribute some or all of the data elements.⁶¹

⁵⁸ U.S. DEP’T OF HEALTH & HUMAN SERVS., ELDER JUST. COORDINATING COUNCIL, 2014–2016 REPORT TO CONGRESS 6–15, <https://acl.gov/sites/default/files/programs/2017-11/2017%20EJCC%20Report.pdf>.

⁵⁹ <https://acl.gov/programs/elder-justice/final-voluntary-consensus-guidelines-state-aps-systems>

⁶⁰ ELDER JUST. COORDINATING COUNCIL, *supra* note 66, at 8.

⁶¹ U.S. Dep’t of Health & Human Servs., Admin. for Cmty. Living, *NAMRS (Nat’l Adult Maltreatment Reporting Sys.)*, “FAQ: What Else Do I Need to Know?,” <https://namrs.acl.gov/FAQ.aspx> (last visited Aug. 12, 2019).

b. U.S. Department of Justice

The U.S. Department of Justice (US DOJ) has focused significant resources on disseminating information; providing training, education, and technical assistance; and, in conjunction with US DHHS, supporting the provision of direct legal services to older adults. The *Elder Justice Initiative* website includes a tremendous amount of information for public agencies involved with elder protection and citizens, including

- written materials, videos, and websites specifically designed for law enforcement officials and prosecutors;
- webinars and other training materials for other types of elder abuse professionals;
- community outreach materials;
- tools and resources for multidisciplinary teams; and
- curated research on elder abuse topics.

The website also includes an “Elder Abuse Resource Roadmap” for victims of financial exploitation.⁶² The roadmap is a tool that walks users through a series of questions and answers that ultimately guide them to the government agency or connection that may be able to receive a report or provide assistance.

The US DOJ also has a role in leading, coordinating, and assisting with investigations and prosecutions when federal laws are violated. For example, in 2018, the department worked with state and local law enforcement to conduct an elder fraud “sweep.”

The cases involve more than two hundred and fifty defendants from around the globe who victimized more than a million Americans, most of whom were elderly. The cases include criminal, civil, and forfeiture actions across more than 50 federal districts. Of the defendants, 200 were charged criminally.⁶³

A map of the federal prosecutions resulting from the sweep is also available online, including available court documents.⁶⁴

c. Consumer Financial Protection Bureau

⁶² U.S. Dep’t of Just., *Elder Abuse Resource Roadmap: Financial*, JUSTICE.GOV, <https://www.justice.gov/elderjustice/roadmap> (last visited Aug. 12, 2019).

⁶³ U.S. Dep’t of Just., *Justice News*, “Justice department Coordinates Nationwide Elder Fraud Sweep of More Than 250 Defendants,” JUSTICE.GOV, <https://www.justice.gov/opa/pr/justice-department-coordinates-nationwide-elder-fraud-sweep-more-250-defendants> (Feb. 22, 2018).

⁶⁴ U.S. Dep’t of Just., *February 22, 2018 Elder Fraud Sweep Map*, JUSTICE.GOV, <https://www.justice.gov/opa/february-22-2018-elder-fraud-sweep/map> (last visited Aug. 12, 2019).

This agency focuses entirely on consumer financial protection.⁶⁵ It has the authority to adopt rules and enforce federal consumer financial laws. It also receives consumer complaints, promotes financial education, researches consumer behavior, and monitors financial markets for risks to consumers.⁶⁶ One office within the agency is dedicated to protecting older adults. It generates outreach and educational materials for consumers and financial institutions and conducts research on issues that impact older adults (such as reverse mortgages).⁶⁷

d. Federal Trade Commission

One role of the Federal Trade Commission (FTC) is to “combat unfair, deceptive, abusive and fraudulent practices that impact older adults.”⁶⁸ Like many of the other federal agencies, the FTC has developed outreach and training materials for both consumers and professionals. The agency also plays an active role in enforcement. For example, it prosecutes scams, such as those involving international sweepstakes, government imposters, and unnecessary computer technical support. It also accepts consumer complaints.

Additionally, the FTC plays a central role in the federal government’s identity theft–prevention efforts and in helping victims build “personal recovery plans” that are tailored to their circumstances.⁶⁹ These plans help victims (1) determine who they need to call and what steps they should take to protect their assets going forward and (2) possibly recover assets that may have been lost.

e. U.S. Department of the Treasury

The charge of the Financial Crimes Enforcement Network (FinCEN) within the U.S. Department of the Treasury is to safeguard “the financial system from illicit use, combat money laundering, and promote national security through the strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence.”⁷⁰ In this role, FinCEN provides support for financial institutions, such as banks and credit unions, collects data from those institutions, and links the data from various sources to provide system oversight. Since 2013, financial institutions have been required to submit “Suspicious Activity Reports” (SARs) to FinCEN. With these reports, federal and state law enforcement officials are able to both investigate individual cases and identify trends. A financial institution may be required to file a SAR if it knows, suspects, or has

⁶⁵ Consumer Fin. Prot. Bureau, CONSUMERFINANCE.GOV, <https://www.consumerfinance.gov/> (last visited Aug. 12, 2019).

⁶⁶ ELDER JUST. COORDINATING COUNCIL, *supra* note 66, at 21.

⁶⁷ Research reports are available on the Consumer Financial Protection Bureau’s website at <https://www.consumerfinance.gov/data-research/research-reports/> (last visited Aug. 12, 2019).

⁶⁸ ELDER JUST. COORDINATING COUNCIL, *supra* note 66, at 24.

⁶⁹ U.S. Fed. Trade Comm’n, *Report Identity Theft and Get a Recovery Plan*, IDENTITYTHEFT.GOV, <https://IdentityTheft.gov> (last visited Aug. 12, 2019).

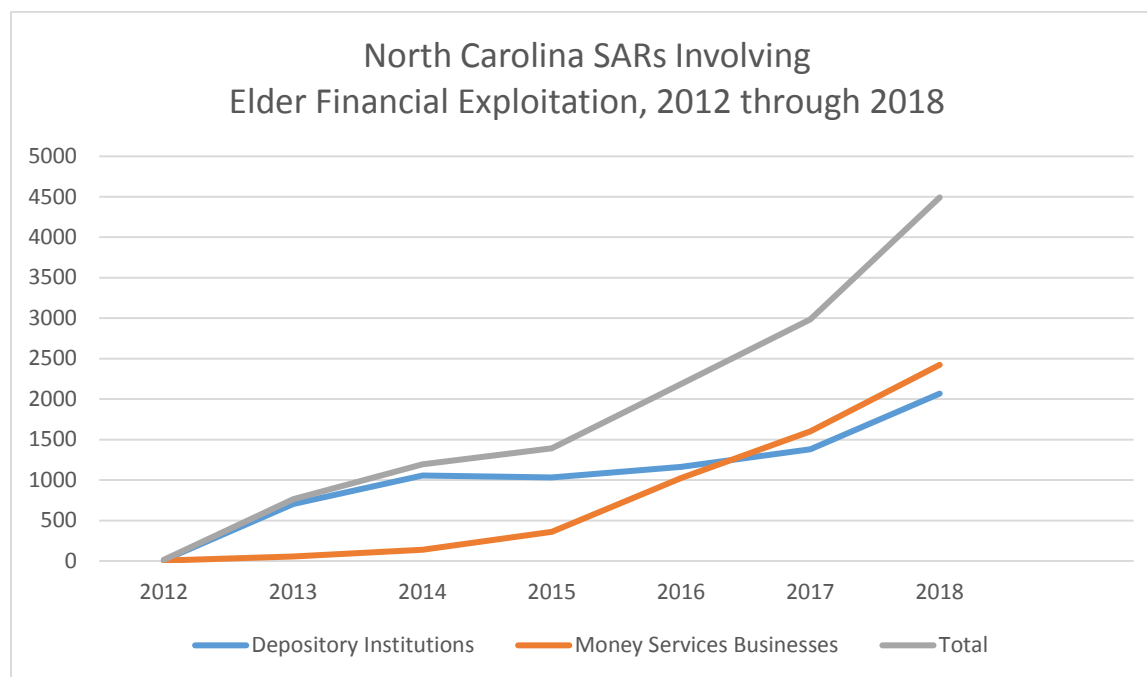
⁷⁰ U.S. Dep’t of Treasury, Fin. Crimes Enf’t Network, *Mission*, FINCEN.GOV, <https://www.fincen.gov/about/mission> (last visited Aug. 12, 2019).

reason to suspect that a transaction conducted or attempted by, at, or through the financial institution

- involves funds derived from illegal activity or attempts to disguise funds derived from illegal activity,
- is designed to evade regulations promulgated under the Bank Secrecy Act (BSA),
- lacks a business or apparent lawful purpose, or
- involves the use of the financial institution to facilitate a criminal activity.⁷¹

There has been significant growth in the reporting of SARs related to elder financial exploitation since the reporting mandate went into effect. See Figure 1.

Figure 1. Number of Suspicious Activity Reports (SARs) Submitted by Financial Institutions in North Carolina Identified by the Institution as Involving “Elder Financial Exploitation”⁷²



The federal Consumer Financial Protection Bureau studied the SARs data for elder financial exploitation and identified patterns. For example,

⁷¹ CONSUMER FIN. PROT. BUREAU & U.S. DEP’T OF TREASURY, FIN. CRIMES ENF’T NETWORK, MEMORANDUM ON FINANCIAL INSTITUTION AND LAW ENFORCEMENT EFFORTS TO COMBAT ELDER FINANCIAL EXPLOITATION (Aug. 30, 2017), https://files.consumerfinance.gov/f/documents/201708_cfpb-treasury-fincen_memo_elder-financial-exploitation.pdf.

⁷² U.S. Dep’t of Treasury, Fin. Crimes Enf’t Network, *Suspicious Activity Report Statistics (SAR Stats)*, [https://www.fincen.gov/\(searchable database\)](https://www.fincen.gov/(searchable%20database)) (last visited Aug. 12, 2019).

- the majority (51 percent) of the suspects listed in the reports were strangers;
- financial losses were greater if the suspect was known to the older adult victim; and
- more than half of the reports related to a money transfer.

Information collected by FinCEN through SARs reporting is protected by federal confidentiality laws, but law enforcement officials can initiate a FinCEN query after a criminal investigation has been opened or in connection with reviews conducted by a task force or group charged with proactively reviewing SARs to identify potential exploitation.⁷³

f. Social Security Administration

Many older adults receive Social Security income every month. The federal Social Security Administration (SSA) is responsible for paying these benefits and has a strong interest in ensuring that payments are received and used by or on behalf of the older adults who have earned them. One of the best tools available from SSA to help older adults who may be cognitively impaired is the representative payee program.⁷⁴

In short, the program allows another individual to apply to the SSA to serve as a recipient's *representative payee*. If SSA approves the application, benefit payments will go directly to the payee, and the payee is expected to spend them only for the benefit of the recipient. In some instances, it may be appropriate to appoint an organization, such as a nursing home, or an agency, such as DSS, to serve as the representative payee. The payee is required to keep records of how the benefits are used and saved and to provide an accounting to SSA upon request.⁷⁵

Unfortunately, this program has the potential to be abused. If a payee has misused benefits, SSA has the authority to pursue both civil and criminal penalties.⁷⁶

⁷³ 31 C.F.R. § 1010.950(b) (“The Secretary may make any information set forth in any report received pursuant to this chapter available to another agency of the United States, to an agency of a state or local government or to an agency of a foreign government, upon the request of the head of such department or agency made in writing and stating the particular information desired, the criminal, tax or regulatory purpose for which the information is sought, and the official need for the information.”); *id.* § 1010.950(e) (placing restrictions on redisclosure of information received). See also U.S. Dep’t of Just., *Suspicious Activity Reports (SARs) and Their Role in Investigations of Elder Financial Exploitation*, JUSTICE.GOV (Nov. 2, 2017), <https://www.justice.gov/elderjustice/video/suspicious-activity-reports-sars-and-their-role-investigations-elder-financial>.

⁷⁴ See, e.g., Soc. Sec. Admin., *Frequently Asked Questions (FAQs) for Representative Payees*, SSA.GOV, <https://www.ssa.gov/payee/faqrep.htm> (describing the role of a representative payee) (last visited Aug. 12, 2019).

⁷⁵ Justice in Aging, *Fact Sheet: SSA’s Representative Payee Program*, JUSTICEINAGING.ORG (2016), <https://www.justiceinaging.org/our-work/economic-security/rep-payee-program/>.

⁷⁶ 42 U.S.C. § 408(a)(5); *id.* § 405(j)(7).