
Adult Protective Services Task Force

**Report to
North Carolina Study Commission on Aging
and
House Study Committee on State Guardianship Laws
Pursuant to Session Law 2005-23**

*Responding Today...
Preparing for
Tomorrow*

**Prepared by:
North Carolina Department of Health and Human Services
Division of Aging and Adult Services**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

SESSION LAW 2005-23

HOUSE BILL 45

AN ACT TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES' ADULT PROTECTIVE SERVICES TASK FORCE TO COLLABORATE WITH OTHERS INTERESTED IN IMPROVING ADULT PROTECTIVE SERVICES AND REPORT, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Health and Human Services, Adult Protective Services Task Force, shall collaborate with stakeholders and other persons interested in improving adult protective services and report its findings and recommendations to the North Carolina Study Commission on Aging and to the Legislative Study Commission on State Guardianship Laws on or before April 1, 2006.

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of April, 2005.

s/ Beverly E. Perdue

s/ President of the Senate

s/ James B. Black

Speaker of the House of Representatives

s/ Michael F. Easley

Governor

Approved 7:45 p.m. this 28th day of April, 2005

APS Task Force Report to North Carolina Study Commission on Aging and House Study Committee on State Guardianship Laws

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I. EXECUTIVE SUMMARY

This report was prepared in response to Session Law 2005-23. This law directed the North Carolina Department of Health and Human Services, Division of Aging and Adult Services, Adult Protective Services Task Force to collaborate with stakeholders and other persons interested in improving adult protective services, and report findings and recommendations to the NC Study Commission on Aging and the Study Committee on State Guardianship Laws. The report contains recommendations to broaden and strengthen North Carolina's Adult Protective Services (APS) Program to respond to the dramatically changing vulnerable and older adult demographics in the State. We must be prepared to respond to the:

1. **Aging of North Carolina's population**

- North Carolina's older population increased 20.5% between 1990 and 2000, giving the state the 12th fastest growing older population. This rate of growth exceeds the national average growth rate of 12%.
- By 2030, 75 counties are projected to have more persons age 60 years of age and older than age 17 years of age and under.
- Among the top 20 most populous states, North Carolina has the highest percentage of seniors living in rural areas.

2. **Increased risk of mistreatment of vulnerable and older adults**

- Vulnerable adults 18 years of age and older, who, as a result of a physical or mental limitation that impairs their ability, may be more at risk of abuse, neglect and exploitation.
- Older adults may also be more at risk of abuse, neglect and exploitation due to isolation from social support systems. Victims of elder abuse are more likely to be isolated from friends and relatives. This social isolation, as is seen with the abuse of children, can increase family stress thus heightening the potential for abuse.
- Elder mistreatment literature also concludes advanced age may produce physical changes (and often illness) that make older adults less able to protect themselves and these changes, plus ageism, can decrease an elder's feelings of self-determination and personal power; potentially putting them at risk of mistreatment. [Journal of Elder Abuse & Neglect, Vol.3(2) 1991]

3. **Increased emphasis on community-based treatment**

- The Division of MH/DD/SAS indicates that each year almost 6% (about 380,000) of adults in North Carolina face serious mental health problems.

- 20% of the disabled adults receiving APS during the 2005-06 fiscal year had a mental or emotional health diagnosis.
- The population of adults in North Carolina facing serious mental health problems is expected to increase as vulnerable and older adults move into community-based treatment settings due to downsizing of State institutions, and the transfer of institutional funding to the community.
- The number of adults in North Carolina receiving publicly-funded community mental health services increased by 26% between 1999 and 2005.
- The prevalence of mental health problems among adults 65+ is as follows: 11.4% suffer anxiety; 6.4% have a cognitive impairment; and 4.4% experience depression and mood disorders.
- Older adults with developmental disabilities are increasing outliving their parents and are at risk of losing their primary support which may put them at risk.

4. Increased incidences of financial exploitation and violence against vulnerable and older adults

- Crimes and financial exploitation against vulnerable and older adults are among the fastest growing in the country.
- Older victims may be reluctant to step forward to report this victimization, and unless they disclose this information or someone learns about it, the victimization may continue.
- Results from a National Abuse Incidence Study indicate that financial abuse was found at higher rates among elders 60 to 70 years of age than among those 80 years of age.
- The Adult Protective Services Register (APS-R) data indicates 13% of all APS reports evaluated during 2005-06 involved exploitation.

After much discussion, extensive research of other states' APS laws and policies, review of elder abuse literature, and extensive dialogue with numerous stakeholders, a totally new system of protection for adults in North Carolina, an Adult Protective Services Clearinghouse Model (CHM) was developed. The CHM will be a significant change from the current APS law, and will enhance county departments of social services capacity to respond to the needs of all abused, neglected or exploited adults. The APS Task Force and stakeholders are convinced North Carolina's APS Program must be prepared to respond to all instances of mistreatment of adults, not just those adults currently defined in APS law as 'disabled adults'. The CHM accomplishes this by:

1. Changing the emphasis of APS to a multifaceted array of protective services rather than problem-solving, symptom-based interventions.
2. Providing county departments of social services the opportunity to offer three components of protective services:
 - APS Information and Referral,
 - APS Outreach, or
 - APS Intervention.
3. Broadening the target population for Adult Protective Services CHM to include (1) vulnerable adults 18 years of age and older with physical or and mental impairments who have been abused, neglected or exploited; (2) elder adults 60 years of age and older without a physical or mental health incapacity who have been abused, neglected or exploited; and (3) vulnerable and elder adults at substantial risk of abuse, neglect or exploitation.
4. Ensuring additional rights and protections for vulnerable and elder adults in keeping with the basic tenets of APS: respect for all adults' freedom, dignity and autonomy; consideration of least restrictive alternatives.
5. Establishing competency-based training requirements for APS staff.
6. Establishing staffing requirements and caseload standards for APS.
7. Providing state funding to support the Adult Protective Services CHM.
8. Developing and implementing a time limited pilot of the Adult Protective Services CHM to demonstrate feasibility of the new system of protection.
9. Obtaining state funding to support a time limited pilot of the Adult Protective Services CHM to demonstrate feasibility of the new system of protection.

What follows is background information and the recommendations, findings and fiscal implications for strengthening North Carolina's Adult Protective Services program.

II. INTRODUCTION

North Carolina is a pioneer in the area of Adult Protective Services (APS). In 1973, North Carolina enacted the first Elder Abuse Law in the United States. In 1975, this law was amended by the North Carolina General Assembly and became known as General Statute 108A, The Protection of the Abused, Neglected, or Exploited Disabled Adult Act. Support for passage of the 1975 amendments was largely the result of a grassroots effort as county departments of social services and other advocates realized that a legal tool other than guardianship was needed to protect all abused, neglected or exploited adults incapacitated by a physical or mental disability. This Act provided for the protection of abused, neglected, or exploited disabled adults eighteen years of age and older.

The mandate to protect is carried out by North Carolina's 100 county departments of social services. The nature of Adult Protective Services intervention and the vulnerability of the population served require consideration of certain ethical principles, including:

- Respect for freedom, dignity and autonomy
- Consideration of least restrictive alternatives and interventions
- Utilization of community-based, family-centered and strength-based prevention and intervention strategies; and
- Emphasis on a multifaceted array of protective services rather than problem-solving, symptom-based interventions.

Ms. Nora McIver is an 80 year old widow who lives alone. Her neighbor called 911 after finding her lying on the floor of her home where she had fallen fracturing her hip. Ms. McIver was subsequently hospitalized. A physical examination found Ms. McIver dehydrated, malnourished and mentally confused. Her doctors indicate she is currently unable to care for herself and will require assistance to obtain the necessary services to meet her basic needs. She does not have family or friends to assist her.

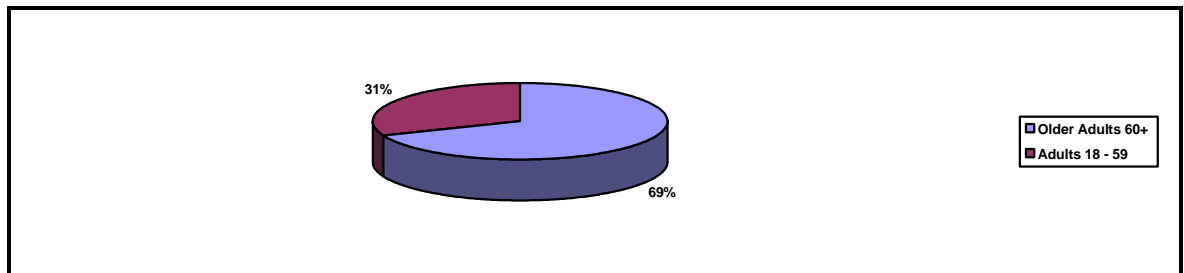
Scenarios like this are likely to increase as more adults live longer and possibly suffer serious age-related chronic illnesses. The proportion of older adults (60 years of age and older) in this State is currently estimated at 40% of the State's total population. By 2030 their proportion is expected to reach almost 50% of the State's total population.

ADULT PROTECTIVE SERVICES IN NORTH CAROLINA

Who Are the Disabled Adults and Their Families?

In North Carolina, Adult Protective Services data from the 100 county departments of social services is collected via the Adult Protective Services Register (APS-R). In use since April 1993, county departments of social services enter a variety of information (e.g., specific demographics about the adult, information about the perpetrator of mistreatment) into the APS-R about reports made to their agencies alleging mistreatment of vulnerable and older adults. During state fiscal year 2005-2006, county departments of social services received 14,001 reports alleging abuse, neglect and exploitation of disabled adults, and of those, 6,667 were evaluated for APS. Data from the APS-R indicates:

- Older adults comprised more than two-thirds (69%) of all disabled adults receiving Adult Protective Services during SFY 2005-06, while adults 18 to 59 years comprised the remaining 31%.



Source: Adult Protective Services – Register

- Women accounted for 62% of the adults receiving Adult Protective Services.
- 78% of all the adults receiving Adult Protective Services lived alone in domestic settings or with family members, while 22% lived in a long term care facility, state institution or shelter.
- 47% or nearly half of the disabled adults evaluated for APS had multiple disabilities. 60% had a physical illness, 24% had a diagnosis of Alzheimer's disease and related disorders, while 20% had a mental illness or emotional impairment.

What is Happening to Them?

- In 76% of the APS reports, the most common forms of mistreatment reported involved self and caretaker neglect.
 - 53% of the neglect reports involved self neglect.
 - 47% of the reports involved caretaker neglect.
- 12% of the APS reports involved abuse.
- 12% of the APS reports involved exploitation.
- The most frequently named perpetrator of mistreatment is an adult child, followed by a spouse, long term care facility staff or other relatives.

How Does Adult Protective Services Respond?

North Carolina General Statute 108A mandates county departments of social services to conduct a prompt and thorough evaluation of all reports alleging a disabled adult is in need of protective services. Prompt refers to the timeframe in which the evaluation must be initiated. The evaluation must be initiated as follows:

- Immediately upon receipt of the report if the report alleges a danger of death to the disabled adult;
- Within 24 hours if the report alleges danger or irreparable harm to the disabled adult; and
- Within 72 hours if the report does not allege danger of death or irreparable harm to the disabled adult.

The statewide average to initiate APS evaluations is 1.8 days. During 2005-06 over half of the APS reports (4,747) received were initiated within 24 hours of receipt of the report. 2,256 of the reports were initiated the same day.

A thorough evaluation includes a visit to, and a private interview with the disabled adult, and consultation with others having knowledge of the facts of the particular allegations; and a functional assessment to determine whether the disabled adult has been abused, neglected or exploited and is need of protective services. The functional assessment is tied to the disabled adult's strengths and limitations to perform major life activities.

The thorough evaluation may also include the review of records, including records maintained by facilities licensed by the NC DHHS, related to the care and treatment of the disabled adult by any individual, facility or agency acting as a caretaker for the disabled adult.

Staff and physicians of local health departments, mental health agencies and other public or private agencies must cooperate when requested in the thorough evaluation, including immediate accessible evaluations and in-home evaluations when necessary.

After the completion of the evaluation, a written report of the case indicating whether Adult Protective Services are needed is made to:

- The District Attorney and/or law enforcement if abuse, neglect or exploitation is found during the evaluation;
- The complainant who made the report alleging the disabled adult has been abused, neglected or exploited; and

- Other licensing agencies, if violations of licensure standards have been found during the course of the APS evaluation.

APS evaluations alleging abuse or neglect must be completed within 30 days; while evaluations alleging exploitation must be completed within 45 days. Statewide, county departments of social services on average complete APS evaluations alleging:

- abuse within 20.0 days
- neglect within 21.1 days
- exploitation within 28.4 days.

Once the APS evaluation is completed, a determination is made as to whether the disabled adult is in need of protective services. If the disabled adult is found to be in need of protective services, authorization is required to provide these services. Authorization is obtained from:

- **The disabled adult**
If the disabled adult has the capacity to consent to the provision of protective services and refuses or withdraws consent, protective services are not provided, or are terminated. During 2005-06 consent to the provision of protective services was given by the disabled adult in 47% of the cases. Consent was denied or withdrawn by the disabled adult in 15% of cases.
- **Legal representative or surrogate**
When the adult lacks the capacity to consent to services, consent may be obtained from others with the legal authority to consent on the disabled adult's behalf, such as a guardian. Consent to the provision of services was obtained from a legal surrogate in about 7% of the cases.
- **Court Order**
When the adult lacks the capacity to consent to services and no one authorized by law or order is available to consent, a petition may be filed with the district court for a court order to provide these services. A court order authorizing the provision of protective services may also be obtained when an APS report alleges the disabled adult will suffer death or irreparable harm. The order authorizes the removal of the conditions creating the emergency when no other person authorized by law or order is available to consent to emergency protective services. APS court orders were obtained in 20% of the cases. Guardianship court orders were obtained in 11% of the cases.

III. NATIONAL and STATE TRENDS

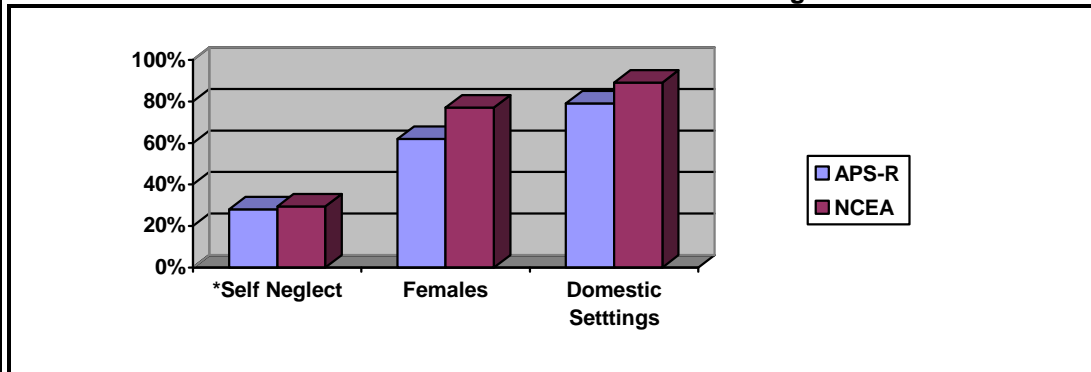
APS Register Data and National Center on Elder Abuse (NCEA) Data

Data from North Carolina's Adult Protective Services Register (APS-R) is consistent with national data when looking at APS reports for adults 60 years of age and older. The NCEA is a national consortium of five organizations advocating for elder rights. The consortium published the results of a survey titled, *Abuse of Adults Age 60+, A 2004 Survey of Adult Protective Services*. The survey summarizes data on the abuse of individuals 60 years of age and older from all 50 states, the District of Columbia and Guam. Although national uniform APS reporting requirements do not exist and APS programs are tailored to the laws and regulations of the specific states, the national data and NC's APS data do share some similarities.

During 2005-06 the APS-R indicates 69% of the total 6,667 APS reports accepted for evaluation involved disabled adults 60 years of age and older. While the APS-R system does not collect data specifically for adults 60 years of age and older for specific categories of mistreatment, some general conclusions can be drawn knowing that 69% of all reports are about adults 60 years of age and older.

The chart below illustrates some similarities between NCEA and APS-R data:

NC APS-R and NCEA Data for Adults 60 Years of Age and Older



Source: NC APS-R Report 2005-06 and the National Center on Elder Abuse 2004 Survey

NC APS-Register Data

28% of all reports on adults 60 years of age and older alleged self neglect

62% of the reports on adults 60 years of age and older found women to be the most frequent victims of mistreatment

79% of the disabled adults age 60 years and older lived in domestic settings (living alone or with family)

NCEA Data :

29.4% of the total reports alleged self neglect

77.1% of the total reports found women to be the most frequent victims of mistreatment

89% of the reports were on adults living in domestic settings

National Center on Elder Abuse Survey Report

In 2004 the National Center on Elder Abuse (NCEA) on behalf of one of its partners, the National Association of Adult Protective Services Administrators (NAAPSA), published the *Report on Problems Facing State Adult Protective Services Programs and Resources Needed to Resolve Them*. This report was compiled from a survey of 42 states' APS programs. North Carolina was one of the 42 states responding to this survey. Two questions were asked of survey participants:

1. What do you see as the most significant problems facing the field of Adult Protective Services at this time?
2. What assistance do you need to improve Adult Protective Services to vulnerable adults?

The following areas were the most frequently identified from the survey:

(57%) Insufficient funding at state and national levels

A lack of federal funding earmarked for APS was the most serious obstacle to program operation followed by: acknowledgement and support for APS programs at the state level as well as over-all cutbacks; the necessity of competing with child welfare services for reduced Social Services Block Grant (SSBG) funds as populations in need of APS increase; and concomitant increases in APS referrals reducing the effectiveness of any additional dollars made available.

(43%) Staffing issues/problems

An inability to obtain and retain enough staff with expertise in APS to effectively operate existing programs; large caseloads and low wages resulting in high staff turnover; and lack of funds prohibiting the provision of necessary training to develop staff expertise in APS.

(22%) Lack of public awareness of APS issues/problems

The general public does not understand the phenomena of adult abuse or have sufficient knowledge to address abuse, neglect or exploitation.

(17%) APS is not a priority in state legislatures – competition with child welfare programs

State legislatures do not understand the phenomena of adult abuse or have sufficient knowledge to address abuse, neglect or exploitation; APS was not a priority for legislature funding.

Implications for National and State Policy

The survey concludes from a global perspective that the major problem facing the Adult Protective Services delivery system is a lack of federal, state and local support. Federal and state agencies must address the problems through strong legislative initiatives. State Adult Protective Services Programs need to be adequately funded as a system of care for the growing population of mistreated older adults and adults with

disabilities, so that states can maintain, expand and improve the quality of Adult Protective Services Programs. “The need for protective services for older and disabled adults with disabilities who are victims of abuse, exploitation and neglect continues to grow. Federal and state agencies must address this problem now through strong legislative initiatives which include sufficient funding to meet the protective needs of our most vulnerable citizens”. (NCEA, 2003)

The information contained in the NCEA survey supports the need for a comprehensive review of North Carolina’s Adult Protective Services delivery system. Findings from the survey further indicate a need to identify strengths and significant problems in North Carolina’s APS service delivery system to improve responses to an increasing vulnerable and older adult population.

IV. THE CHALLENGE

North Carolina's Adult Protective Services program must be strengthened and prepared to respond to the following challenges:

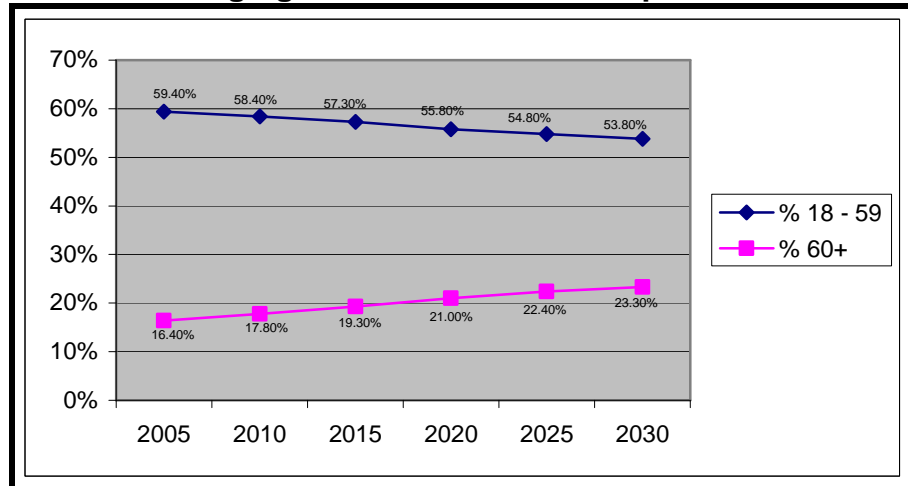
- Aging of North Carolina's population;
- Projected increases in the number of vulnerable and older adults who may be victims of abuse, neglect or exploitation;
- Increased emphasis on community-based treatment for vulnerable and older adults with chronic mental illness, mental retardation, and substance abuse; and
- Increased incidences of financial exploitation and violence against vulnerable and older adults.

A recent report by the President's Council on Bioethics, *Taking Care: Ethical Caregiving in our Aging Society*, speaks of the first ever "mass geriatric society". Other states such as Oregon, Wisconsin, Ohio, New Jersey, Michigan, and Texas have undertaken initiatives to respond to the needs of the projected increases in the numbers of vulnerable and older adults, many of whom may be victims of mistreatment.

1. The Aging of North Carolina's Population

- North Carolina ranked 11th nationally in total population and ranked 10th in the number of persons age 50 and older in 2004.
- North Carolina's older population increased 20.5% between 1990 and 2000, giving the state the 12th fastest growing older population. This rate of growth exceeds the national average growth rate of 12%.
- In 83 of North Carolina's 100 counties, the rate of increase among those age 65 years of age and older is expected to exceed the growth of the total population between 2000 and 2010.
- By 2030, 75 counties are projected to have more persons age 60 years and older than age 17 years and under.
- North Carolina ranks 11th highest in the proportion of the poor among older adults with 12.7% below the federal poverty level in 1999.
- Another 23.2% are considered near-poor with incomes between 100% and 200% of poverty.
- Among the top 20 most populous states, North Carolina has the highest percentage of seniors living in rural areas.

The Aging of North Carolina's Population



Source: NC Data Center

In 2005 North Carolina's total population was 8,663,674. By 2030 the State's total population is projected to increase to 12,067,013. As the overall population increases, the population of adults age 18 – 59 years of age is expected to decrease from 59.4% the State's total population in 2005 to 53.8% by 2030. The population of adults age 60 years of age and older is expected to increase from 16.4% of the State's total population in 2005 to 23.3% by 2030. (See data chart above)

2. Risk factors for mistreatment of vulnerable and older adults

The mistreatment of vulnerable and older adults is recognized as a growing problem. (*Journal of Elder Abuse & Neglect, Vol. 3(2) 1991, Elder Mistreatment: A Taxonomy with Definitions by Delphi, Margaret F. Hudson*)

The mistreatment of older adults is often distinguished from other forms of violence by several key risk factors including:

- the age of the victim;
- an established relationship connoting trust between the victim and the perpetrator;
- the intentionality of the harmful behavior;
- the distinction between neglect and abuse on the basis of commission and omission; and
- the different forms of neglect and abuse.

The following risk factors for elder abuse have been identified from empirical studies and clinical accounts:

(1) Shared living situations are a major risk factor for elder abuse based on the increased opportunity for contact between the perpetrator of mistreatment and the victim and the conflict and tension caused by the shared living arrangement;

(2) Higher rates of physical abuse are prevalent in patients with dementia than people without this disorder based on disruptive and aggressive behaviors of the victims that create stress on the caregivers thus causing caregivers to retaliate. We know that almost half of North Carolina family caregivers of persons age 60 years and older are providing care for someone with dementia. [Behavioral Risk Factor Surveillance Survey through the State Division of Health Statistics];

(3) Victims of elder abuse are more likely to be isolated from friends and relatives. This social isolation, as is seen with the abuse of children, can increase family stress thus heightening the potential for abuse. The presence of others can lead to intervention and sanctions for those who mistreat;

(4) A key pathological characteristic of some perpetrators is mental illness, (especially depression) and alcohol misuse. Several studies have established that a history of mental illness is more common among those who commit elder abuse than in the general population; and

(5) Perpetrators of elder abuse tend to be heavily dependent on the persons they are mistreating for financial support. In some instances mistreatment results from attempts by the financially dependent (especially adult children) relative to obtain resources from the victim.

Physical impairment of the older adult is not listed in this study as a risk factor for elder abuse, although some impairment may be a predisposing factor for abuse since this diminishes the adult's ability to protect him or herself or to escape an abusive situation. Reis and Nahmiash (Validation of the Indicators of Abuse (IoA) screen, *Gerontologist* 1998;38:471-80) did not find that impairment of activities of daily living predicted elder abuse. They conclude there is very little evidence that the victim's health and functional status is a risk factor for mistreatment. [The Lancet 2004; Volume 364:1263-72, Elder Abuse, Mark S. Lachs, Karl Pillmer.]

4. Increased emphasis on community-based treatment for vulnerable and older adults with chronic mental illness, mental retardation, and substance abuse

Data from the APS-R indicates 20% of the disabled adults receiving APS during the 2005-06 fiscal year had a mental or emotional health diagnosis. This population is expected to increase as vulnerable and older adults move into community-based treatment settings due to downsizing of State institutions, and the transfer of institutional funding to the community.

The Division of MH/DD/SAS indicates that each year almost 6% (about 380,000) of adults in North Carolina face serious mental health problems. The number of adults in North Carolina receiving publicly-funded community mental health services increased by 26% between 1999 and 2005. That Division has prioritized target populations who represent the

most severe types of disabilities to receive mental health services. Adults 65 and older with a serious mental illness are one of the targeted populations.

The 2005 Mental Health State Plan, *Blueprint for Change*, indicates that 2,000 (30.8%) of adults age 65+ reported some level of physical disability, while 12.6% reported a mental disability. The U. S. Department of Health and Human Services noted that older adults often do not recognize the need for or availability of mental health treatment. The lack of sufficient insurance coverage and inadequate screening result in a gross under utilization of mental health services.

The estimate of the prevalence of mental health problems among adults 65+ is believed to be much higher than the numbers reflect due to the lack of diagnosis and treatment and the comorbidity with other illness affecting many older adults. Of those 65 years of age and older, the estimate is that, 11.4% suffer anxiety; 6.4% have a cognitive impairment; and 4.4% experience depression and mood disorders. The estimated prevalence of heavy alcohol use varies between 3% and 25%. It is estimated that only about half of older adults who acknowledge mental health problems receive treatment from any health care provider. In addition, a new sub-population is emerging. Older adults with developmental disabilities are increasingly outliving their parents and are at risk for losing their primary support. The population of adults diagnosed with a developmental disability in North Carolina is estimated to be between 5,400 to 13,000.

In 2000 it was estimated that 20% of the U.S. population 65 years of age and older had a mental illness. For the same year, North Carolina's percentage was identical to the national percentage. The percentages for the U.S. and North Carolina are again estimated to increase at the same rate by 2030.

COMPARISON OF US AND NC POPULATIONS WITH A MENTAL ILLNESS DIAGNOSIS

	POPULATION 65+		ESTIMATED POPULATION 65+ WITH MENTAL ILLNESS DIAGNOSIS	
	US ¹	NC ²	US ³	NC ⁴
2000	35,061,000	969,112 (.03%)	7,000,000 (20%)	193,485 (20%)
2030	71,453,000	2,142,136 (.03%)	15,000,000 (21%)	449,695 (21%)

Source: ¹ US Census Bureau, ² N C State Data Center. ³ Jeste DV, et al (1999).

Consensus statement on the upcoming crisis in geriatric mental health: Research agenda for the next 2 decades. Archives of General Psychiatry 56:848-853.

⁴ NC DAAS estimates using the following formula:

$$(\text{Est. NC pop. 65+ with MI in 2000}) = \frac{(\text{Est. US pop. 65+ with MI in 2000}) \times (\text{NC pop. 65+ in 2000})}{(\text{US pop. 65+ in 2000})}$$

5. Increasing incidences of financial exploitation and violence against vulnerable and older adults.

For example, an 80 year old, recently widowed woman was befriended by a 40 year old neighbor, who told the widow her late husband asked him to take care of her when he died. She had always depended on her husband for emotional and physical support, and they had no children. During the next 2 years, the neighbor using deception and coercion, convinced the widow to build an addition to her home where he and his girlfriend lived. He convinced the widow to change her will, arranged to be her power of attorney, and transferred large sums of her cash into his personal accounts. Preying on the widow's motherly instincts, he convinced her to adopt him as her legal son. After being legally adopted he arranged to have the widow placed in a long term care facility after transferring more than \$500,000 of her assets into his name.

Crimes and financial exploitation against vulnerable and older adults are among the fastest growing in the country. Results from a National Abuse Incidence Study indicate financial abuse was found at higher rates among elders 60 to 70 years of age than among those 80+. The APS-R data indicates a total of 13% of the disabled adults reported to departments of social services were victims of exploitation during 2005-06. Ten percent (10%) of the total reports alleging exploitation involved exploitation of assets. Elderly victims may be reluctant to step forward to report this victimization, and unless they disclose this information or someone learns about it, the victimization may continue.

An article in Newsweek, *The Final Indignity*, by Susanna Schrosdorff, reports "as many as 5 million people are victims of financial exploitation every year". The article also asks the question, "With an enormous number of baby boomers heading for retirement, are we on the verge of an elder fraud epidemic?"

In 2005, the North Carolina General Assembly responded to the increasing victimization and exploitation of vulnerable and older adults by passing Session Law 2005-272 titled, An Act to Amend the Offense of Exploitation of an Elder or Disabled Adult and to Increase the Penalty for that Offense. This law is intended to provide increased protection for 'disabled adults' 18 years of age and older, and 'elder adults' who are defined as persons 60 years of age and older. The General Assembly also passed the Identity Theft Protection Act of 2005 which reduces the use of social security numbers and gives consumers the right to freeze their credit.

The concern about the lack of public awareness of abuse, neglect and exploitation of vulnerable and elder adults and the increasing incidence of abuse, neglect and exploitation of vulnerable and elder adults prompted bi-partisan sponsorship in the US Congress of the Elder Justice Act. Passage of this Act would:

- Establish an Office of Adult Protective Services within the US Department of Health & Human Services;
- Improve quality, quantity and accessibility of information on abuse, neglect and exploitation of elder adults;
- Develop forensic capacity for law enforcement and investigators to elevate elder crime to the same importance as crimes against women and children;
- Fund states' APS programs;
- Expand and enhance training about elder mistreatment, and
- Create model state laws and practices.

V. RESPONDING TO THE CHALLENGE:

A COMPREHENSIVE REVIEW OF NORTH CAROLINA'S APS PROGRAM

In March 2002, the Adult Services Section of the NC Division of Aging and Adult Services (Division) in collaboration with the NC Association of County Directors of Social Services (NCACDSS) conducted an APS needs assessment in 31 county departments of social services. The needs assessment was completed in August 2002. A balanced sample of quality and timeliness baseline data from rural and urban, and large and small counties was collected. The data reflected the strengths and weaknesses of North Carolina's Adult Protective Program.

North Carolina APS Task Force

In November 2002, an APS Task Force was convened by the Adult Services Section of the Division to address the critical needs identified from the assessment and develop recommendations to strengthen the quality and consistency of the APS service delivery system in all 100 counties of North Carolina. The Task Force which has continued its work, is made up of representatives from county departments of social services from across the state, and the Division. The Task Force began its efforts with development of a mission statement and goals.

Mission

To provide protection for vulnerable disabled and elder adults who have been abused, neglected, or exploited or at significant risk of harm. To ensure these adults are protected and their essential needs are met with utmost consideration given for their quality of life, utilizing a collaborative community and family-centered approach. County departments of social services, in partnership with the North Carolina Division of Aging and Adult Services, value and respect the individual's right to self determination and recognize the inherent value of all people as we carry out our mission.

Goals

- Strengthen APS service delivery across all 100 counties.
- Develop APS standards beyond current policies and procedures, including staffing and work load standards.
- Expand the Division's training for county APS staff to include a comprehensive program of basic, intermediate and advanced curricula.
- Develop a Quality Assurance System to ensure quality and accountability.
- Encourage and support improved interagency cooperation in APS.
- Seek legislative support/funding to strengthen APS.

An APS Clearinghouse Model: North Carolina's System of Protection

The culmination of collaboration between the APS Task Force and key stakeholders is a totally new system of protection for vulnerable and elder adults in North Carolina. After much discussion, extensive research of other states' APS laws and policies, and elder abuse literature, a new system of protection for adults in North Carolina, an Adult Protective Services Clearinghouse Model (CHM) was developed. The CHM will enhance county departments of social services capacity to respond to the needs of all abused, neglected or exploited adults. The Task Force and stakeholders are convinced North Carolina's APS Program must respond to all instances of mistreatment of adults, not just those adults currently defined in APS law as "disabled adults". The CHM accomplishes this by enabling county departments of social services to offer services voluntarily to new populations of adults abused, neglected and exploited or at substantial risk including: (1) vulnerable adults 18 years of age and older with physical or and mental impairments that limit at least two major life activities; (2) elder adults 60 years of age and older who do not have a physical or mental health incapacity; and (3) vulnerable and elder adults at substantial risk of abuse, neglect or exploitation.

Once the CHM was developed and new target populations identified, additional rights and protections were included in the recommended changes to the APS law in keeping with the basic tenets of APS: respect for all adults' freedom, dignity and autonomy; consideration of least restrictive alternatives; and an emphasis on a multifaceted array of protective services rather than problem-solving, symptom-based interventions. The proposed law:

- Redefines "protective services" as an array of activities including intake, screening, and evaluation of reports regarding abuse, neglect or exploitation or substantial risk of abuse, neglect, or exploitation of vulnerable or elder adults.
- Provides county departments of social services the opportunity to offer vulnerable and elder adults three components of protective services which may be as simple as APS Information and Referral or more comprehensive as APS Outreach or APS Intervention.
- Provides the opportunity to offer protective services to vulnerable and elder adults, with their consent, when they possess sufficient understanding or ability to consent to services, or make or communicate important decisions concerning their person, family or property.
- Provides the opportunity to offer protective services to vulnerable and elder adults at substantial risk when there is a reasonable probability they are at substantial risk of being abused, neglected or exploited.

The Task Force acknowledges the Governor's Advisory Council on Aging concern about identifying adults 60 years of age and older who do not have a physical or mental incapacity within the target population to receive and benefit from the Adult Protective Services CHM. The concern is that North Carolina's CHM identifies adults 60 years of age and older as a group. It is felt this identification devalues and labels this group of adults as being incapable of protecting themselves, and unable to take action on their own behalf. The Task Force acknowledges that many adults age 60 years of age and older without a physical or mental incapacity will not need protective services. On the other hand, there are adults age 60 years of age and older without a physical or mental incapacity who will need and can benefit from protective services. The new system of protection is designed so that NC citizens 60 years of age and older without a physical or mental incapacity will be afforded the same right to be free from abuse, neglect or exploitation as will be afforded to vulnerable adults and adults at substantial risk of abuse, neglect or exploitation.

What follows are recommendations, findings and fiscal implications to strengthen North Carolina's Adult Protective Services Program.

VI. CORE RECOMMENDATIONS and FINDINGS OF NORTH CAROLINA'S APS TASK FORCE

Core Recommendation 1:

Clarify and strengthen North Carolina General Statute 108A, Protection of the Abused, Neglected or Exploited Disabled Adult Act and North Carolina Administrative Code 10 NCAC 71A to support a broader system of protection for vulnerable and elder adults who have been abused, neglected, or exploited, or who are at substantial risk of abuse, neglect or exploitation.

1. Redefine 'protective services' as the provision of an array of activities to protect vulnerable and elder adults who have been abused, neglected, or exploited, or who are at substantial risk of abuse, neglect or exploitation.
2. County departments of social services must provide "protective services" to all vulnerable and elder adults in North Carolina who are abused, neglected, or exploited, or at substantial risk of abuse, neglect or exploitation. The new system of protection, "Adult Protective Services Clearinghouse Model" (CHM), is designed to accomplish this. The Adult Protective Services CHM is composed of three components:
 - **APS Information & Referral** will be provided to vulnerable and elder adults who require referral to public and private agencies and community resources. Information and referral services may be provided to a vulnerable or elder adult with the adult's consent if the adult is alleged to have been abused, neglected, exploited, or at substantial risk of abuse, neglect, or exploitation and does not need outreach services or intervention services.
 - **APS Outreach** will be provided to vulnerable and elder adults who have been or who are at substantial risk of being abused, neglected, or exploited, and need protective services other than information and referral services. APS Outreach is the planning, coordination, arrangement, mobilization, and management of essential services for vulnerable and elder adults. Outreach services may be provided to a vulnerable or elder adult with the adult's consent if the adult has been abused, neglected, or exploited or is at substantial risk of abuse, neglect, or exploitation.
 - **APS Intervention** will be provided to vulnerable adults who have been or who are at substantial risk of being abused, neglected, or exploited, and have no responsible caregiver or other responsible person willing and able to provide or arrange for the provision of

emergency or essential services. APS Intervention is the provision of emergency or essential services to vulnerable adults. Intervention services may be provided to a vulnerable adult with the adult's consent, or in the case of a vulnerable adult who lacks the ability to consent pursuant to a court order, if the adult is unable to obtain the services himself or herself, and has no able, willing, and responsible person who can obtain the services for him or her.

3. Change the focus of the provision of protective services from disabled adults to vulnerable and elder adults.
4. Base the definition of 'vulnerable adult' on the adult's functional strengths and limitations.
5. Recognize age 60 and older as a definition for elder adults who have been or who are at substantial risk of being abused, neglected or exploited.
6. Acknowledge APS as a voluntary intervention provided to vulnerable and elder adults, with adults' consent.
7. Broaden the definition of 'abuse' by: deleting the intentionality requirement from the definition in keeping with elder mistreatment literature; replace 'caretaker' with 'caregiver' in the definition of 'abuse'; and including 'persons who are in a significant social or family relationship with the vulnerable adult or elder adult' in the definition of 'caregiver'.
8. Refine the definition for 'essential services' to include those services that are necessary to safeguard the vulnerable adult's rights and resources.
9. Add 'substantial risk' to the definitions to support the provision of services to vulnerable and elder adults at risk of abuse, neglect or exploitation.
10. Anticipate approximately 432 additional APS reports per year by broadening the target population to include adults 60 years of age and older.

Findings to Support Core Recommendation 1:

1. The current APS Program is narrow in scope and only targets 'disabled adults'. G.S. 108A-101(d) defines a 'disabled adult' as "any person 18 years of age or over or any 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, mental or physical illness or continued consumption or absorption of substances."

This definition does not acknowledge the adult's functional strengths or limitations, and is based on a diagnosis. This leads to inconsistency in determining who meets the definition; and therefore, some disabled adults do not qualify to receive needed services.

2. The current APS statute supports involuntary intervention with disabled adults who meet the APS criteria. This narrow definition of APS does not enable county departments of social services to provide outreach services on a voluntary basis to all abused, neglected or exploited vulnerable and elder adults who have the capacity to consent to or refuse these services.
3. The current APS law provides strict filters that county departments of social services are mandated to apply when screening reports alleging a disabled adult has been abused, neglected or exploited and offers only two alternatives:
 - (1) screen-in the report for an involuntary evaluation, or
 - (2) screen-out the report if the criteria (disabled adult, abused, neglected or exploited, and currently in need of APS) are not met.

Under NC's current program, resources vary from one county department of social services to another. Some county departments of social services have resources to offer services to vulnerable adults who have been abused, neglected or exploited, but do not meet the APS criteria. Other county departments of social services do not have the resources outside of the mandates of APS. The narrow criteria creates inconsistency in the delivery of services to disabled adults across the state.

4. The current APS statute does not support the provision of services to disabled adults unless they have already been abused, neglected or exploited. This narrow interpretation does not acknowledge the increase in the numbers of vulnerable and elder adults at 'substantial risk' of abuse, neglect or exploitation.
5. The current APS statute does not include adults age 60 years of age or older as a target population to receive adult protective services.

Other states, such as Florida, Virginia, Illinois, Massachusetts, Louisiana, and Wisconsin use 60 years of age or older as benchmarks when defining "elders" in their Adult Protective Services laws. Elder mistreatment literature concludes advanced age may produce physical changes (and often illness) that make older adults less able to protect themselves and these changes, plus ageism (devaluing older adults increases an adult's risk of

mistreatment), can decrease an elder's feelings of self-determination and personal power, potentially putting them at risk of mistreatment. [Journal of Elder Abuse & Neglect, Vol.3(2) 1991]

Total Proposed Budget: \$15,212,202

(Includes \$300,000 per year to serve adults 60 years of age and older)

Core Recommendation 2:

Provide adequate funding for the 100 county departments of social services to hire additional staff to carry out the APS Clearinghouse Model: NC's System of Protection.

1. County departments of social services will require 8 additional FTE social work positions to carry out APS Intake and Screening.
2. County departments of social services will require 154 additional FTE social work positions to carry out APS Intervention.
3. County departments of social services will require 42 additional FTE social work positions to carry out APS Outreach.
4. County departments of social services will require 8 additional FTE social work positions to carry out APS Information & Referral.

Findings to Support Core Recommendation 2:

1. Currently the 100 county departments of social services have 150.96 FTEs to carry out the APS mandate:
 - 35.47 FTEs to carry out APS intake and screening; and
 - 115.49 to conduct APS evaluations and plan and mobilize services to protect disabled adults from abuse, neglect or exploitation.
2. During FY 2005-06 county departments of social services received 14,001 reports alleging abuse, neglect or exploitation of disabled adults, and of those, 6,667 for APS. The number of reports is expected to increase because the APS CHM broadens the target population to receive protective services to include vulnerable and elder adults who are abused, neglected or exploited or who are at substantial risk of abuse, neglect or exploitation.
3. The Social Services Block Grant (SSBG) is the primary funding source for APS. SSBG allocations to states have remained at the same level for many years and may be cut in 2007. As a result of SSBG funding remaining at the same level, county departments of social services have been unable to expand their APS Programs without cutting other programs funded with SSBG or using 100% county dollars. With competing priorities for county dollars at the local level, it has been difficult for DSSs to tap into this revenue.
4. In 2000, the General Assembly appropriated \$2,000,000 to be used by county departments of social services to fund additional APS positions. This appropriation was the first and only one specifically for the APS Program. While no county match is required, the allocation is not sufficient to fund APS positions in all 100 county

departments of social services. Currently 53 county departments of social services receive this funding.

<u>Proposed Budget:</u> \$13,992,000	<u>FTEs:</u> 212 positions
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Core Recommendation 3:

Provide adequate staff in the Division of Aging and Adult Services to support county departments of social services to carry out the APS Clearinghouse Model: NC’s System of Protection.

1. 5.0 FTEs will be needed in the Division to carry out the APS Clearinghouse Model. This includes developing policies and procedures for a pilot, developing assessment tools, developing and conducting intermediate and advanced training to strengthen the skills of APS staff to carry out their expanded duties to protect vulnerable and elder adults from abuse, neglect or exploitation; and providing consultation and technical assistance on the new APS law, the policies and procedures and social work practice.
2. .28 FTE of an attorney position will be needed in the Office of the NC Attorney General to provide legal consultation to Division staff.

Findings to Support Core Recommendation 3:

1. The current number of Division staff is not adequate to manage all the changes needed to implement the APS Clearinghouse Model. For example additional staff will be needed to manage a CHM demonstration pilot, develop competency-based training, implement a new APS statute; revise and implement administrative rules, and provide training, consultation, and technical assistance to support county departments of social services.
2. The Division currently has 1.75 FTE positions to implement APS the statutes; implement and revise (as needed) administrative rules, identify training needs, develop training curricula, provide training, consultation and technical assistance to 100 county departments of social services around APS statues, policies, and social work practice.

<u>Proposed Budget:</u> \$346,202	<u>FTEs:</u> 5.28 FTE positions
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Core Recommendation 4:

Establish a mandatory competency-based training and continuing education program for APS social workers and supervisors in county departments of social services.

APS Social Workers shall complete:

1. Standardized pre-service training prior to social workers assuming direct client contact responsibilities. The standardized training will have a scorable exam to indicate completion of the pre-service training.
3. A minimum of 66 hours of available training on APS intake, screening, evaluation, service provision, and social work practice on working with vulnerable and elder adults and their families. All training will be completed within 2 months of assuming direct client contact responsibilities.
4. A minimum of 18 hours of specialized intermediate and advanced training on the delivery of Adult Protective Services and work with vulnerable and elder adults and their families within 12 months of assuming direct client contact responsibilities.
5. A minimum of 24 hours of additional training annually for continuing education credit relevant to APS practice.

APS Supervisors shall complete:

1. Standardized APS supervisor orientation within 1 month of assuming direct APS supervisory responsibilities.
2. A minimum of 66 hours of available training on APS intake, screening, evaluation, service provision, and social work practice on working with adults and their families. All training shall be completed within 2 months of assuming direct supervisory responsibilities.
3. A minimum of 18 hours of specialized intermediate and advanced training in the delivery of APS and work with vulnerable and elder adults within 12 months of assuming supervisory responsibilities.
4. A minimum of 24 hours additional training annually for continuing education credit relevant to APS practice.

APS Intake and After-Hours staff shall complete a minimum of:

1. Available training on APS intake and screening procedures.
2. An APS home visit with a trained APS social worker or supervisor within 2 months of assuming intake or after-hours responsibilities.

Findings to Support Core Recommendation 4:

1. The current APS statute does not contain training requirements. Current APS training consists of a 5 day basic curriculum developed and taught by Division staff, and four specialized advanced training curricula for county department of social services staff who have completed the basic training curriculum. The training needs of county departments of social services APS staff continue to increase as they deal with increasingly difficult and complex issues of protecting vulnerable and elder adults.

Proposed Budget:

Costs to county departments of social services associated with attending training have been built into the total cost for county FTEs (See Core Recommendation #1.)

Core Recommendation 5:

Provide funding to county departments of social services for the provision of essential services for vulnerable adults who have been abused, neglected or exploited, or who are at substantial risk of abuse, neglect, or exploitation.

1. Funding is needed to pay for essential services to protect vulnerable adults who have been abused, neglected or exploited or who are at substantial risk of abuse, neglect or exploitation and are unable to pay for these services.

Findings to Support Core Recommendation 5:

1. The APS statute requires that essential services needed to protect vulnerable adults be provided at no cost to vulnerable adults if they are unable to pay.
2. The majority of vulnerable adults determined to need essential services are unable to pay.
3. Social Services Block Grant (SSBG) funds and all-county funds, in addition to public benefits when eligible, are being utilized to provide essential services. These funding sources are not adequate.

Proposed Budget \$513,000

Core Recommendation 6:

Establish a caseload standard based on an in-depth job analysis of the time and tasks associated with implementation of the APS Clearinghouse Model: NC's System of Protection.

1. Adult Protective Services social workers will be assigned no more than 12 concurrent APS cases.
2. Workers with less than full time responsibility for Adult Protective Services will be assigned fewer than 12 APS cases commensurate with the percentage of time assigned to APS.
3. The Adult Protective Services supervisor/worker ratio will not exceed an average of one FTE supervisory position to five APS social work positions.

Findings to Support Core Recommendation 6:

1. The current APS statute does not contain caseload requirements. The recommended caseload size of 1:25 ratio is more than 20 years old. It does not reflect the:
 - Anticipated increases in the numbers of vulnerable and elder adults in North Carolina who may be abused, neglected and exploited, or at substantial risk of abuse, neglect or exploitation; or
 - Complexity involved and specialization needed when intervening with vulnerable and elder adults who are mistreated.

Proposed Budget:

Costs associated with standards for caseload size and supervisor/worker ratio are built into the costs for county staff FTEs (See Recommendation #2).

Core Recommendation 7:

Enhance technology and data collection systems to strengthen accountability and support implementation of an APS Clearinghouse Model pilot and statewide implementation.

1. Enhance the current system of statistical and demographic data collection to reflect the additional data elements that will be needed to support the APS Clearinghouse Model pilot and statewide implementation.

Findings to Support Core Recommendation 7:

1. The data collection tool (DSS 5026) for reporting to the APS Register will need to be revised to capture the new data elements in the APS Register.
2. The current APS Register does not have the capability to collect statistical and demographic information needed for the APS Clearinghouse Model.

Proposed Budget:

Costs associated with enhancement of the APS Register can be covered under the current budget. No additional funding required.

Core Recommendation 8:

Develop and implement a statewide public awareness and education campaign to raise community understanding about the abuse, neglect and exploitation of vulnerable and elder adults.

1. Develop printed materials, such as, brochures, news print, videos, public service announcements, or web sites for public consumption.
2. Encourage local public awareness with community partners and outreach to the public regarding the problems of elder abuse.
3. Encourage local public awareness about county departments of social services' mandate to protect all vulnerable and elder adults who have been abused, neglected or exploited or who are at substantial risk of abuse, neglect or exploitation.

Findings to Support Core Recommendation 8:

1. The general public often does not understand the phenomena of adult abuse or have knowledge about the issues and problems associated with abuse, neglect or exploitation of vulnerable and elder adults. APS research indicates that only 1 in 14 instances of mistreatment are actually reported.
2. Increased public awareness is needed to address issues of under-reporting and to more proactively assure mistreated vulnerable and elder adults are protected.
3. Adult Protective Services is not a priority for local, state and federal funding.
4. A public awareness campaign will require funding.

Proposed Budget: \$61,000

Core Recommendation 9

Design and implement a time limited CHM pilot.

1. Design and implement a time limited pilot for twelve months.
2. Provide funding for staff in county departments of social services to carry out the CHM pilot based on workload standards described in Recommendation 6.
3. Provide funding for 3 of the 5 staff positions needed in the Division of Aging and Adult Services to plan and carry out the CHM pilot.

Findings to Support Core Recommendation 9:

1. The APS Clearinghouse Model is a new and more comprehensive system of protection for vulnerable and elder adults who are abused, neglect or exploited or who are at substantial risk of abuse, neglect or exploitation.
2. A pilot will be needed to document findings and effectiveness of the APS CHM.
3. No funding is currently available to support a pilot of the APS CHM.

<p>Total Proposed Pilot Budget: \$1,822,085</p> <p>\$1,617,308 County Staff \$ 179,027 Division Staff \$ 18,000 Public Awareness \$ 6,750 Essential Services</p>	<p>Total FTEs: 27.103</p> <p>24.103 County Staff 3.0 Division Staff</p>
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ATTACHMENTS

List of Stakeholders

Adult Protective Services Task Force Membership

Adult Protective Services Work Group/Sub Work Group Membership

Draft of North Carolina General Statute 108A Proposed Changes

Adult Protective Services Clearinghouse Model

Key Stakeholders

State Government

NC Division of Social Services
NC Division of Facility Services
NC Division of Medical Assistance
NC Division of MH/DD/SAS
NC Division of Public Health
NC Division of Services for the Blind
NC Division of Services for the Deaf
and Hard of Hearing
NC Division of Vocational
Rehabilitation
Office of Economic Opportunity

County Government

NC Association of County Directors of
Social Services
NC Adult Services Committee
NC Association of County
Commissioners
NC Association of County Boards of
Social Services
NC Association of Area Agencies on
Aging
NC LTC Ombudsman Program
NC Council of Community Programs
NC Association of Local Health
Directors

Legal

NC Office of the Attorney General
NC Institute of Government
NC Bar Association, Elder Law
Section
NC Association of County Department
of Social Services Attorneys
Wake Forest School of Law, Elder
Law Clinic
Carolina Legal Assistance
Administrative Office of the Courts
NC Association of Clerks of Superior
Court
North Carolina Association of District
Court Judges

Advocacy/Support Organizations

NC Adult Protective Services
Association
NC Senior Tar Heel Legislature
NC Coalition on Aging
NC Association on Aging
Governor's Advisory Council on Aging
Friends of Residents in Long Term
Care
NC Association of LTC Facilities
NC Health Care Facilities Association
NC Assisted Living Association
Family Care Facilities Association
NC Adult Foster Care Association
Coalition for Continuity of Care in
Geriatric Communities
NC Adult Services Association
Orange County Coalition of Elder
Abuse
NC Adult Day Services Association
NC Association of Non-Profit Homes
for the Aging
Association of Home & Hospice Care
of NC
Alzheimers Association – Western and
Eastern Chapters
NC Council for Developmental
Disabilities
NC Public Health Association
NC Senior Citizens Association
The Carolina Centers for Hospice and
End of Life Care
NC Guardianship Association
Association of NC Boards of Health
NC-AARP
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North Carolina General Statute 108A Proposed Changes

Chapter 108A, Article 6. **Protection of Vulnerable and Elder Adults**

108A-99. Short Title. - This Article may be cited as the “Protection of Abused, Neglected, or Exploited Vulnerable and Elder Adults Act.”

~~108A-99.~~ ~~Short Title.~~

G.S. 108A-100. Legislative intent and purpose.

Determined to protect the increasing number of vulnerable and elder adults in North Carolina who are abused, neglected, exploited, or at substantial risk of being abused, neglected, or exploited, the General Assembly enacts this Article to provide protective services for such persons consistent with their right to personal autonomy and self-determination.

~~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.~~

108A-101. Definitions.

(a) “Abuse” means the infliction or threat of infliction of physical pain, injury or mental anguish; unreasonable confinement or deprivation of services that are necessary to maintain the vulnerable or elder adult’s mental and physical health by a caregiver or by a person who has a significant personal, family, or social relationship with the adult.

~~(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) “Caregiver” means a person or entity that is providing, or is responsible for providing, care for a vulnerable or elder adult by virtue of a personal, social, or family relationship with the adult or by contract, agreement, or operation of law.

“Caregiver” includes, but is not limited to, guardians, health care agents, and attorneys-in-fact. “Caregiver” also includes, but is not limited to, nursing homes, adult care homes, home health agencies, adult day services, and their employees or agents. “Caregiver” does not include acute care hospitals, emergency services personnel, or other persons, agencies, or

entities that provide only emergency or acute care to a vulnerable or elder adult.

- ~~(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) "Consent" means that a vulnerable or elder adult possesses sufficient understanding or ability to consent to protective services or make or communicate important decisions concerning his or her person, family, or property; or consent given on behalf of a vulnerable or elder adult by a lawfully authorized person or entity. The director may determine a vulnerable or elder adult's ability to consent based on observations, medical or mental health assessment, the risk and benefits, or other available information.
- ~~(c) The word "director" shall mean the director of the county department of social services or his representative in the county in which the person resides or is present.~~
- (d) "County social services department" means a county social services department that administers public assistance and social services programs under this Chapter or a consolidated human services agency established pursuant to G.S. 153B-77(b)(3).
- ~~(d)~~
- (e) "Director" means the director of a county social services department or the director's representative as authorized in G.S. 108A-14.
- (e) .
- (f) "Elder adult" means an individual who is 60 years of age or older and who is present in the State.
- ~~(f)~~ .
- (g) "Emergency services" means essential services that are necessary to protect a vulnerable adult from death or, serious, and irreparable physical or mental harm and are provided pursuant to a court order entered pursuant to G.S. 108A-112.
- ~~(g)~~

(h) “Essential services” means services that are necessary to protect a vulnerable or elder adult’s rights and resources and ensure his or her health, safety, and well-being. “Essential services” include, but are not limited to, social, medical, psychiatric, psychological, and legal services; in-home services; adult placement services; assistance in obtaining adequate food, clothing, shelter, and health care; protection from health and safety hazards; protection from physical mistreatment; and protection from exploitation.

~~(h)~~

(i) “Exploitation” means (1) the illegal or improper use of a vulnerable or elder adult or his resources for another’s profit or advantage; (2) the transfer, acquisition, conversion, or theft of a vulnerable or elder adult’s money, property, or resources by any person or entity, including, but not limited to, a guardian, attorney-in-fact, or other individual with legal or fiduciary authority; or (3) causing or requiring a vulnerable or elder adult to engage in any activity, including sexual behavior, or labor that is improper or illegal or refused by the vulnerable or elder adult. “Exploitation” includes, but is not limited to, forging checks; obtaining or attempting to obtain a vulnerable or elder adult’s money, property, or resources through misrepresentation, deception, fraud, coercion, intimidation, force, or threat of force; concealing or retaining possession of a vulnerable or elder adult’s money, property, or resources without authority or just cause to do so; and using undue influence, coercion, deceit, or misrepresentation to induce a vulnerable or elder adult to execute a contract, deed, will, or other legal document affecting the adult’s money, property, or resources.

~~(i)~~

(j) “Lacks the ability to consent” means that a vulnerable or elder adult lacks sufficient understanding or ability to consent to protective services or to make or communicate important decisions concerning his or her person, family, or property. The court shall make the determination following procedures in G. S. 108A-111, 112, 113, or 114. A decision to refuse protective services cannot be the sole evidence for finding the vulnerable or elder adult lacks the ability to consent. The vulnerable or elder adult may be determined to lack the ability to consent due to coercion, duress, fear of reprisal, undue influence or dependency.

~~(j)~~

- (k) “Major life activities” means “major life activities” as defined in G.S. 168A-3(7a)b.; activities of daily living (ADLs), such as bathing and feeding oneself, going to the toilet, dressing and grooming oneself, taking medication, walking (independently or with assistance), using a wheelchair, getting in and out of one’s bed, bathtub, vehicle, etc., and other activities related to self-care; and instrumental activities of daily living (IADLs), such as cooking, shopping, using a telephone, doing housework, driving, managing finances, etc.

~~(k)~~

- (l) “Neglect” means (1) a caregiver’s failure or refusal to provide or obtain adequate food, clothing, shelter, health care, or other essential services necessary to ensure a vulnerable or elder adult’s health, safety, or welfare; (2) the abandonment or desertion of a vulnerable or elder adult by a caregiver; (3) a vulnerable or elder adult’s inability, failure, or refusal to provide himself or herself, or make arrangements to provide himself or herself, with adequate food, clothing, shelter, health care, or other essential services necessary to ensure his or her health, safety, or welfare; or (4) other acts or behaviors by a vulnerable or elder adult that jeopardize his or her health, safety, or welfare.

~~(l)~~

- (m) “Obstruct or interfere” means obstructing or interfering with an adult protective services evaluation conducted pursuant to this Article or the provision of protective services pursuant to this Article by a person or entity other than the vulnerable or elder adult who is the subject of the evaluation or the recipient of protective services. Obstructing or interfering includes, but is not limited to, refusing to allow the director to enter the premises where the vulnerable or elder adult is located if the vulnerable or elder adult has consented to the evaluation or protective services, or lacks the ability to consent; refusing to allow the director to interview the vulnerable or elder adult if the vulnerable or elder adult has consented to the evaluation or protective services or lacks the ability to consent; refusing to release confidential or privileged information or records concerning the vulnerable or elder adult if the vulnerable or elder adult has consented to the release of the information or records or lacks the ability to consent; obstructing or interfering with the examination or evaluation of the vulnerable or elder

adult by a physician or other health care provider or expert if the vulnerable or elder adult has consented to the evaluation or protective services or lacks the ability to consent; refusing to disclose the whereabouts of a vulnerable or elder adult; refusing to provide information or records to the director as required by G.S. 108A-104; or any other conduct that obstructs or interferes with the director's ability to conduct an evaluation or provide protective services pursuant to this Article. Obstruct or interfere also means the refusal of a vulnerable adult who lacks the ability to consent to allow the director to enter the adult's home, to interview the adult, to take photographs of the adult or the adult's home, to obtain confidential or privileged information or records concerning the adult, or to cooperate in connection with the examination or evaluation of the adult by a physician or other health care provider or expert.

- ~~(m)~~ (n) "Physical or mental impairment" means a physical or mental impairment as defined in G.S. 168A-3(7a)a. or a physical or mental impairment resulting from alcohol or substance abuse.
- ~~(n)~~
- (o) "Protective services" means services to protect vulnerable or elder adults from abuse, neglect, or exploitation. "Protective services" include the intake, screening, and evaluation of reports regarding the abuse, neglect, or exploitation of vulnerable or elder adults pursuant to this Article; information and referral services; outreach services; and intervention services.
- (1) "Information and referral services" mean the provision of information to vulnerable and elder adults and the referral of vulnerable and elder adults to public and private human services agencies and community resources pursuant to this Article. Information and referral services may be provided to a vulnerable or elder adult with the adult's consent if the adult has been alleged to have been abused, neglected, exploited, or at substantial risk of abuse, neglect, or exploitation and does not need outreach services or intervention services.
- (2) "Outreach services" means the planning, coordination, arrangement, mobilization, and management of essential services for vulnerable and elder adults pursuant to this Article. Outreach services may be provided to a vulnerable or elder adult with the adult's consent if the adult has been abused, neglected, or exploited or is at substantial risk of abuse, neglect, or exploitation.

- (3) “Intervention services” means the provision of emergency or essential services to vulnerable adults pursuant to this Article. Intervention services may be provided to a vulnerable adult with the adult’s consent, or in the case of a vulnerable adult who lacks the ability to consent pursuant to a court order entered under G.S. 108A-111, 112, or 113, if the adult has been abused, neglected, exploited, or at substantial risk of abuse, neglect, or exploitation, is unable to obtain the services himself or herself, and has no able, willing, and responsible person who can obtain the services for him or her.
- (p) “Substantial risk” means a reasonable probability that a vulnerable or elder adult will be abused, neglected, or exploited unless protective services are provided.
- (q) “Vulnerable adult” means a person who (1) is 18 years of age or older or a lawfully emancipated minor, (2) is present in this State, and (3) has a physical or mental impairment that substantially limits at least two major life activities.

G.S. 108A-102. Responsibility for adult protective services.

Each county department of social services shall provide, under the supervision of the Department of Health and Human Services and pursuant to this Article, protective services for vulnerable or elder adults who have been, or are at substantial risk of being, abused, neglected, or exploited.

G.S. 108A-103. Reporting abuse, neglect, or exploitation of vulnerable or elder adults.

- (a) Any person having reasonable cause to believe that a vulnerable or elder adult has been, or is at substantial risk of being, abused, neglected, or exploited shall report such information to the director in the county in which the adult resides or is present.
- (b) The report may be made orally or in writing. The person making the report shall provide, to the extent known to the person who made the report, the vulnerable or elder adult’s name, age, address, physical or mental condition, and location; the caregiver’s name and address; the name and address of the person believed to be responsible for the abuse, neglect, or exploitation; information regarding the nature and extent of the suspected abuse, neglect, or exploitation and the injury or

damage resulting there from; and other pertinent information requested by the director.

G.S. 108A-104. Evaluation of reports of abuse, neglect, or exploitation of vulnerable or elder adults.

- (a) The director shall evaluate all reports alleging that a vulnerable or elder adult has been, or is at substantial risk of being, abused, neglected, or exploited.
- (b) The director shall initiate evaluations:
 - (1) Immediately upon receipt of a report if the report alleges a danger of death.
 - (2) Within 24 hours from receipt of a report if the report alleges a danger of serious and irreparable harm.
 - (3) Within 72 hours from receipt of a report if the report does not allege a danger of death or serious, and irreparable harm.
- (c) Unless the person making the report otherwise requests, the director shall notify the person making the report whether the director has accepted the report for evaluation.
- (d) The evaluation shall determine whether the vulnerable or elder adult who is the subject of a report (1) has been, or is at substantial risk of being, abused, neglected, or exploited; (2) needs protective services (and, if so, what type of protective services); (3) lacks the ability to consent; and (4) has anyone willing, able, and responsible who can provide or arrange for the provision of essential services.
- (e) Except as otherwise provided herein, the evaluation shall include a home visit to, and private interview with, the vulnerable or elder adult. A home visit and interview are not required if the information provided to the director indicates that the adult is not at substantial risk of abuse, neglect, or exploitation. Unless the director reasonably believes that a vulnerable or elder adult lacks the ability to consent and may be under undue influence, fear of reprisal, coercion, duress from others, or dependency, the director shall honor a vulnerable or elder adult's refusal to be visited or interviewed or the adult's request that others be present during the interview or evaluation.

- (f) In conducting an evaluation, the director may interview the vulnerable or elder adult's caregiver, neighbors, family, friends, or others; take photographs of the vulnerable or elder adult and the adult's residence with the adult's consent; make arrangements for the physical or mental evaluation of the vulnerable or elder adult with the adult's consent; obtain nonconfidential information and records; and obtain confidential or privileged information and records regarding the vulnerable or elder adult from health care providers, financial institutions, or others with the adult's consent; and take any other action that the director deems necessary to conduct a thorough evaluation.
- (g) If any person or entity, other than the vulnerable or elder adult who is the subject of the evaluation, obstructs or interferes with the director's evaluation, the director may obtain a court order pursuant to G.S. 108A-114.
- (h) If a vulnerable adult who lacks the ability to consent obstructs or interferes with the director's evaluation, the director may obtain a court order pursuant to G.S. 108A-114.
- (i) The director may contract with a public agency or qualified private health care provider to provide immediate and accessible physical and mental evaluations of vulnerable and elder adults under subsection (f).
- (j) Upon the director's request, local health departments, hospitals, area mental health authorities and local management entities, and other public or private health care or human services providers shall cooperate with the director in the director's evaluation of reports of abuse, neglect, or exploitation of vulnerable or elder adults and the provision of protective services pursuant to this Article.
- (k) The director shall complete evaluations of reports alleging the abuse or neglect of vulnerable or elder adults within 30 days and complete evaluations of reports regarding the exploitation of vulnerable or elder adults within 45 days.
- (l) After completing an evaluation, the director shall document in the adult's protective services case record the director's findings and determinations with respect to whether the vulnerable or elder adult was, or is at substantial risk of being, abused, neglected, or exploited; whether the adult needs protective services; what protective services are needed; what protective services have been and will be provided; and whether the elderly or vulnerable adult lacks the ability to consent.
- (m) Upon completion of an evaluation, the director shall provide written notice to the individual who made the report unless the person who made the report has waived notice. The notice shall indicate whether the director is, or will be, providing protective

services to the vulnerable or elder adult and whether the director has referred the case to law enforcement officials or the district attorney pursuant to G.S. 108A-105 or to a licensing agency pursuant to G.S. 108A-106.

G.S. 108A-105. Referral to law enforcement.

The director shall adopt, in consultation with the district attorney and appropriate law enforcement officials, written procedures governing the referral of cases involving the abuse, neglect, or exploitation of vulnerable or elder adults to the district attorney or law enforcement officials. The director shall refer cases involving abuse, neglect, or exploitation of vulnerable or elder adults to the district attorney or appropriate law enforcement officials in accordance with these procedures and, upon request, shall provide the district attorney or law enforcement officials with any information, including the identity of the person who made the report, that may be relevant and necessary to the investigation or prosecution of a criminal proceeding involving the abuse, neglect, or exploitation of a vulnerable or elder adult.

G.S. 108A-106. Referral to licensing agencies.

The Department of Health and Human Services shall adopt, in consultation with appropriate licensing agencies, written procedures governing the referral of cases involving the abuse, neglect, or exploitation of vulnerable or elder adults to appropriate licensing agencies. The director shall refer cases involving the abuse, neglect, or exploitation of vulnerable or elder adults to appropriate licensing agencies in accordance with these procedures and, upon request, shall provide a licensing agency with any information, including the identity of the person who made the report, that may be relevant and necessary to the licensing agency's investigation or administrative proceedings involving the abuse, neglect, or exploitation of a vulnerable or elder adult.

G.S. 108A-107. Adult protective services register.

- (a) The Department of Health and Human Services shall maintain an adult protective services register in accordance with rules adopted by the Social Services Commission.
- (b) The director shall submit information regarding adult protective services cases to the Department in accordance with rules adopted by the Social Services Commission.
- (c) Information in the adult protective services register may be used or disclosed only in accordance with rules adopted by the Social Services Commission.

G.S. 108A-108. Provision of protective services: information and referral.

If the director determines that a vulnerable or elder adult needs information and referral services, the director shall provide information and referral services to the vulnerable or elder adult with the adult's consent.

G.S. 108A-109. Provision of protective services: outreach.

If the director determines that a vulnerable or elder adult (1) has been abused, neglected, or exploited or is at substantial risk of abuse, neglect, or exploitation, and (2) needs protective services other than information and referral services, the director shall provide outreach services to the vulnerable or elder adult with the adult's consent.

G.S. 108A-110. Provision of protective services: intervention.

If the director determines that a vulnerable adult (1) has been, or is at substantial risk of being, abused, neglected, or exploited, (2) needs emergency or essential services, and (3) is unable to obtain essential services and has no responsible caregiver or other responsible person who is able and willing to provide or arrange for the provision of emergency or essential services, the director shall provide or arrange for the provision of emergency or essential services with the adult's consent, or in the case of an adult who lacks the ability to consent, pursuant to a court order entered pursuant to G.S. 108A-111, 112, or 113.

G.S. 108A-111. Protective services: involuntary intervention.

- (a) If the director determines that a vulnerable adult (1) has been, or is at substantial risk of being, abused, neglected, or exploited; (2) needs emergency or essential services; (3) is

unable to obtain essential services and has no responsible caregiver or other responsible person who is able and willing to provide or arrange for the provision of emergency or essential services; and (4) lacks the ability to consent, the director may file a special proceeding in the district court pursuant to this section.

- (b) Venue for a special proceeding pursuant to this section is in the county in which the vulnerable adult resides or is present.
- (c) The petition shall name the vulnerable adult as the respondent, be verified, and allege specific facts sufficient to show that the vulnerable adult (1) has been, or is at substantial risk of being, abused, neglected, or exploited; (2) needs emergency or essential services; (3) is unable to obtain essential services and has no responsible caregiver or other responsible person who is able and willing to provide or arrange for the provision of emergency or essential services; and (4) lacks the ability to consent. The petition also must set forth the nature and extent of the emergency or essential services that the director deems necessary. The petition may include a verified motion seeking an ex parte order authorizing the provision of emergency services pursuant to G.S. 108A-112.
- (d) A copy of the petition and summons must be promptly served on the vulnerable adult and any next of kin known to the director, and, in cases involving abuse, neglect, or exploitation by a caregiver, on the vulnerable adult's caregiver, pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. A sheriff who serves the notice and summons shall do so without demanding fees in advance.
- (e) Upon the filing of a petition under this section, the clerk of superior court shall appoint an attorney to represent the vulnerable adult in the proceeding pursuant to G.S. 7A-451(a)(11) and rules adopted by the Office of Indigent Defense Services. Notwithstanding G.S. 7A-450 and G.S. 7A-451, a vulnerable adult who is the respondent in an adult protective services proceeding shall be deemed indigent for the purpose of appointment of counsel. If the court subsequently determines that the vulnerable adult is not indigent or is partially indigent, the court may enter an order pursuant to G.S. 7A-455 requiring the vulnerable adult to pay some or all of the value of the legal services rendered by court-appointed counsel. The court shall dismiss the court-appointed attorney if the vulnerable adult retains legal counsel. The court may appoint a guardian ad litem for the vulnerable adult pursuant to G.S. 1A-1, Rule 17, if the court determines that the appointment of a guardian ad litem is necessary and appropriate.
- (f) The court shall hold a hearing and enter an order authorizing or denying the provision of essential services without the

vulnerable adult's consent within 14 days after the petition is filed. The vulnerable adult must receive at least five days' notice of the hearing.

- (g) The court may enter an order authorizing the provision of essential services if it finds that the vulnerable adult (1) has been, or is at substantial risk of being, abused, neglected, or exploited; (2) needs essential services; (3) is unable to obtain essential services and has no responsible caregiver or other responsible person who is able and willing to provide or arrange for the provision of essential services; and (4) lacks the ability to consent. If the court authorizes the director to provide or arrange for the provision of essential services, the order shall state the nature, extent, and duration of the essential services that may be provided and designate the individual, agency, or organization that will be responsible for arranging, providing, or obtaining essential services or consenting to the provision of essential services for the vulnerable adult. The court may not order that essential services be provided for a period in excess of 90 days. The court may not appoint a guardian for the vulnerable adult or commit the vulnerable adult to a mental health facility under this Article. The court, however, may order the director to file a proceeding pursuant to Chapter 35A if it finds that the vulnerable adult may be incompetent and may need a guardian.
- (h) If the court enters an order authorizing essential services, the vulnerable adult [, or] the vulnerable adult's attorney or guardian ad litem [, or the adult's caregiver or next of kin, if any,] may file a motion in the cause requesting that the order be modified or dissolved.
- (i) A finding by the court that a vulnerable adult lacks the ability to consent is inadmissible in a guardianship proceeding under Chapter 35A, in involuntary commitment proceedings under Chapter 122C, or in any other legal proceeding. A judicial determination regarding a vulnerable adult's capacity made in a guardianship proceeding under Chapter 35A or in an involuntary commitment proceeding under Chapter 122C does not have conclusive effect on the issue of the vulnerable adult's ability to consent in an adult protective services proceeding under this Article.

G.S. 108A-112. Protective services: involuntary emergency services.

- (a) The director may, by filing a verified motion in an adult protective services proceeding pursuant to G.S. 108A-111 or as part of the petition in an adult protective services proceeding

- pursuant to G.S. 108A-111, request the court to authorize the provision of emergency services to a vulnerable adult.
- (b) The court may enter an order authorizing the provision of emergency services if it finds that there is reasonable cause to believe that the vulnerable adult (1) has been, or is at substantial risk of being, abused, neglected, or exploited; (2) needs emergency services; (3) is unable to obtain emergency services and has no responsible caregiver or other responsible person who is able and willing to provide or arrange for the provision of emergency services; (4) lacks the ability to consent; and (5) will suffer death or serious, and irreparable physical or mental harm if emergency services are not provided.
 - (c) A copy of a verified motion, or the petition and summons, and notice of hearing shall be served promptly on the vulnerable adult, the vulnerable adult's attorney, the vulnerable adult's next of kin, if any, and in cases involving abuse or neglect by a caregiver, on the vulnerable adult's caregiver, at least 24 hours before the hearing on the director's request for authorization to provide emergency services. The court, however, may issue an ex parte order authorizing emergency services if it determines that the conditions specified in subsection (b) exist and that the vulnerable adult may suffer death or serious and irreparable harm unless an ex parte order is entered.
 - (d) If the court issues an order authorizing emergency services, ex parte or otherwise, the vulnerable adult or the vulnerable adult's attorney, or the vulnerable adult's caregiver or next of kin may file a motion to modify or dissolve the order and the district court shall hear and make a decision on the motion as soon as possible after it has been served on the director and other parties.
 - (e) Unless previously dissolved by the court, an order authorizing emergency services shall remain in effect until the court enters an order authorizing or denying the provision of emergency or essential services under G.S. 108A-111.
 - (f) An order authorizing emergency or essential services under this section or under G.S. 108A-111 may authorize the director or other public officials, including law enforcement officials, to enter the premises in which a vulnerable adult is located in order to take physical custody of the vulnerable adult; to consent to necessary medical treatment of the vulnerable adult; to place the vulnerable adult in an appropriate health care facility or other custodial arrangement; or to take other actions necessary to protect the vulnerable adult from death or serious physical or mental injury.
 - (g) An order under this section may be issued by telephone if other means of communication are impractical. Any written order

pursuant to telephonic communication shall bear the name and title of the person communicating by telephone, the signature and title of the official entering the order, and the hour and date of the authorization.

- (h) A chief district court judge may enter an administrative order authorizing the director to file a petition or petition and motion requesting emergency services pursuant to this section in the magistrate's office if the clerk of superior court's office is closed and there is an emergency situation requiring the prompt issuance of an order authorizing emergency services. A chief district court judge may enter an administrative order authorizing a magistrate to issue an order authorizing emergency services pursuant to this section if no district court judge is readily available to issue the order and there is an emergency situation requiring the prompt issuance of an order authorizing emergency services. Any petition filed or order issued under this subsection shall be filed in the clerk's office as soon as that office is open for business.

G.S. 108A-113. Protective services: special proceeding to enjoin financial exploitation.

- (a) If the director determines that a vulnerable or elder adult has been, or is at substantial risk of being, exploited, and (1) the vulnerable or elder adult consents, or (2) the director determines that the adult is a vulnerable adult who lacks the ability to consent, and has no responsible caregiver or other responsible person who is able and willing to act on behalf of the adult, the director may file a petition in district court naming any person or financial institution that has or may have property or financial assets belonging to the adult as respondent and requesting an order enjoining the respondent from using, converting, selling, transferring, spending, or withdrawing the adult's financial assets or property without prior order of the court.
- (b) Venue for special proceedings under this section shall be in the county in which the respondent resides or does business or in the county in which the adult's property or financial assets are located.
- (c) The petition shall be verified and include a concise statement of the basis for the director's determination regarding financial exploitation and a description of the adult's property or financial assets.
- (d) The court shall hold a hearing and make a determination with respect to the director's petition within 5 days of service of the petition and summons on the respondent.
- (e) The court may issue a temporary restraining order pursuant to G.S. 1A-1, Rule 65, or an injunction against the respondent if

the court finds that the vulnerable or elder adult has been or is at substantial risk of being exploited; that the adult has consented to the proceeding or lacks the ability to consent; that the respondent has property or financial assets belonging to the adult; and that an injunction prohibiting the use, conversion, sale, transfer, etc. of the adult's financial assets or property without prior order of the court is necessary to protect the adult or the adult's property.

G.S. 108A-114. Orders to enjoin interference with evaluation or provision of protective services.

- (a) If any person or entity, including, but not limited to, a vulnerable or elder adult's caregiver or a vulnerable adult who lacks the ability to consent, obstructs or interferes with the director's evaluation pursuant to G.S. 108A-103 or with the provision of protective services pursuant to this Article, the director may file a petition in district court naming that person or entity as respondent and requesting an order enjoining the respondent from obstructing or interfering with the director's evaluation or with the provision of protective services or granting any other relief that is necessary to allow the director to conduct an evaluation or provide protective services pursuant to this Article.
- (b) Venue for special proceedings under this section shall be in the county in which the respondent resides or does business or in the county in which the obstruction or interference occurred.
- (c) The petition shall be verified and include a concise statement of the basis for the evaluation or the authority under which protective services are provided, specifically describe the conduct that is alleged to constitute obstruction or interference with the evaluation or provision of protective services, and specify the relief sought.
- (d) The petition and summons shall be served promptly on the respondent.
- (e) The court shall hold a hearing and make a determination with respect to the director's petition within 5 days of service of the petition and summons on the respondent.
- (f) The court may issue a temporary restraining order pursuant to G.S. 1A-1, Rule 65, or an injunction against the respondent if the court finds that the respondent has unlawfully and without just cause obstructed or interfered with an evaluation or the provision of protective services pursuant to this Article.
- (g) No order shall be granted under this section unless the court finds that the respondent has unlawfully and without just cause obstructed or interfered with an evaluation or the provision of protective services pursuant to this Article and that the relief

granted is necessary to enable the director to protect the vulnerable or elder adult.

- (h) An order under this section may authorize the director or other public officials, including law enforcement officials, to enter the premises where a vulnerable adult is located in order to conduct a home visit or to interview or take physical custody of a vulnerable adult.

- (i) An order under this section may be issued by telephone if other means of communication are impractical. Any written order pursuant to telephonic communication shall bear the name and title of the person communicating by telephone, the signature and title of the official entering the order, and the hour and date of the authorization.
- (j) A chief district court judge may enter an administrative order authorizing the director to file a petition under this section in the magistrate's office if the clerk of superior court's office is closed and there is an emergency situation requiring the prompt issuance of an order enjoining interference with an evaluation or the provision of protective services. A chief district court judge may enter an administrative order authorizing a magistrate to issue an order enjoining interference with an evaluation or the provision of protective services pursuant to this section if no district court judge is readily available to issue the order and there is an emergency situation requiring the prompt issuance of an order enjoining interference with an evaluation or the provision of protective services. Any petition filed or order issued under this subsection shall be filed in the clerk's office as soon as that office is open for business.

G.S. 108A-115. Payment for emergency and essential services.

- (a) A vulnerable adult who receives emergency or essential services pursuant to this Article is responsible for paying the cost of those services if he or she has the financial ability to pay for those services, as determined under rules established by the Social Services Commission, and is not eligible to receive the services without charge under available federal or state programs.
- (b) If a vulnerable adult is not financially able to pay for emergency or essential services under the rules established by the Social Services Commission and is not eligible to receive the services without charge under available federal or state programs, the county is responsible for paying the cost of the emergency or essential services when provided under Adult Protective Services Intervention.
- (c) Vulnerable adults who are receiving protective services pursuant to this Article shall be given priority for county, state, or federally funded services offered by the county.

G.S. 108A-116. Funding for protective services.

- (a) Counties may use available federal, state, and county funding for the provision of protective services under this Article.
- (b) Any funds appropriated by counties for home health care, adult care 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 vulnerable or elder adults in need of protective services. The state shall reimburse fifty percent of any county funds expended on the required provision of protective services for eligible vulnerable adults that are not available by any other means of funding.

G.S. 108A-117. Confidentiality.

All information and records obtained or created by the director pursuant to this Article, including the identity of a person making a report pursuant to G.S. 108A-104, are confidential and may not be used or disclosed by any person except (1) with the consent of the individual to whom the information pertains or a person acting lawfully on behalf of that individual; (2) pursuant to a valid court order; (3) to the extent necessary to provide protective services to or protect the health, safety, and well-being of a vulnerable or elder adult who lacks the ability to consent, and has no responsible caregiver or responsible person who is willing and able to provide or arrange for the provision of protective services; or (4) as otherwise required by this Article or other applicable law or by rules adopted by the Social Services Commission.

G.S. 108A-118. Immunity from liability.

Anyone who makes a report pursuant to G.S. 108A-104, who testifies in any judicial proceeding pursuant to this Article, or who participates in an evaluation or files a judicial proceeding pursuant to this Article shall be immune from any civil or criminal liability on account of such report, testimony, participation, or filing unless such person acted in bad faith or with a malicious purpose.

G.S. 108A-119. Training requirements.

- (a) The Department of Health and Human Services, Division of Aging and Adult Services shall establish minimum, competency-based training requirements for adult protective services staff that equal or exceed those under this section.
- (b) Adult protective services social workers shall complete:
 - (1) Standardized pre-service training provided by the supervisor and the Division of Aging and Adult Services prior to the worker assuming direct client contact responsibilities. This training shall have a scoreable exam.
 - (2) A minimum of sixty-six hours of available training on adult protective services intake, screening, evaluation, service provision; and social work practice on working with adults and their families. All training shall be

- completed within two months of assuming direct client contact responsibilities.
- (3) A minimum of eighteen hours of specialized intermediate and advanced training in the delivery of adult protective services and work with vulnerable and elder adults within twelve months of assuming direct client contact responsibilities that the Division of Aging and Adult Services determines is necessary to adequately meet training needs.
 - (4) A minimum of twenty-four hours of additional training annually for continuing education credit.
- (c) Adult protective services intake and on-call workers shall complete:
- (1) Available training on adult protective services intake and screening procedures.
 - (2) An adult protective services home visit with a trained adult protective services social worker or supervisor within two months of assuming direct client contact.
- (d) Adult protective services supervisors shall complete:
- (1) Standardized adult protective services supervisor's orientation within one month of assuming supervisory responsibilities.
 - (2) A minimum of sixty-six hours of available training on adult protective services intake, screening, evaluation, service provision; and social work practice on working with adults and their families. All training shall be completed within two months of assuming direct supervisory responsibilities.
 - (3) A minimum of eighteen hours specialized intermediate and advanced training in the delivery of adult protective services and work with vulnerable and elder adults within twelve months of assuming supervisory responsibilities that the Division of Aging and Adult Services determines is necessary to adequately meet training needs.
 - (4) A minimum of twenty-four hours of additional training annually for continuing education credit
- (e) The Division of Aging and Adult Services may grant an exception in whole or in part to the requirements under this section.
- (f) The Division of Aging and Adult Services shall ensure that training opportunities are available for county departments of social services to meet the requirements of this subsection.

G.S. 108A-120. Staffing requirements.

- (a) The Department of Health and Human Services, Division of Aging and Adult Services shall establish maximum workload

limits for adult protective services staff that do not exceed those under this section.

- (b) Adult protective services workers shall be assigned no more than twelve concurrent adult protective services cases. Workers with less than full time responsibility for adult protective services shall be assigned fewer than twelve adult protective services cases commensurate with the percentage of time assigned to adult protective services.
- (c) Supervisor to worker ratios shall not exceed an average of one full time equivalent supervisory position to five full time equivalent adult protective services social work positions.

Clearinghouse Model for Access to Adult Protective Services

Adult Services Intake
Call received about adult

Clearinghouse for APS
DSS obligation to prescreen for APS triggers
APS triggers sound like allegations of
Abuse, neglect by self or others, exploitation or substantial risk

No allegation of abuse, neglect, exploitation or substantial risk
No vulnerable or elder adult

Allegations of abuse, neglect, exploitation or
substantial risk of vulnerable or elder adult

Regular Intake

APS Intake

Provide information
Make referrals for DSS and community services
Conduct assessment

Gather information and complete APS Intake Tool

Conduct APS Evaluation/Determine Agency's Response

APS Intervention Services
Provision of Emergency or Essential
Services to Vulnerable Adults with
Adults Consent or Court Ordered

APS Outreach Services
Planning, Coordination, Arrangement
of Available Essential Services to
Vulnerable or Elder Adults with
Adults Consent

APS Information and Referral
Does Not Need Outreach Services or
Intervention Services
Provided with Adults Consent

Evaluation Findings
(Target Population
Vulnerable Adults

Allegation of abuse, neglect,
exploitation or substantial risk

Evaluation Findings
(Target Population
Elder or Vulnerable Adults

Allegations of abuse, neglect,
exploitation or substantial risk

Evaluation Findings
(Target Population)
Elder or Vulnerable Adults

Protection provided or

No APS Triggers met