
Coates' Canons Blog: Adult Protective Services: Which County is Responsible?

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If you have reasonable cause to believe that a disabled adult has been abused, neglected, or exploited and is in need of protective services, you are required to report your concerns to the county department of social services (DSS). GS 108A-102. DSS is then required to take action on the report. But what if multiple counties are involved? Which one should take the lead? In most circumstances, it will be the adult's county of residence but there may be some exceptional situations. A working group convened by the North Carolina Division of Aging and Adult Services (DAAS) recently developed policy guidance intended to clarify some ambiguities related to the interpretation and application of state statutes and regulations. This guidance is now in draft form but it will likely be integrated into the Adult Protective Services manual and incorporated into forms used by county social workers. This blog post explains the legal framework involved and highlights some of the recommendations included in the working group's guidance materials.

This state has long taken the position that the *county of legal residence* is responsible for providing social services required by an individual (G.S. 153A-257). If the disabled adult resides and is located in County A, it is easy to decide which county is the "county of legal residence." County A would be responsible for screening the report, conducting the evaluation and, if necessary and authorized by law, providing protective services to the adult. But in some situations, the adult may reside in one county but be located in another. For example, the adult's home may be in County A but she may be vacationing at the beach, visiting a relative, or staying in a hospital or other facility in County B at the time of the report. When the report comes in to either County A or B, that county must screen the report but then it must take steps to determine which county – the county of location (COL) or county of residence (COR) – should follow up with an evaluation and, if appropriate, offer or provide protective services.

Which County is the "Legal Residence"?

The state statute provides a circular answer to this question by explaining that "a person has legal residence in the county in which he resides." It goes on further to explain that "if a person is in a hospital, mental institution, nursing home, boarding home, confinement facility, or similar institution or facility," the person does not automatically have "legal residence" in the county where the facility is located. Weaving these two parts of the statute together in the context of an adult protective services (APS) case, DSS is often trying to determine which county the individual calls home. Where does he or she usually live? Where does she intend to remain or return to? This determination is significant because it affects which county will be financially and, in many instances, administratively responsible for the evaluation of the report and the provision of protective services. It's important to note that the term "residence" is applied differently in other contexts. This blog post by Bob Joyce explores how the term is applied in the elections arena.

Which County Should Initiate the Evaluation? Provide Protective Services?

When a person who is the subject of a report resides in one county (COR) but is located in another (COL), DSS staff in both counties have the authority to receive the report and take action. The legal framework for APS grants authority to the DSS "director." In the context of the APS law, the term "director" is defined as "the director of the county [DSS] in the county in which the person *resides or is present*..." G.S. 108A-101(c) (emphasis added). Therefore, both directors have the legal authority to act and the director may delegate that authority to other staff pursuant to G.S. 108A-14(b).

But the guidance from the working group clarifies and emphasizes that the legal county of residence is ultimately

responsible for the adult and therefore should take the lead on the evaluation and provision of protective services in many circumstances. It directs counties to promptly notify the COR of the report and then follow the lead of the COR. If the COR is able to initiate the evaluation, it will do so and request help from the COL as needed. If the COR is not able to initiate the evaluation, it will ask the COL to do so. The COL would then communicate findings back to the COR and cooperate with any follow-up that is necessary. In both cases, the COR will be financially responsible for the evaluation and for any services that are ultimately provided. This flow chart, which was developed by the working group, illustrates the process quite well.

This policy guidance is consistent with the state statute discussed above as well as state regulations that place both legal and financial responsibility on the COR. For example, one regulation explains that “the county of residence shall be financially responsible for such examinations and for all necessary legal expenses incurred in providing protective services” when those are provided outside the county of residence. It also specifically requires the COL to “cooperate” with a COR that has received a report and is conducting an evaluation. 10A NCAC 71A .0701.

There are some exceptional circumstances, described below, when a county other than the COR will need to take the lead on the evaluation and possibly the provision of protective services.

Emergencies

If the situation is an emergency, DSS in the COL should initiate the evaluation. It should not wait to notify the COR before acting. According to the APS law, an emergency is a situation where

- the disabled adult is in substantial danger of death or irreparable harm if protective services are not provided immediately,
- the disabled adult is unable to consent to services,
- no responsible, able, or willing caretaker is available to consent to emergency services, and
- there is not enough time to petition a court through standard channels to provide protective services (see G.S. 108A-105 for the standard process for petitioning a court for authority to provide services, which can take weeks).

State law sets out relatively tight timelines for DSS to take action on reports. The agency must initiate the evaluation (1) immediately if the report alleges a danger of death in an emergency, (2) within 24 hours if the report alleges danger of irreparable harm in an emergency, and (3) within 72 hours for all other reports. The first two timelines do not provide much opportunity for the COL and COR to coordinate so it seems reasonable that the COL should take at least the first step in the process and possibly additional steps depending on the circumstances.

What is that first step? The APS regulations and policy guidance refer to “initiation” which involves a visit to the adult who is the subject of the report. 10A NCAC 71A .0205. If DSS is unable to find the adult during the short timeframe, it must document its efforts to do so. As soon as possible after initiating the evaluation, the COL should contact the COR and proceed with the rest of the evaluation as discussed above.

Residential Facilities

Recall that the county residency statute, G.S. 153A-247, states that a person in an “institution or facility” is not *automatically* considered a resident of the county where the institution or facility is located. That is important language for many social services and public assistance programs. In the Medicaid program, for example, a person may move into a nursing home in a neighboring county or one far across the state. That person’s Medicaid eligibility and enrollment remains connected to the original county of residence. It does not change just because the person moved into a nursing home in another county and will likely stay in that home for many years. See this excerpt from the Adult Medicaid manual for more details.

An APS regulation takes a somewhat different approach by effectively transferring the COR's responsibility to conduct an evaluation and provide services to the COL when the adult is in a residential care facility. It provides that DSS "in the county in which a nursing, combination, or residential care facility is located has primary responsibility for providing protective services to adults in that facility." 10A NCAC 71A .0504. It directs the county to share information with the COR and requires that the COR cooperate and assist the COL.

If a disabled adult is staying in a short term placement in a hospital, rehabilitation facility, or other institution, it seems unlikely that this regulation would apply so the COR would retain primary responsibility for the adult. In those cases, the COL would be required to cooperate with the COR upon request.

County Officials

If a report alleges abuse, neglect, or exploitation of a disabled adult by a social services board member, a DSS staff member, a county commissioner or the county manager, the DSS receiving the report must notify the DAAS immediately. 10A NCAC 71A .0203. The state will direct another county to conduct the evaluation and, if the report is substantiated, provide services. The COR remains financially responsible for the evaluation and services.

Other Conflicts of Interest

In some circumstances, a COR will determine that it has a conflict of interest other than those described above for county officials. For example, the DSS director may be serving as the guardian of the disabled adult who is the subject of the report or DSS may be involved in a child welfare case involving the disabled adult's children. In these instances, DSS will likely have a system in place for enlisting assistance from a neighboring county to manage the evaluation and possibly the provision of services. Just this past April, the state Division of Social Services issued revised guidance to counties about managing conflicts of interest. The guidance focuses on child welfare but there is significant overlap with adult services, such as guardianship and APS.

This conflicts of interest guidance brings to light many other issues facing counties but I will save that topic for a blog post on another day.

Links

- canons.sog.unc.edu/adult-protective-services-a-new-reporting-requirement/
- ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_108A/GS_108A-102.pdf
- ncdhhs.s3.amazonaws.com/s3fs-public/documents/files/APS_Manual.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_153A/GS_153A-257.pdf
- canons.sog.unc.edu/residency-changes-by-elected-officials/
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