
Coates' Canons Blog: UPDATED: Limitations on the Authority and Role of Adult Protective Services Programs

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Yesterday, August 21, was National Senior Citizens Day. When President Reagan issued the proclamation first recognizing this day, he explained:

For all they have achieved throughout life and for all they continue to accomplish, we owe older citizens our thanks and a heartfelt salute. We can best demonstrate our gratitude and esteem by making sure that our communities are good places in which to mature and grow older – places in which older people can participate to the fullest and can find the encouragement, acceptance, assistance, and services they need to continue to lead lives of independence and dignity.

This sends a powerful message and it is one that I think about often. As I've been working with the adult protective services program for the past few years, one of the issues I have struggled with is the balance between providing protection and preserving "independence and dignity" of older adults and disabled adults. Once a county department of social services (DSS) receives a report of alleged abuse, neglect, or exploitation of an adult, it will take action quickly to screen the report and, if appropriate, conduct an evaluation. In some situations, DSS will not intervene to provide protective services to the adult who is the subject of the report. This post explores some of these circumstances and will discuss the reasons why DSS may not have the authority to provide protective services. Also, at the end of the post I've included details about some free training resources related to financial exploitation.

The core of the adult protective services law is found in G.S. Chapter 108A, Articles 6 and 6A. These laws require reporting, outline the scope of DSS's authority to take action, and provide some tools for the county to use when evaluating a report and providing services. Regulations governing the program are found in 10A NCAC Title 10A, Chapter 71, Subchapter A. Important guidance about the program and the scope of DSS's authority can also be found in the state's Adult Protective Services Manual (APS Manual).

In general, an APS case will follow this basic path:

1. Report received by DSS.
2. DSS screens the report to determine if it has authority to conduct an APS evaluation.
3. If DSS has authority, it will "screen in" the report and conduct an evaluation that will include meeting with the adult and possibly reviewing records and interviewing caretakers, family, and other contacts.
4. At the conclusion of the evaluation, DSS will decide whether to proceed with offering protective services to the adult or requesting a court order authorizing the agency to provide protective services.

If, at Step 2, DSS determines that it does not have the authority to provide protective services, the report will be "screened out," which means that the agency will not conduct an APS evaluation. The reporter will be notified of the agency's decision. Depending on the circumstances, DSS may reach out to the adult and offer other services provided by DSS or try to connect the adult with appropriate services available in the community.

What are some of the circumstances that would result in DSS either screening out a report at intake or determining that the disabled adult does not need protective services after an evaluation?

Not a "Disabled Adult"

North Carolina's child protective services are available to every child in the state. Adult protective services, on the other hand, are more limited by law. DSS has the authority to take action if it receives a report related to a "disabled adult" who

is in need of protective services. The term “disabled adult” is defined as:

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

Some older adults will meet this definition but many others will not. Social workers are encouraged to consider the adult’s functioning: “Does the adult’s non or reduced functioning necessitate reliance on others to meet their basic needs?” (APS Manual, Sec. III-3). Age alone is not enough to allow DSS to screen in the report. For example, a 50 year old with dementia or significant physical limitations will be considered disabled but a person who is 80 years old and in good physical and mental health will not. Similarly, diagnosis alone is not sufficient to determine disability. As the APS Manual explains:

A physical condition, disease, or diagnosis that limits one person may not limit another. For example, arthritis and heart disease in one person may not impair that individual’s functioning while in another it keeps them confined to bed. Each person and situation is unique.

Finally, DSS must not rely only on a person’s status or living conditions when deciding whether the adult is disabled. For example, an adult who is homeless but generally healthy and able would not meet the definition.

When DSS receives a report, it will gather as much information as possible from the reporter about the adult’s situation and condition in order to determine whether the agency has the authority to follow up on the report. If DSS concludes that the adult is not disabled, the agency is not authorized to provide protective services. It may, however, provide other support services to the adult depending on his or her situation and needs.

No Need for “Protective Services”

One of the initial questions DSS will explore with the reporter is whether the adult needs services to protect him or her from abuse, neglect, or exploitation. In order to move forward with the evaluation or provision of services, the agency must conclude:

- The adult is unable to perform or obtain essential services because of his or her physical or mental incapacity; and
- No able, responsible, and willing person is able to perform or obtain the essential services for the adult. S. 108A-101(e).

A service is considered “essential” if it is necessary to safeguard the adult’s rights and resources and maintain his or her physical or mental well-being. Essential services could include medical care, food, clothing, shelter, protection from physical mistreatment, and protection from exploitation.

In some situations, DSS will determine that a person is in need of essential services but finds that there is a family member or friend who is willing to help obtain those services for the adult. DSS may transfer responsibility for providing those services if the agency concludes that the volunteer is not only *willing* to help but also *able* to provide the required assistance and *responsible* enough to provide the needed services. If DSS has concerns about the volunteer’s ability to provide the services, it will likely remain involved to some extent to ensure that the disabled adult is protected.

Abuse By Someone Other than a Caretaker

DSS’s authority extends to abuse, neglect, and exploitation. For exploitation, the alleged perpetrator may be anyone. For abuse or neglect, however, DSS has authority to act only if the alleged perpetrator is the disabled adult’s “caretaker” or in cases that may involve self-neglect. In order to understand how this all fits together, it’s useful to review the key definitions found in G.S. 108A-101:

- A caretaker is “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.”

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- Abuse is “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.”
 - Neglect “refers to a disabled adult who is either living alone and not able to provide for himself or herself the services which are necessary to maintain the person’s mental or physical health or is not receiving services from the person’s caretaker.

Weaving these three definitions together with the scope of authority granted to DSS, it seems that one type of case that may fall outside DSS’s authority is the willful infliction of pain, injury, anguish, or confinement by someone other than a caretaker. Depending on the circumstances, DSS may be able to screen in these types of cases if they rise to the level of self-neglect. In other words, the agency may determine that the disabled adult is not able to protect himself or herself from the abuse and is therefore proceed with the protective services evaluation.

Such cases could also fall within the scope of the generally applicable criminal laws. Offenses such as assault and battery may apply, but there are also specific laws tailored to disabled and older adults that could come into play. For example, a caretaker in a domestic setting may be charged with a felony if he or she abuses or neglects either (1) a disabled adult or (2) an adult who is over 60 years of age and is unable to provide necessary self-care (G.S. 14-32.3). A different law applies to abuse or neglect of any patient in a health care facility. (G.S. 14-32.2). Criminal laws also specifically address financial exploitation of disabled and older adults (G.S. 14-112.2; see also this bulletin).

Refuse or Withdraw Consent

Once DSS has received a report and screened it in, a social worker will meet with the adult as soon as possible, consult with other people connected to the adult, and gather records from providers and/or financial institutions. The purpose of the evaluation is to determine whether the case should be “substantiated” – in other words, are protective services necessary and appropriate? If the case is substantiated, DSS must then determine whether the disabled adult has capacity to consent to those services. If the adult has capacity and ultimately refuses the offer to provide services, that is the end of the road for DSS. The agency does not have the authority to compel an adult with decisional capacity to accept services. Similarly, if the adult initially consents to the services and then later withdraws that consent, DSS must abide by that decision. The agency may still offer other services and conduct wellness checks consistent with policy and practice, but protective services may not be provided.

The APS Manual provides some guidance for DSS staff to follow when evaluating capacity. It states that the focus should be on the adult’s ability to perceive and understand his situation, including his or her physical limitations, the resources and assistance that are available, and the consequences of not getting assistance. It also emphasizes a few other points:

- *Capacity is different than competency.* The former is determined by DSS for this limited purpose and competency is determined by a judicial official.
- *Capacity may be intermittent.* Someone with an acute illness, such as a urinary tract infection, may temporarily lack decisional capacity. Once treated, the person’s capacity may be restored and DSS should recognize that change and adapt to it.
- *Professional evaluations may be helpful but they are not determinative:* If DSS is unsure about capacity, it may consult with a medical or mental health professional. The decision about capacity, however, rests with DSS.

By recognizing that an adult who has capacity must be allowed to refuse services, our law is clearly trying to find the appropriate balance between protecting individuals and preserving their independence and autonomy.

Court Denies Petition

If DSS concludes that the adult needs protective services but lacks capacity to consent, it must file a petition in district court requesting permission to provide those services. G.S. 108A-105. If the court finds by clear, cogent, and convincing evidence that the disabled adult is (1) in need of protective services and (2) lacks capacity to consent, it will issue an order authorizing DSS to provide services. The law also allows for a more expedited *ex parte* petition in emergency situations. G.S. 108A-106. If the court denies DSS’s petition, the agency may not proceed with the plan to provide protective services. Depending on the circumstances, the agency may still decide to offer some other services to the adult, such as referrals for nutrition programs or caregiver support, but it may not provide protective services.

Other Reasons

The discussion above is certainly not comprehensive. There are other reasons that DSS will not provide protective services for an adult. For example, if the adult who is the subject of the report is located outside North Carolina, a county DSS does not have the authority to take action. If the adult resides in a county other than the one that received the report, things can get a little confusing but the bottom line is one or more counties will be involved in responding to the report (see this blog post).

Just Can't Get Enough APS Information?

I'm excited to announce a new training resource that is available to the general public. Back in 2014, I was part of a multidisciplinary team that developed training related to the changes in the law related to financial exploitation, with a particular focus on the new authority to obtain subpoenas for financial records. More recently, Lori Cole, an instructional designer with the Administrative Office of the Courts adapted those training materials and developed a self-directed online training module. The module, along with a recorded version of one of the 2014 webinars, is available online for free. In the coming weeks, Judicial Branch officials and staff will also be able to access it through the LearningCenter to have it recorded on their transcript. Feel free to contact me if you have any questions about this topic.

Note about update: The author made revisions to two sections ("Not a Disabled Adult" and "Abuse by a Person other than a Caretaker") based on discussions with representatives of the Division of Aging and Adult Services and counties. The feedback is much appreciated.

Links

- reaganlibrary.archives.gov/archives/speeches/1988/081988b.htm
- canons.sog.unc.edu/adult-protective-services-a-new-reporting-requirement/
- www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_108A/Article_6.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_108A/Article_6A.pdf
- reports.oah.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2071%20-%20adult%20and%20family%20support/subchapter%20a/subchapter%20a%20rules.pdf
- www.ncdhhs.gov/document/aging-and-adult-services-protective-services-adults-policy-and-procedures-manual
- ncdhhs.s3.amazonaws.com/s3fs-public/documents/files/APS_Manual.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_108A/GS_108A-101.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_14/GS_14-32.3.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_14/GS_14-32.2.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_14/GS_14-112.2.pdf
- www.sog.unc.edu/publications/bulletins/financial-exploitation-older-adults-and-disabled-adults-overview-north-carolina-law
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_108A/GS_108A-105.pdf
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