

# Quick Reference: Information Sharing in Elder Abuse Cases

## Important Background and Disclaimers

- These reference sheets identify situations in which components of the elder protection system may want to or need to share confidential information with one another. The sheets then provide a brief summary of the law that likely applies to the disclosure. It is essential remember that these reference sheets are intended to provide a quick snapshot of the law.
  - The situations identified are not comprehensive – not every type of allowed disclosure is summarized. Rather, examples of situations that often arise in elder abuse cases are highlighted.
  - The legal analysis is not detailed. Many of the laws include conditions, exceptions and qualifications that must be considered. The legal citations are included so the laws can be reviewed directly when developing information sharing policies or making decisions regarding specific disclosures.
  - One should not rely on these reference sheets alone but rather, they can serve as a starting point for the legal analysis.
- The information regarding “health care providers” and “health information” does not address the applicability of the federal substance abuse confidentiality regulations (42 CFR Part 2). Those regulations add a layer of complexity to the analysis that is not conducive to this quick reference sheet format. It is essential, however, that health care providers subject to that law and others who receive information from such providers conduct a separate legal analysis regarding disclosure of covered information. See \_\_\_\_ (reference sheet forthcoming with a summary of the SA regs)
- The term “law enforcement” is used to refer generally to both law enforcement officials (e.g., police officers, sheriff’s deputies) and prosecutors (e.g., elected and assistant district attorneys).

## DSS and Law Enforcement

Situation	General rule	Applicable law
<b>DSS receives a report and has reason to believe that an adult may be at risk of immediate harm</b>	<ul style="list-style-type: none"> <li>DSS may contact the DA or law enforcement (LE) and share confidential information, including most health information. May also provide information from APS register.</li> </ul>	<p>10A NCAC 71A .0201 10A NCAC 71A .0806 (b)(1)(C)</p>
<b>DSS conducts an evaluation and finds evidence that the adult has been abused, neglected, or exploited</b>	<ul style="list-style-type: none"> <li>DSS must notify the DA if it finds such evidence. It must be in writing and should include the specific findings from the evaluation.</li> </ul>	<p>GS 108A-109 10A NCAC 71A .0906 10A NCAC 71A .0901</p>
<b>Law enforcement requests information from DSS about an adult.</b>	<ul style="list-style-type: none"> <li>If DSS found evidence of abuse, neglect, or exploitation and receives a request for information from LE or DA, DSS must provide information to assist with the investigation or prosecution.</li> <li>If DSS did not find evidence of A/N/E but it has information about the adult that may be useful to LE or DA in the investigation of a potential crime, it may be provided to the LE or DA pursuant to a search warrant or court order.</li> </ul>	<p>10A NCAC 71A .0803 10A NCAC 69 .0505</p>
<b>Law enforcement requests the identity of a reporter</b>	<ul style="list-style-type: none"> <li>DSS may disclose to LE/DA if they are investigating or prosecuting a criminal investigation of alleged A/N/E without a court order.</li> <li>If the request is for another purpose, DSS may disclose the identity pursuant to a search warrant or court order.</li> </ul>	<p>10A NCAC 71A .0802 10A NCAC 69 .0505</p>

## DSS and Health Care Providers

Situation	General rule	Applicable law
<p><b>Health care provider identifies potential signs of elder A/N/E</b></p>	<ul style="list-style-type: none"> <li>■ State law requires reporting to DSS if the person is a disabled adult. Applicable medical confidentiality laws allow disclosure when otherwise required by law. Therefore, health care providers must file a report with DSS. The report should not identify whether the adult has or may have a reportable communicable disease.</li> <li>■ Providers subject to the HIPAA Privacy Regulation must notify the adult about the report unless the provider believes notification would put the adult at risk of serious harm or the notification would be going to a personal representative who may be responsible for the A/N/E and informing that person would not be in the adult's best interest.</li> </ul>	<p>GS 108A-102 See, e.g., 45 CFR 164.512(a); 45 CFR 164.512(c); GS 130A-143 45 CFR 164.512(c)(2)</p>
<p><b>Provider believes there is a serious threat to health or safety</b></p>	<ul style="list-style-type: none"> <li>■ If a provider believes there is a serious threat to health or safety <i>and</i> the provider reasonably believes that DSS may be able to prevent or seriously lessen the threat, it may disclose a limited amount of information to DSS.</li> <li>■ The provider may disclose only the following: name, address, date and place of birth, SSN, blood type, type of injury, date and time of treatment, and a description of distinguishing physical characteristics.</li> <li>■ There is a limited exception that applies if the provider was treating an individual or asked to treat an individual for the purposes of trying to prevent the individual from causing the type of harm that would be the subject of the report.</li> </ul>	

## DSS and Health Care Providers, *continued*

Situation	General rule	Applicable law
<p><b>DSS requests assistance from a provider in evaluating an adult</b></p>	<ul style="list-style-type: none"> <li>▪ Health care providers are required to assist DSS in conducting evaluations upon request. Because these evaluations are being conducted at the request of DSS, there is a strong legal implication that health care providers must share the information from the evaluations with the agency with or without the permission of the adult.</li> </ul>	<p>GS 108A-103</p>
<p><b>DSS requests records from a health care provider during an APS evaluation</b></p>	<ul style="list-style-type: none"> <li>▪ It is not clear whether state law requires health care providers to provide DSS with access to records during an evaluation.</li> <li>▪ State law authorizes the agency to “review and copy” records related to the care and treatment of any person, facility or agency acting as a caretaker for the adult. If the definition of the term “caretaker” is interpreted broadly to include any person who has provided health care to the adult, state law would require providers to disclose requested information to DSS.</li> <li>▪ The term caretaker is defined to 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.”</li> </ul>	<p>GS 108A-103 GS 108-101(b)</p>

## Health Care Providers and Law Enforcement

Situation	General rule	Applicable law
<p><b>Physician or hospital treats a person with certain types of wounds, injuries or illnesses</b></p>	<ul style="list-style-type: none"> <li>■ State law requires physicians and hospitals to make a report to law enforcement if they treat a case of:               <ul style="list-style-type: none"> <li>○ A bullet wound, gunshot wound, powder burn or other injury arising from or appearing to arise from the discharge of a gun or firearm;</li> <li>○ Illness apparently caused by poisoning;</li> <li>○ A wound or injury caused, or apparently caused, by a knife or sharp or pointed instrument <i>if</i> it appears to the treating provider that a criminal act was involved;</li> <li>○ A wound, injury, or illness in which there is grave bodily harm or grave illness <i>if</i> it appears to the treating provider that it resulted from a criminal act of violence.</li> </ul> </li> <li>■ If the place of treatment is in a city or town, the report must be made to the police. If the place of treatment is not in a city or town, the report must be made to the sheriff.</li> <li>■ Only certain information may be disclosed:               <ul style="list-style-type: none"> <li>○ Patient's name;</li> <li>○ The patient's age, sex, race, residence or present location; and</li> <li>○ The character and extent of the patient's injuries.</li> </ul> </li> <li>■ Applicable confidentiality laws allow providers to make these reports because the disclosures are required by law.</li> <li>■ If law enforcement officials request additional information from a health care provider related to this report, they must have other legal authority to obtain it, such as search warrant.</li> </ul>	<p>GS 90-21.20 45 CFR 164.512(a)</p>

## Health Care Providers and Law Enforcement, *continued*

Situation	General rule	Applicable law
<b>Provider believes there is a serious threat to health or safety</b>	<ul style="list-style-type: none"> <li>■ If a provider believes there is a serious threat to health or safety <i>and</i> the provider reasonably believes that law enforcement may be able to prevent or seriously lessen the threat, it may disclose a limited amount of information to law enforcement.</li> <li>■ The provider may disclose only the following: name, address, date and place of birth, SSN, blood type, type of injury, date and time of treatment, and a description of distinguishing physical characteristics.</li> <li>■ There is a limited exception that applies if the provider was treating an individual or asked to treat an individual for the purposes of trying to prevent the individual from causing the type of harm that would be the subject of the report.</li> </ul>	45 CFR 164.512(j); 45 CFR 164.512(f)(2)(i)
<b>Provider suspects a death was caused by criminal conduct</b>	<ul style="list-style-type: none"> <li>■ A provider may notify law enforcement of a death if the provider suspects it was caused by criminal conduct. The provider should not share extensive information in this context but rather the minimum that is necessary to alert them of the death and the provider's suspicions.</li> <li>■ If law enforcement officials request additional information from a health care provider related to this report, they must have other legal authority to obtain it, such as search warrant.</li> </ul>	45 CFR 164.512(f)(4)
<b>A crime is committed on the provider's premises</b>	<ul style="list-style-type: none"> <li>■ If a crime was committed on the provider's premises, the provider may disclose information that the provider, in good faith, believes constitutes evidence of the crime.</li> </ul>	45 C.F.R. 164.512(f)(5).

## Health Care Providers and Law Enforcement, *continued*

Situation	General rule	Applicable law
<b>A crime is committed when not on the provider's premises in course of medical emergency</b>	<ul style="list-style-type: none"> <li>▪ If a provider (1) is providing care in response to a medical emergency and (2) the emergency is not on the provider's premises, the provider may notify law enforcement that a crime has been committed.</li> <li>▪ The provider may disclose only limited information, including the nature and location of the crime, the victim(s), and the identity, description and location of the perpetrator.</li> </ul>	45 C.F.R. 164.512(f)(6).
<b>Law enforcement presents a provider with a search warrant or court order compelling disclosure</b>	<ul style="list-style-type: none"> <li>▪ The provider must disclose information to law enforcement in these two situations. The provider may request that law enforcement keep the information confidential.</li> </ul>	45 CFR 164.512(a); (f)(1)
<b>Law enforcement seeks information from a provider to locate a suspect, fugitive, material witness, or missing person</b>	<ul style="list-style-type: none"> <li>▪ In response to a request from a law enforcement official, a health care provider may disclose certain information including name, address, date and place of birth, SSN, blood type, type of injury, date and time of treatment, and a description of distinguishing physical characteristics.</li> </ul>	45 CFR 164.512(f)(2)

## Health Care Providers and Law Enforcement, *continued*

Situation	General rule	Applicable law
<b>Law enforcement seeks information about a crime victim from a provider</b>	<ul style="list-style-type: none"><li>■ The crime victim may agree to the disclosure or</li><li>■ If the victim is not able to agree because of incapacity or emergency circumstances, the provider may make the disclosure if<ul style="list-style-type: none"><li>○ The law enforcement official represents that the information is needed to determine whether there has been a violation of law by someone other than the victim, and the information is not intended to be used against the victim;</li><li>○ The law enforcement official represents that the immediate law enforcement activity that depends on the disclosure would be materially and adversely affected by waiting until the individual is available to agree to the disclosure, and</li><li>○ The provider concludes, in the exercise of professional judgment, that disclosure is in the best interest of the individual.</li></ul></li></ul>	45 CFR 164.512(f)(3)

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## DSS and Financial Institutions

Situation	General rule	Applicable law
<b>Financial institution identifies signs of potential financial exploitation</b>	<ul style="list-style-type: none"> <li>▪ Disabled adult: If the institution (or an officer or employee) has reasonable cause to believe that a disabled adult is the victim or target of financial exploitation, they are required to make a report to DSS. Financial privacy laws allow financial institutions to comply with this reporting requirement.</li> <li>▪ Older adult: If the adult is older (65+), whether disabled or not, a report must be made to local law enforcement.</li> </ul>	GS 108A-115
<b>DSS presents an order to freeze and inspect financial information</b>	<ul style="list-style-type: none"> <li>▪ DSS may request a district court order to freeze a disabled adult's account and inspect records related to that account. There are some limitations on such orders. A financial institution must comply with such an order.</li> </ul>	GS 108A-106
<b>DSS presents a subpoena to the financial institution</b>	<ul style="list-style-type: none"> <li>▪ DSS may petition a district court for a subpoena for financial records of a disabled adult when investigating a credible report of exploitation.</li> <li>▪ If the court issues the subpoena, a financial institution may ask the court to either modify or quash it.</li> <li>▪ Once any challenge is resolved, the financial institution must comply with the subpoena by producing the requested records.</li> <li>▪ DSS is required to notify the customer about the subpoena immediately but may ask the court to delay the notice under certain circumstances.</li> </ul>	GS 108A-116 GS 108A-117
<b>DSS, serving as guardian, requests access to financial information</b>	<ul style="list-style-type: none"> <li>▪ If DSS is appointed interim guardian, general guardian or guardian of the estate, the financial institution must provide access to the adult's financial information if authorized by the guardianship order.</li> <li>▪ If DSS is appointed guardian of the person, the financial institution is not required to provide access.</li> </ul>	GS 35A-1114(e) GS 35A-1251  GS 35A-1241

## Law Enforcement and Financial Institutions

Situation	General rule	Applicable law
<b>Financial institution identifies signs of potential financial exploitation</b>	<ul style="list-style-type: none"> <li>▪ If the institution (or an officer or employee) has reasonable cause to believe that a disabled or older adult (65+) is the victim or target of financial exploitation, a report must be made to local law enforcement. Note that if the potential victim is a disabled adult (18+), a report must also be made to DSS (see above).</li> <li>▪ Financial privacy laws allow financial institutions to comply with this reporting requirement.</li> </ul>	<p>GS 108A-115 G.S. 53B-4(13)</p>
<b>Law enforcement official presents a subpoena to the financial institution</b>	<ul style="list-style-type: none"> <li>▪ Law enforcement may petition a district court for a subpoena for financial records of a disabled or older adult (65+) when investigating a credible report of exploitation.</li> <li>▪ If the court issues the subpoena, a financial institution may ask the court to either modify or quash it.</li> <li>▪ Once any challenge is resolved, the financial institution must comply with the subpoena by producing the requested records.</li> <li>▪ Law enforcement is required to notify the customer about the subpoena immediately but may ask the court to delay the notice under certain circumstances.</li> </ul>	<p>GS 108A-116 GS 108A-117</p>
<b>Law enforcement official presents a search warrant to the financial institution</b>	<ul style="list-style-type: none"> <li>▪ The financial institution must comply with the search warrant.</li> </ul>	<p>GS 53B-4(3)</p>

## DSS and Guardianship Proceedings

Situation	General rule	Applicable law
<p><b>After conducting an APS investigation, DSS petitions for guardianship</b></p>	<p>DSS will likely need to include confidential information in the petition for incompetency or application for appointment of a guardian that the agency gathered during an APS evaluation. If DSS concludes that guardianship is necessary to protect the adult, this disclosure is authorized by state law because it is directly connected with the provision of services to the adult.</p> <p>DSS may ask the clerk to close the hearing(s) and seal the records to preserve the confidentiality of the APS information.</p>	<p>GS 108A-80 GS 35A-1105 GS 35A-1210 GS 35A-1112</p>
<p><b>Clerk receives a petition for guardianship from someone other than DSS</b></p>	<p>The clerk may issue an order requiring DSS to provide information from the APS record to the court. DSS must comply with such an order.</p> <p>If DSS gathered health information from health care providers, it may also share that information with the court pursuant to the order.</p>	<p>10A NCAC 69 .0505 45 CFR 164.512(a) GS 130A-143</p>
<p><b>Clerk orders DSS to conduct or participate in a multidisciplinary evaluation (MDE)</b></p>	<p>DSS must conduct or participate in the MDE as directed by the clerk.</p> <p>Because the MDE is required by court order, DSS may share information gathered during the evaluation with the court.</p>	<p>GS 35A-1111 10A NCAC 69 .0505</p>