

Quick Reference: Information-Sharing in Elder Abuse Cases

Important Background and Disclaimers

- The complexity of confidentiality laws can often be seen as a barrier to information-sharing in elder abuse cases. Many of the applicable laws allow information-sharing in specific circumstances, but they can be challenging to identify, interpret, and apply.

In order to facilitate appropriate information-sharing, five Quick Reference Guides were developed that highlight circumstances that may arise when information about an older adult is being shared between the following actors.

- Department of Social Services (DSS) and Law Enforcement
- DSS and Health Care Providers
- Health Care Providers and Law Enforcement
- DSS and Financial Institutions
- DSS and Parties Involved in Guardianship Proceedings

These Quick Reference Guides are intended to provide a quick snapshot of the law and therefore should serve only as the starting point for legal analysis. The guides are not comprehensive. Specifically:

- They do not identify every potential circumstance where information may be requested or shared. Rather, the guides highlight examples of circumstances that often arise in elder abuse cases.
 - The legal analysis is not detailed. Many of the laws identified in the guide include conditions, exceptions, and qualifications that must be considered. The legal citations are included so that the statutes and regulations can be reviewed directly when developing information-sharing policies or making decisions regarding specific disclosures.
- The information regarding “health care providers” and “health information” does not address the applicability of the federal substance abuse confidentiality regulations (42 C.F.R. 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.
 - The term “law enforcement” is used to refer generally to both law enforcement officials (e.g., police officers, sheriffs’ deputies) and prosecutors (e.g., elected and assistant district attorneys (DAs)).

DSS and Law Enforcement

Situation	General Rule
DSS receives a report and has reason to believe that an adult may be at risk of immediate harm¹	<ul style="list-style-type: none"> ▪ DSS may contact the DA or law enforcement (LE) and share confidential information, including most health information. May also provide information from Adult Protective Services (APS) register.
DSS conducts an evaluation and finds evidence that the adult has been abused, neglected, or exploited²	<ul style="list-style-type: none"> ▪ DSS must notify the DA if it finds such evidence. It must be in writing and should include the specific findings from the evaluation.
Law enforcement requests information from DSS about an adult³	<ul style="list-style-type: none"> ▪ If DSS found evidence of abuse, neglect, or exploitation (A/N/E) and receives a request for information from LE or the DA, DSS must provide information to assist with the investigation or prosecution. ▪ If DSS did not find evidence of A/N/E but has information about the adult that may be useful to LE or the DA in the investigation of a potential crime, it may be provided to LE or the DA pursuant to a search warrant or court order.
Law enforcement requests the identity of reporter of suspected abuse	<ul style="list-style-type: none"> ▪ DSS may disclose to LE/DA if they are investigating or prosecuting a criminal investigation of alleged A/N/E without a court order. ▪ If the request is for another purpose, DSS may disclose the identity pursuant to a search warrant or court order.

1. Title 10A, Chapter 71A, Section .0201 of the North Carolina Administrative Code (hereinafter N.C.A.C.); 10A N.C.A.C. 71A, § .0806(b)(1)(c).
2. Chapter 108A, Section 109 of the North Carolina General Statutes (hereinafter G.S.); 10A N.C.A.C. 71A, §§ .0906, .0901.
3. 10A N.C.A.C. 71A, § .0803; *id.* at 69, § .0504.

DSS and Health Care Providers

Situation	General Rule
Health care provider identifies potential signs of elder A/N/E⁴	<ul style="list-style-type: none">▪ State law requires reporting to DSS if the person at potential risk 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.▪ Providers subject to the federal HIPAA Privacy Regulation must notify the adult about the report unless the provider believes that (1) 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 (2) informing that person would not be in the adult's best interest.
Provider believes there is a serious threat to health or safety⁵	<ul style="list-style-type: none">▪ If a provider believes that 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.▪ The provider may disclose only the following: name, address, date and place of birth, Social Security number (SSN), blood type, type of injury, date and time of treatment, and a description of distinguishing physical characteristics.▪ There is a limited exception that applies if the provider was treating an individual or was 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.
DSS requests assistance from a provider in evaluating an adult	<ul style="list-style-type: none">▪ 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.

4. G.S. 108A-102. *See also* 45 C.F.R. §§ 164.512(a), (c), (c)(2); G.S. 130A-143.

5. 45 C.F.R. § 164.512(j).

DSS and Health Care Providers, *continued*

Situation	General Rule
DSS requests records from a health care provider during an APS evaluation	<ul style="list-style-type: none">■ It is not clear whether state law requires health care providers to provide DSS with access to records during an evaluation.■ 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 affected 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.■ 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.”⁶■ Providers subject to the HIPAA Privacy Regulation may disclose protected health information to DSS if doing so is<ul style="list-style-type: none">□ required by law,□ authorized by the individual or the individual’s personal representative, or□ allowed by law and in accordance with other requirements.■ If a HIPAA-covered provider concludes that it is not a “caretaker” as defined in North Carolina law, it may conclude that disclosure to DSS is allowed only with the authorization of the individual (i.e., the older adult) or the individual’s personal representative.

6. G.S. 108A-101(b).

Health Care Providers and Law Enforcement

Situation	General Rule
Physician or hospital treats a person with certain types of wounds, injuries, or illnesses⁷	<ul style="list-style-type: none"> ■ 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"> □ a bullet wound, gunshot wound, powder burn, or other injury arising from or appearing to arise from the discharge of a gun or firearm; □ illness apparently caused by poisoning; □ 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; or □ 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. ■ 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. ■ Only certain information may be disclosed: <ul style="list-style-type: none"> □ the patient's name; □ the patient's age, sex, race, residence, or present location; and □ the character and extent of the patient's injuries. ■ Applicable confidentiality laws allow providers to make these reports because the disclosures are required by law. ■ 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 a search warrant.
Provider believes that there is a serious threat to health or safety⁸	<ul style="list-style-type: none"> ■ If a provider believes that 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. ■ 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. ■ There is a limited exception that applies if the provider was treating an individual or was 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.
Provider suspects a death was caused by criminal conduct⁹	<ul style="list-style-type: none"> ■ A provider may notify law enforcement of a death if the provider suspects that 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 LE of the death and the provider's suspicions. ■ 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 a search warrant.

7. G.S. 90-21.20; 45 C.F.R. § 164.512(a).

8. 45 C.F.R. §§ 164.512(j); (f)(2)(i).

9. 45 C.F.R. § 164.512(f)(4).

Health Care Providers and Law Enforcement, *continued*

Situation	General Rule
A crime is committed on the provider's premises¹⁰	<ul style="list-style-type: none"> ▪ 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.
A crime is committed when not on the provider's premises in the course of a medical emergency¹¹	<ul style="list-style-type: none"> ▪ 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. ▪ 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.
Law enforcement presents a provider with a search warrant or court order compelling disclosure¹²	<ul style="list-style-type: none"> ▪ The provider must disclose information to law enforcement in these two situations. The provider may request that LE keep the information confidential.
Law enforcement seeks information from a provider to locate a suspect, fugitive, material witness, or missing person¹³	<ul style="list-style-type: none"> ▪ 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.
Law enforcement seeks information about a crime victim from a provider¹⁴	<ul style="list-style-type: none"> ▪ The crime victim may agree to the disclosure. ▪ 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"> □ 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; □ the law enforcement official represents that the immediate LE 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 □ the provider concludes, in the exercise of professional judgment, that disclosure is in the best interest of the individual.

10. 45 C.F.R. § 164.512(f)(5).

11. 45 C.F.R. § 164.512(f)(6).

12. 45 C.F.R. §§ 164.512(a); (f)(1).

13. 45 C.F.R. § 164.512(f)(2).

14. 45 C.F.R. § 164.512(f)(3).

DSS and Financial Institutions

Situation	General Rule
Financial institution identifies signs of potential financial exploitation¹⁵	<ul style="list-style-type: none"> ▪ 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, it/he/she is required to make a report to DSS. Financial privacy laws allow financial institutions to comply with this reporting requirement. ▪ Older adult: If the adult is older (65+), whether disabled or not, a report must be made to local law enforcement.
DSS presents an order to freeze and inspect financial information¹⁶	<ul style="list-style-type: none"> ▪ 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.
DSS presents a subpoena to the financial institution¹⁷	<ul style="list-style-type: none"> ▪ DSS may petition a district court for a subpoena for financial records of a disabled adult when investigating a credible report of exploitation. ▪ If the court issues the subpoena, a financial institution may ask the court to either modify or quash it. ▪ Once any challenge is resolved, the financial institution must comply with the subpoena by producing the requested records. ▪ DSS is required to notify the customer about the subpoena immediately but may ask the court to delay the notice under certain circumstances.
DSS, serving as guardian, requests access to financial information¹⁸	<ul style="list-style-type: none"> ▪ 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. ▪ If DSS is appointed guardian of the person, the financial institution is not required to provide access.

15. G.S. 108A-115.

16. G.S. 108A-106.

17. G.S. 108A-116; -117.

18. G.S. 35A-1114(e); -1251; -1241.

DSS and Financial Institutions, *continued*

Situation	General Rule
Financial institution identifies signs of potential financial exploitation¹⁹	<ul style="list-style-type: none">▪ 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).▪ Financial privacy laws allow financial institutions to comply with this reporting requirement.
Law enforcement official presents a subpoena to financial institution²⁰	<ul style="list-style-type: none">▪ 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.▪ If the court issues the subpoena, a financial institution may ask the court to either modify or quash it.▪ Once any challenge is resolved, the financial institution must comply with the subpoena by producing the requested records.▪ Law enforcement is required to notify the customer about the subpoena immediately but may ask the court to delay the notice under certain circumstances.
Law enforcement official presents search warrant to financial institution²¹	<ul style="list-style-type: none">▪ The financial institution must comply with the search warrant.

19. G.S. 108A-115; 53B-4(13).

20. G.S. 108A-116; -117.

21. G.S. 53B-4(3).

DSS and Guardianship Proceedings

Situation	General Rule
After conducting an APS investigation, DSS petitions for guardianship²²	<ul style="list-style-type: none">▪ 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.▪ DSS may ask the clerk of superior court to close the hearing(s) and seal the records to preserve the confidentiality of the APS information.
Clerk receives a petition for guardianship from someone other than DSS²³	<ul style="list-style-type: none">▪ 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.▪ If DSS gathered health information from health care providers, it may also share that information with the court pursuant to the order.
Clerk orders DSS to conduct or participate in a multidisciplinary evaluation (MDE)²⁴	<ul style="list-style-type: none">▪ DSS must conduct or participate in the MDE as directed by the clerk.▪ Because the MDE is required by court order, DSS may share information gathered during the evaluation with the court.

22. G.S. 108A-80; 35A-1105; -1210; -1112.

23. 10A N.C.A.C. 69, § .0505; 45 C.F.R. § 164.512(a); G.S. 130A-143.

24. G.S. 35A-1111; 10A N.C.A.C. 69, § .0504.