

Social Services Legislation: Adult Services

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Financial Exploitation of Older Adults – S.L. 2013-337 (S 140)

This bill adds a new Article 6A to G.S. Chapter 108A related to financial exploitation of disabled and older adults and amends several existing related statutes, including the applicable criminal law, the DSS director's duties, and the disclosure of financial records by financial institutions. A separate session law (summarized below) establishes new authority to freeze assets in some of these cases.

Criminal

There were two major changes to the criminal laws governing financial exploitation of disabled and older adults:

- *Applicability*: The current law applies to disabled adults and elder adults. The revised law changes the term "elder adult" to "older adult" and increases the age of older adults from 60 to 65. Most importantly, it removes the requirement that the older adult "is not able to provide for the social, medical, psychiatric, psychological, financial, or legal services necessary to safeguard the person's rights and resources and to maintain the person's physical and mental well-being."
- *"Capacity to consent"*: The current law makes it a crime for "a person, who knows or reasonably should know that an elder adult or disabled adult lacks the capacity to consent, to" obtain or use funds or assets of the older or disabled adult. The revisions would replace that language with a different crime: "It is unlawful for a person to knowingly, by deception or intimidation" obtain or use funds or assets of the older or disabled adult.

DSS Director's Duties

G.S. 108A-14 includes a list of duties and responsibilities of a DSS director. This bill adds a new duty to the list "to receive and evaluate reports of financial exploitation of disabled adults, to investigate credible reports of financial exploitation under Article 6A of this Chapter, and to take appropriate action to protect these adults." While this may appear to add an expansive new "duty," the director has already had duties related to these types of investigations under Article 6. It appears that the DSS director's duties with respect to investigating financial exploitation and taking appropriate action are limited to disabled adults and do not encompass older adults.

New Article 6A

The stated intent of this new article is to “facilitate the collection of records needed to investigate and prosecute such incidents.” The key components of this new article are as follows:

- “Trusted persons” list: Financial institutions may offer disabled and older adults an opportunity to offer a list of “trusted persons” to contact in case of suspected financial exploitation.
- Reporting: Financial institutions (and officers/employees) having reasonable cause to believe that a disabled or older adult is the victim or target of exploitation must report the information to local law enforcement and any “trusted person” identified by the adult (unless the institution suspects that the trusted person may be involved with the exploitation). If the adult is disabled, the institution must also report it to the county DSS. The report may be oral or written, and must include the name and address of the adult, the nature of the suspected exploitation, and “any other pertinent information.”
- Production of records: G.S. 108A-116 authorizes law enforcement or, in the case of a disabled adult, DSS, to ask a judge or magistrate to issue a subpoena for production of financial records. The section directs the institution to promptly provide the records upon receipt of a proper subpoena and requires that the information be kept confidential unless required to be disclosed in court or introduced into evidence.
- Notice to the customer: When a law enforcement or DSS official issues a subpoena for financial records, the official must either (1) immediately provide the customer with written notice of the subpoena or (2) obtain an order for delayed notice. The judge or magistrate issuing the subpoena may order a delayed notice for up to 30 days for various reasons related to interfering with the investigation. This delay may be extended for up to 60 days. If the delay is requested because the notice may endanger the life or physical safety of any person, the delay may be up for 180 days, with the option of an unlimited number of 180-day extensions as necessary.

Financial institutions

In general, financial institutions must protect customers’ financial records. New language is added to G.S. 53B-4 authorizing institutions to disclose financial records pursuant to a subpoena to (1) a DSS director investigating a credible report of financial exploitation of a disabled adult or (2) a law enforcement agency investigating a credible report of financial exploitation of a disabled or older adult. G.S. 53B-9 also includes language that directs the financial institution to locate and prepare the subpoenaed records and directs the government authority to pay the institution “a fee for costs directly incurred in assembling and delivering the financial records,” unless the institution waives the fee.

Freezing Assets in Financial Exploitation Cases – S.L. 2013-203 (H891)

This act authorizes the district attorney to file a petition to freeze a person's assets if that person is charged with financial exploitation of disabled or older adults and the charge relates to funds, assets, or property valued at more than \$5,000. The standard of proof for freezing assets is clear and convincing evidence. The act adds a new G.S. 14-112.3 outlining the procedure for requesting and implementing such an order. The new authority is available for offenses committed on or after October 1, 2013.

Adult Guardianship – S.L. 2013-258 (H 543)

Last year, the legislature made several changes to the laws governing guardianship of adults in the wake of changes in the public mental health system. See this blog post for more details: <http://canons.sog.unc.edu/?p=6726>. This year, the legislature made a few additional changes:

- Corporate guardians: G.S. 35A-1213(c) allows corporations to be appointed as guardians in some circumstances. The legislation adds new language that prohibits a corporation from being appointed as guardian for “any individual to whom it provides [MH/DD/SA] services for compensation as part of a contractual or another arrangement with a local management entity....”
- Individuals as guardians: If an individual (1) contracts with an entity that contracts with an LME to provide MH/DD/SA services or (2) is employed by an entity that contracts with an LME to provide MH/DD/SA services, that individual may not serve as a guardian for a ward who is receiving MH/DD/SA services from that person or entity *unless*:
 - The person is a parent of the ward;
 - The person is a member of the ward's immediate family, a licensed family foster care provider, or a licensed therapeutic foster care provider who is under contract with an LME as of 1/1/13; or
 - A biologically unrelated individual who was serving on 3/1/2013 as a guardian without compensation for guardianship services.

The legislation also directs a subcommittee of a legislative oversight committee to study the impact of mental health reform on public guardianship services and report its findings by May 9, 2014.

This legislation became effective on July 10, 2013.

Appropriations Act/Selected Provisions – S.L. 2013-360 (S 402)

Supplemental Short-Term Assistance for Group Homes

The bill authorizes NC DHHS to use \$4.6 million to provide temporary, short-term financial assistance to help certain Medicaid-eligible individuals stay in group homes. This funding is available if the person has continuously lived in the group home since December 31, 2012 and was eligible for personal care services before the state changed eligibility criteria in 2012. Similar bridge funding was provided last year.

State-County Special Assistance Pilot

The legislation directs NC DHHS to create a pilot program in 4-6 counties to try out two changes to the State-County Special Assistance program:

- Block grant funding rather than open-ended 50/50 funding, and
- Tiered rate structure based on participants' intensity of need.

Progress report is due by February 1, 2014 and a final report is due by February 1, 2015.

Medicaid Reform

The legislation directs NC DHHS to work with a small advisory group appointed by the legislature and the Governor to create a detailed plan for reforming the Medicaid program. Plan is due by March 17, 2014.

Medicaid Fraud Recovery

A new section, G.S. 108A-64.1 directs NC DHHS to provide financial incentives to counties that successfully recover fraudulently spent Medicaid funds.

Adult Guardianship

The legislation authorizes NC DHHS to use almost \$4 million from the Social Services Block Grant for guardianship services in FY 2013-14 and FY 2014-15 for the following two purposes:

- Existing corporate guardianship contracts, and
- Guardianship contracts transferred to the State from local management entities or managed care organizations