

## Administrative Inspection Warrants in Adult Protective Services Cases

The county department of social services (DSS) receives a report that a 65-year old woman, Mary, was injured by a family member who repeatedly hit her during a dispute that took place at Mary's home. Mary lives with her adult daughter, Patricia, and son-in-law, Frank. The report includes a statement that Mary has been recently diagnosed with dementia and has not left the house in more than a month. After finding the necessary allegations to screen the report in as an adult protective services (APS) report, the case is assigned to an APS caseworker who commences an evaluation to investigate the report further and determine whether Mary is a disabled adult subject to abuse, neglect, or exploitation and in need of protective services. See G.S. 108A-103.

When the caseworker goes to visit Mary as part of the evaluation, Frank refuses to allow her in the home. The caseworker returns multiple times and each time is denied entry and access to Mary. The caseworker determines that it is not possible to complete the evaluation without meeting with Mary. Is there anything that she can do to gain access to the home and thus to Mary?

### **The Solution: Administrative Inspection Warrant**

DSS could apply to the court for an administrative inspection warrant. [G.S. 15-27.2](#) authorizes any official or employee of the State or of a unit of county or local government of North Carolina to obtain a warrant authorizing him or her to conduct a search or inspection of property if such a search or inspection:

1. is one for which such a warrant is constitutionally required, and
2. is one that is elsewhere authorized by law, either with or without the consent of the person whose privacy would be thereby invaded. [G.S. 15-27.2\(a\)](#).

Because the caseworker has not been able to obtain consent, the caseworker's entry into Mary's home likely qualifies as an entry for which "a warrant is constitutionally required." See [In re Stumbo](#), 357 NC 279 (2003) (J. Martin, concurring) (noting in the context of a child protective services investigation that the entry by DSS into the home of a person suspected of child abuse constitutes a search by a government actor and thus implicates the Fourth Amendment).

The inspection is one that is "elsewhere authorized by law" as Articles 6 and 6A of G.S. 108A, along with related regulations, require DSS directors to take on an inspector role through their duty to receive and evaluate reports of abuse, neglect, or exploitation of disabled adults and to provide protective services to such adults. See [G.S. 108A-14\(a\)\(14\) and \(15\)](#). As part of the evaluation, the director must visit with the disabled adult and assess the disabled adult's functionality, including his or her physical and mental health, social support, activities and instrumental activities of daily living, financial support, and physical environment. [G.S. 108A-103\(a\)](#); [10A NCAC](#)

[71A.0208](#). The director may delegate this duty to an authorized member of his or her staff. [G.S. 108A-14\(b\)](#).

## Types of Administrative Inspection Warrants

There are two types of administrative inspection warrants authorized under [G.S. 15-27.2](#).

1. **Program of Inspection Warrant.** One type of administrative inspection warrant is issued when certain property to be searched or inspected is part of a legally authorized program of inspection that naturally includes that property. For example, a fire marshal conducts periodic fire inspections of all of the multi-family residences in a neighborhood to ensure compliance with the fire code. If one resident in the group of residences to be inspected refuses to allow the fire marshal to enter, the fire marshal could obtain this type of warrant to allow her to gain access to the residence to conduct the inspection.
2. **Condition, Object, Activity, or Circumstance Warrant.** The second type of administrative inspection warrant is the type of warrant that a county DSS would seek in an APS case. This warrant may issue when there is probable cause to believe that there is a condition, object, or activity, or circumstance that legally justifies such a search or inspection. In Mary's case, it would be that there is probable cause to believe there is abuse, neglect, or exploitation of a disabled adult in need of protective services.

## Issuing the Warrant

When seeking an administrative inspection warrant, DSS may apply for the warrant from an authorized court official whose territorial jurisdiction includes the property to be inspected. [G.S. 15-27.2\(b\)](#). The court officials authorized to issue these types of warrants are elected, assistant, or deputy clerks of court, magistrates, and district and superior court judges. *Id.* For example, if the property is located in Harnett County, DSS may apply to a district court judge in Judicial District 11, a deputy, assistant, or elected clerk or magistrate in Harnett County, or any superior court judge in the State to issue the warrant. See [Bob Farb, Arrest, Search, and Investigation in North Carolina 426 \(2011\)](#) (noting that the most reasonable way to interpret the official's jurisdiction with respect to administrative inspection warrants is that it is the same as the official's jurisdiction to issue a search warrant). Magistrates are the court officials who most often issue search warrants and administrative inspection warrants, and who may be most easily accessible to DSS.

There are two key documents related to this second type of administrative inspection warrant: (i) the probable cause affidavit, and (ii) the warrant. The Administrative Office of the Courts has published forms for both of these documents ([AOC-CR-913M](#)). In addition, the NC Department of Health and Human Services through the Division of Aging and Adult Services also published a sample affidavit as [Appendix F-1](#) to the Adult Protective Services Manual.

## 1. Affidavit

When applying for an administrative inspection warrant, DSS is required to submit an affidavit that is signed under oath or affirmation. [G.S. 15-27.2\(c\)\(2\)](#). The affidavit must include facts sufficient to establish probable cause that there is abuse, neglect, or exploitation of a disabled adult in need of protective services. *Id.* DSS should not include the name of the person who made the report or the identity of those with knowledge of the situation in the affidavit, as those names are required to be kept confidential. [10A NCAC 71A .0802](#). As a result, this could make it more challenging to show probable cause.

In Mary's case, facts that may be used to attempt to establish probable cause may include statements about the caseworker's attempts to visit Mary, Frank's refusal to allow the caseworker to enter the house, Mary's dementia diagnosis and injury as well as any information from records obtained by DSS related to her care and treatment, the report of violence in the home, the failure of Mary to leave the house to seek treatment, and the lack of responsible, willing, and able persons acting on Mary's behalf, among any other facts discovered as part of the caseworker's evaluation.

## 1. Warrant

Upon receipt of the affidavit, the authorized court official is required to examine the affiant under oath or affirmation to verify the accuracy of the matters indicated by the statement in the affidavit. [G.S. 15-27.2\(c\)\(3\)](#). The court official must then determine whether probable cause is sufficiently shown.

If probable cause is established, for the warrant to be valid it must:

1. Be signed by the issuing official;
2. Include the date and hour of issuance above the signature of the issuing official;
3. Include a notation that it is only valid for 24 hours following its issuance;
4. Describe the property to be searched sufficient to enable the person executing the warrant and the property owner to reasonably determine what property is authorized to be searched (the description may be in the warrant or the affidavit; if in the affidavit, the warrant should include a reference to the affidavit); and
5. Be attached to the affidavit.

[G.S. 15-27.2\(d\)](#).

## Execution of the Warrant

Once issued, the warrant is only valid for 24 hours and it must be returned to the court within 48 hours. [G.S. 15-27.2\(e\)](#). The warrant must be **personally served** upon the owner or possessor of the property and executed between the hours of 8:00 A.M. and 8:00 P.M. *Id.*; Farb at 428. If DSS

is unable to locate the owner or possessor of the property after making reasonable efforts to do so, DSS may affix the warrant or a copy of it to the property during the same time period and that has the same effect as if served personally upon the owner. *Id.* It is advisable for the DSS official executing the warrant to take a law enforcement officer with them for safety and assistance in executing the warrant.

After serving the warrant, the caseworker may enter the property to interview Mary and assess her functionality, capacity, whether there is abuse, neglect, or exploitation, and her need for services.

If, based on the interview, an emergency exists and Mary is in need of services, lacks the capacity to consent to services, and no one else is authorized to give such consent, DSS may elect to seek an ex parte order in district court under [G.S. 108A-106](#) to remove the conditions creating the emergency or initiate a guardianship proceeding under G.S. Chapter 35A and seek [interim guardianship](#). Otherwise, the caseworker may proceed with his or her evaluation and make any reports to law enforcement or the district attorney as are required by law.