

# **Guardianship and Adult Protective Services in NC**

**8/21/15**

## **TASK FORCE ON ALZHEIMER'S DISEASE AND RELATED DEMENTIA**



# Guardianship in NC

**Statutory Authority:** N.C. General Statute 35A

***Purpose:***

- help an individual who is declared incompetent to exercise his or her rights
- not an appropriate avenue to attempt to control a person's behavior
- should be considered only after all other possible alternatives have been explored

***Types:***

- Guardian of the Person
- Guardian of the Estate
- General Guardian (both person/estate)



# Guardianship in NC

## ***Responsibilities (can be limited or full):***

- Making decisions about where the individual will live (cannot force them to go anywhere)
- Authorizing medical treatment
- Consenting to recreational activities
- Managing the individual's finances/estate/asset related issues
- Filing status reports and accountings with the court

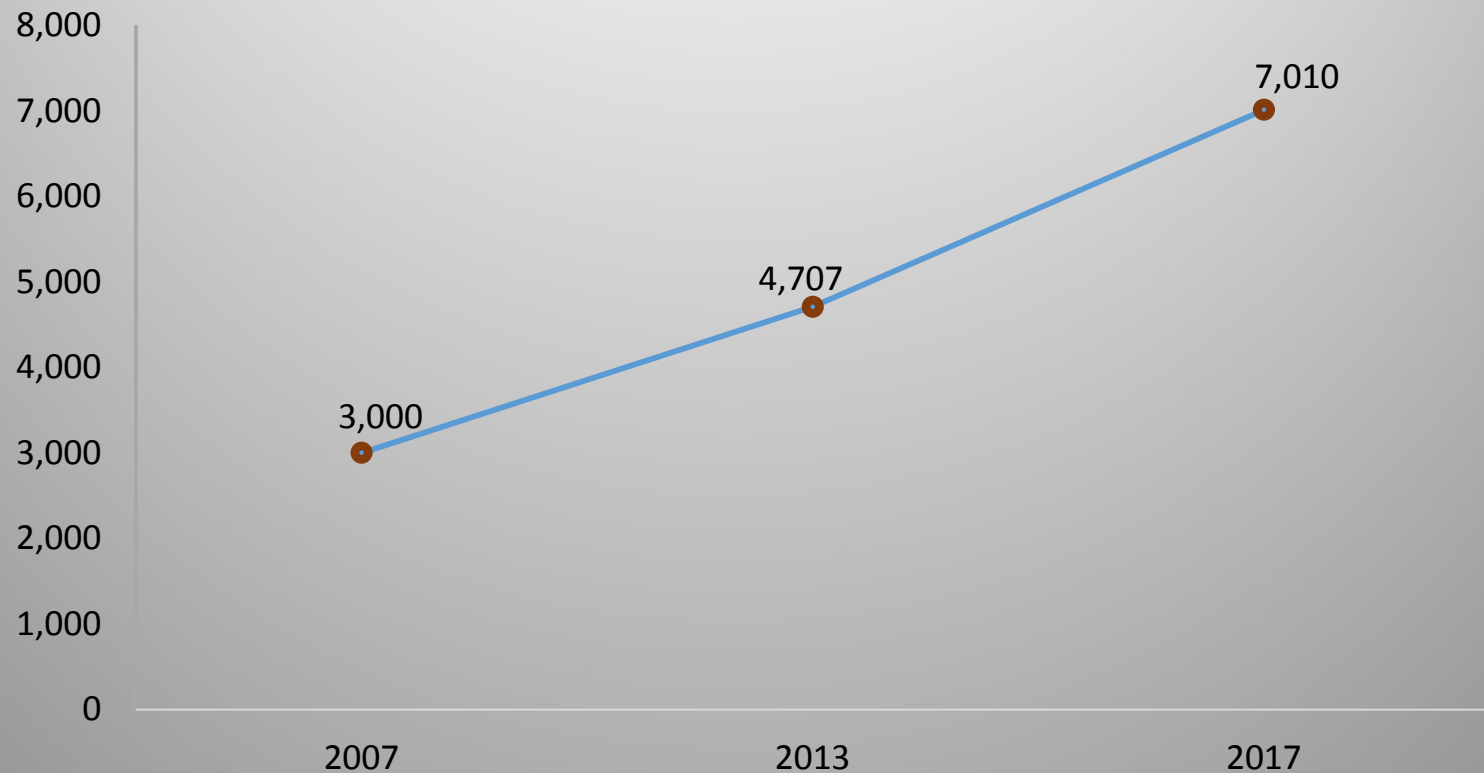
## ***A guardian is not:***

- required to contribute his/her own resources to the ward
- liable for the ward's debts
- able to gift whatever he/she wants to themselves (must be reasonable expenses incurred in carrying out his duties as guardian). The clerk can set a commission for the guardian by the clerk from the ward's estate for serving.

# Guardianship Process

- Guardianship (Incompetency) Petition Filed with the Clerk of Court
- Hearing is set
- All parties served notices of hearing
- Pre multi-disciplinary evaluation (MDE) **may** be ordered
- Hearing held (court appointed attorney may be offered)-Clerk serves as the judge unless a jury is requested
- If evidence deems incompetency, the Clerk will appoint a guardian. If not, the petition will be dismissed

# North Carolina Public Guardianship Services Total Number of Wards Served by Year



## Guardianship (key issues)

- Appointment process
- Limited family involvement
- Geography/Distance/Jurisdiction
- Indigent persons wishing to serve
- Growth of this population

# Adult Protective Services in NC

**Statutory Authority:** N.C. General Statute 108A

**Purpose:** County Social Services protect adults by:

- Receiving reports and evaluating the need for protective service
- Planning with the disabled adult, family or caregiver to identify and prevent abuse, neglect or exploitation
- Reporting evidence of mistreatment to the District Attorney and various regulatory agencies
- Initiating court action as necessary to protect the adult
- Mobilizing essential services on behalf of the disabled adult

**Types of Maltreatment:**

- Abuse – Willful infliction of physical pain, injury, mental anguish, unreasonable confinement or willful deprivation by caretaker of services that are necessary to maintain mental/physical health.
- Caretaker Neglect – Failure of the caregiver to provide services to maintain the physical/mental health of the disabled adult.
- Self-Neglect – Disabled adult who lives alone or has no caregiver and is not able to provide necessary services to maintain her mental/physical health.
- Exploitation – Illegal or improper use of the disabled adult or his/her resources for another's profit or advantage.

\* There is a difference in what the community perceives that APS should do and what they APS law will allow APS to do. The main issue being that self-determination is respected if the adult has the capacity to make what we might see as bad decisions.



# Adult Protective Services in NC

**When a report is made, we must know that alleged victim adult is:**

- disabled-incapacitated by a physical or mental impairment, meaning the consumer cannot complete daily activities or handle his/her affairs or protect interests (Mental retardation, cerebral palsy, epilepsy or autism, organic brain damage caused by advanced age or other physical degeneration in connection therewith; or conditions incurred which are the result of accident, mental or physical illness, or continued consumption or absorption of substances);
- abused, neglected and/or exploited (already occurred);
- unable and unwilling to obtain essential services him or herself **OR** in a situation where no one willing, able and responsible to obtain essential services on their behalf.

**If an APS report meets ALL of the criteria above, the County can accept the report for evaluation/investigation.**

- Responses/initiation times (immediate up to 72 hours depending on the urgency)
- The social worker must complete a thorough evaluation of abuse/neglect within 30 days and before 45 days for exploitation cases.
- If the criteria is not met, if APS criteria are not met some counties will provide information regarding community resources.

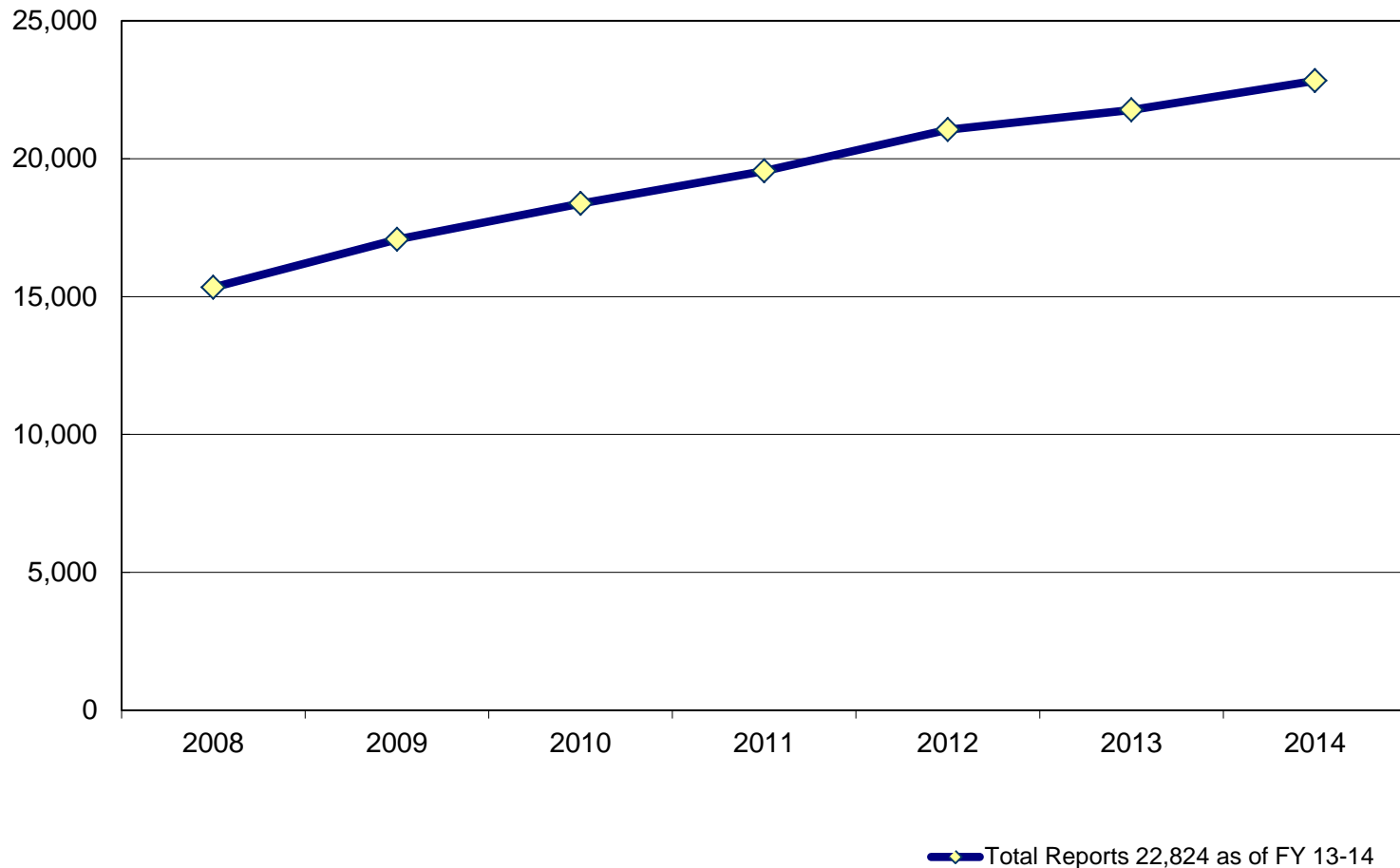
**For Social Services to “take action”, they must substantiate that the adult meets ALL of the criteria below.**

- truly a disabled adult (incapacitated);
- has being abused, neglected and/or exploited;
- in need of protective services (needs services to alleviate substantiation like in home care, needs an appointed guardian, assist with long term care placement, or provide case management);
- willing to accept services (and has the mental capacity to do so).





# Adult Protective Services Reports 2008-2014



# APS Key Issues

- Strengthen APS statues in NC
- Financial Exploitation & Prosecution
- Geography/Jurisdiction
- Limited Family Involvement
- Growth



# Top 10 Recommendations (not ranked)

- 1) Strengthen NC laws/statutes as it relates to APS/Guardianship.
- 2) Study the placement process for vulnerable adults to understand current gaps.
- 3) Statewide integrated case management system for social work services for APS/Guardianship that can cross reference public assistance programs to reduce keying duplications.
- 4) Better Education for Clerks of Court to press for family members being identified prior to appointing Social Services as guardian.
- 5) Assess national and local processes/models who serve as guardians/caregivers/ surrogate decision makers (bonds, status reports, accountings, transportation, burnout, etc..).

# Top 10 Recommendations (not ranked)

- 6) Provide More Support for Caregivers.
- 7) More education about what APS can and cannot do (self-determination).
- 8) Implement Collective Community Impact Models in communities focused on outcomes specific to local issues and needs to ensure a more coordinated response among both public and private providers.
- 9) Adding dementia assessments into part of the annual physical leading to early detection/diagnosis.
- 10) Assess/study the availability of Home and Community Care Services in NC with recommendations for how to address waiting lists.



# Questions?

John Eller

828-695-5603

[jeller@catawbacountync.gov](mailto:jeller@catawbacountync.gov)

