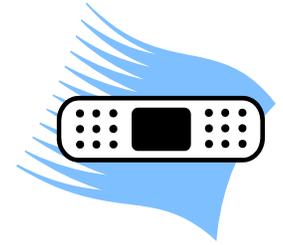


GALs and APS: The Next Generation



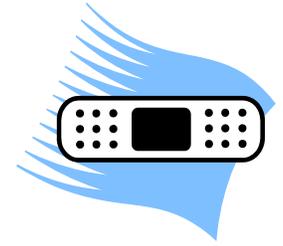
- On November 20, 2009, the Supreme Court of South Carolina amended Rule 608 so that attorneys will no longer be appointed as Guardians ad Litem (GALs) in Family Court. This amendment takes effect on July 1, 2010. (<http://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=600>)
- While there are GAL programs in effect to cover DSS Child Protective cases, there are no such programs for Adult Protective cases.

The Need: South Carolina



- In 2009, there were 508 APS cases brought into the Family Court system.
- By 2025, estimates indicate that South Carolinians age 60+ will number more than 1,290,000.
- Current figures indicate that 60% of South Carolina Seniors' income is below federal poverty guidelines.
- 30% of individuals 65+ have significant functional or cognitive impairments.

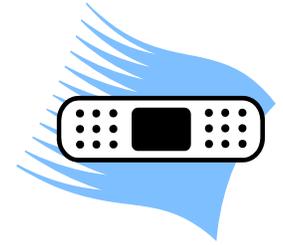
January 2010 INTAKES of Abuse, Neglect or Exploitation



Incident Intakes by Region

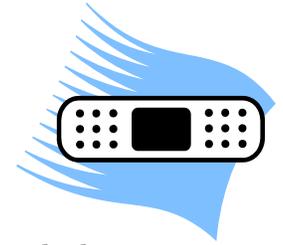
	<u>2007</u>	<u>2008</u>	<u>2009</u>
Low Country	185	209	208
Midlands	411	390	301
Pee Dee	113	119	110
Piedmont	345	314	332
<u>Unknown</u>	<u>0</u>	<u>0</u>	<u>3</u>
Total:	1,054	1,032	954

Definitions - The Omnibus Adult Protection Act (OAPA)



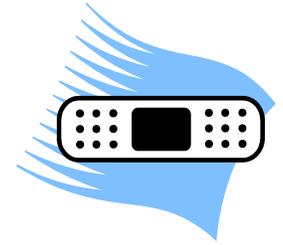
- Vulnerable Adult – a person 18+ with physical or mental condition that substantially impairs the person from adequately providing for his/her own care.
- Abuse
 - Physical Abuse – intentional infliction of physical injury on a vulnerable adult
 - Sexual Abuse – any act that constitutes sexual battery
 - Psychological Abuse – deliberately subjecting a vulnerable adult to threats, harassment, or other forms of intimidating behavior
- Neglect – failure or omission of caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult

Definitions: OAPA (cont'd)



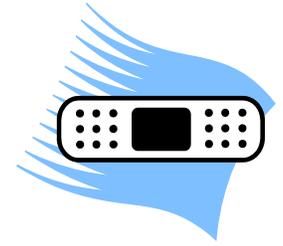
- Exploitation –
 - causing or requiring a vulnerable adult to engage in activity or labor which is improper, unlawful, or against the reasonable and rational wishes of the vulnerable adult;
 - Improper, unlawful, or unauthorized use of funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult for profit or advantage of someone other than the vulnerable adult;
 - Causing a vulnerable adult to purchase goods or services for the profit or advantage to someone other than the vulnerable adult through
 - Undue influence;
 - Harassment;
 - Duress;
 - Force;
 - Coercion; or
 - Swindling by overreaching, cheating,, or defrauding the vulnerable adult that causes the vulnerable adult to lose money or other property.

The Law, APS & the Courts



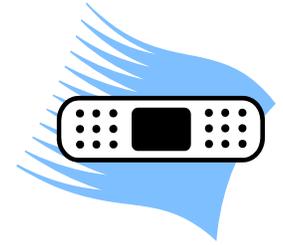
- § 43-35-5 et seq. The Omnibus Adult Protection Act (Handout)
- Your Day in Court
 - Distribute GAL Report to the Court, SC DSS, and Defense
 - NOTE: Sometimes these reports are requested 7-10 days before the trial
 - Prepare for the trial
 - Re-read the case file
 - Talk to the vulnerable adult
 - Talk to the Caregivers
 - Talk to the DSS caseworkers
 - Talk to Other witnesses

Investigative Entities



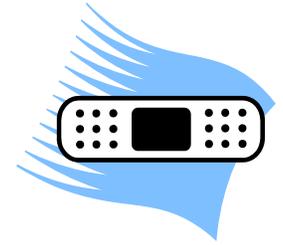
- SLED
 - investigates or refers to local law enforcement abuse, neglect, or exploitation in a residential facility contracted with or operated by DDSN or DMH.
- SC Long Term Care Ombudsman’s Office
 - investigates other residential facilities, such as private nursing homes and most community residential care facilities.
- SC Department of Social Services
 - investigates abuse, neglect, or exploitation of vulnerable adults in settings other than those facilities investigated by SLED or the Long Term Care Ombudsman. Reports of abuse, neglect, or exploitation of a child or a vulnerable adult should be made to county DSS offices.
- SC Attorney General’s Medicaid Fraud Control Unit
 - investigates misuse of Medicaid funds, including financial exploitation of Medicaid recipients.

DSS Adult Protective Services (APS), the Report



- Report is made to DSS (§§ 43-35-40 & 43-35-45)
- Report is made to Law Enforcement (§ 43-35-55)

Report to APS, §§ 43-35-40 & 43-35-45



- Upon receiving a report, APS promptly initiates an investigation and within 2 working days of receiving the report reviews it for the purpose of reporting to SLED's Vulnerable Adults Investigations Unit (VAIU) those cases which indicate reasonable suspicion of criminal conduct. APS must make a report to the VAIU within one working day of completing the review.
- APS can petition family court for an order to provide protective services at any time during or subsequent to an investigation into allegations that a vulnerable adult is at substantial risk to be or has been abused, neglected, or exploited and consent for protective services cannot be obtained. APS can seek an ex parte order in those cases requiring emergency protective services or emergency removal of the vulnerable adult from the place the adult is located or residing.
- 10 days from filing of petition, the court must appoint a GAL and an attorney for the vulnerable adult;

Report to APS, §§ 43-35-40 & 43-35-45 (cont'd)



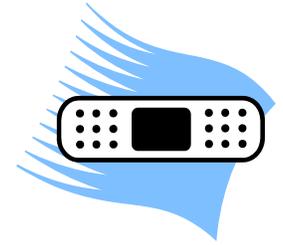
- 40 days from filing of petition for protective services , there is to be hearing on the merits;
- 5 days prior to the merits hearing, APS is to conduct a comprehensive evaluation of the vulnerable adult
- At the merits hearing , the court can order protective services be provided to the vulnerable adult if there is a substantial risk of being or there is abuse, neglect or exploitation and the vulnerable adult is unable to protect themselves and protective services are necessary to protect the vulnerable adult;
- Services are to be provided in the least restrictive environment;
- After the merits hearing, any interested person can file for a review of the case; and,
- APS is to evaluate the case every six (6) months after the merits hearing.

Report to Law Enforcement § 43-35-55



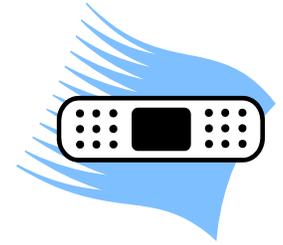
- Law Enforcement can take vulnerable adult into emergency protective custody (EPC) when there is probable cause to believe that there is imminent danger to the vulnerable adult's life or physical safety because of abuse, neglect or exploitation, the adult or caregiver does not consent to custody and there is no time to get a court order;
- If EPC taken, Law Enforcement is to immediately notify APS and the vulnerable adult is placed in the agency's protective custody pending the probable cause hearing. APS commences an investigation at this time;
- Within 1 day of notification by law enforcement, APS is to file a petition for protective custody and the remaining sections of §43-35-45 are followed;
- A probable cause hearing is held within 72 hours of the vulnerable adult being taken into EPC.

Signs of Physical Abuse



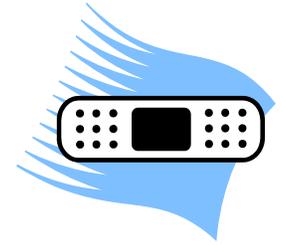
- Bruises, black eyes, welts, cuts and rope marks;
- Broken bones and skull fractures;
- Open wounds, cuts, punctures, untreated injuries in various stages of healing;
- Sprains, dislocations, and internal injuries/bleeding;
- Broken eyeglasses/frames, physical signs of being subjected to punishment and signs of being restrained;
- An individual's report of being hit, slapped, kicked or mistreated; and
- The caregiver's refusal to allow visitors to visit the individual alone.

Signs of Psychological/Emotional Abuse



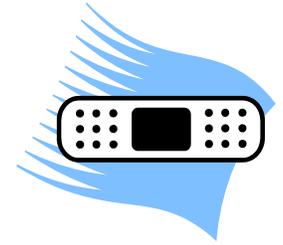
- Emotionally upset or agitated;
- Extremely and unusually withdrawn, not communicating or not responding
- Unusual childlike behavior (sucking, biting, rocking)
- An individual's report of being verbally or emotionally mistreated.

Signs of Sexual Abuse



- Bruises around the breasts or genital area;
- Unexplained venereal disease or genital infections;
- Unexplained vaginal or anal bleeding;
- Torn, stained or bloody underclothing; and
- An individual's report of being sexually assaulted or raped.

Signs of Neglect



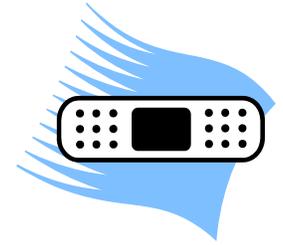
- Dehydration, malnutrition, untreated bed sores and poor personal hygiene;
- Unattended or untreated health problems;
- Hazardous or unsafe living conditions/arrangements (improper wiring, no heat or no running water)
- Unsanitary and unclean living conditions (dirt, fleas, lice on person, soiled bedding, fecal/urine smell, inadequate clothing); and
- An individual's report of being mistreated.

Signs of Financial Exploitation



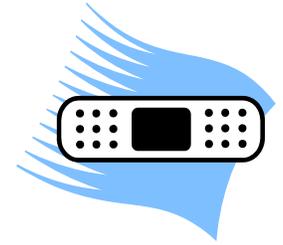
- Sudden changes in bank account or banking practice, including an unexplained withdrawal of large sums of money by a person accompanying the individual;
- Addition of names on an individual's bank signature card;
- Unauthorized withdrawal of funds with an ATM card;
- Abrupt changes in a will or other financial documents;
- Unexplained disappearance of funds or valuable possessions;
- Substandard care being provided or bills unpaid despite the availability of adequate financial resources;
- Discovery of forged signature or documents;
- Sudden appearance of previously uninvolved relatives claiming rights to an individual's affairs and possessions;
- Unexplained sudden transfer of assets to a family member or someone outside the family;
- Provision of services that are not necessary; and
- An individual's report of exploitation.

Signs of Activity/Labor Exploitation



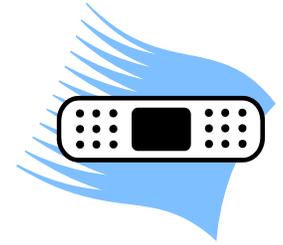
- An individual's report of being forced to participate in activities that are not part of a care plan;
- An individual's report of working (non-volunteer work) but not being paid; and
- An individual's report of being forced to do chores or labor that are not part of his/her care plan.

GAL Volunteer Role



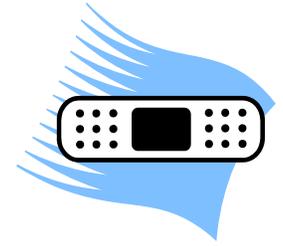
- Research/Independent Investigation
 - If possible, interview Client
 - Interview Witnesses
 - Review Documents, Photographs, Medications, MARs, Medical History, Investigative Reports
 - Descriptions, not conclusions
- Facilitation
- Advocacy
- Monitoring

Potential Witnesses



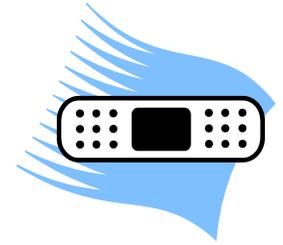
- Doctors
- Neighbors
- Family – children, siblings, parents, cousins, etc.
- Service providers
- Community – churches, clubs (Rotary, Sorority/Fraternity, Jaycees, etc.), Meals on Wheels, etc.
- DSS Caseworker
- Law enforcement
- Probate Court
- Any person who has contact or knowledge of the person

Cultural Considerations



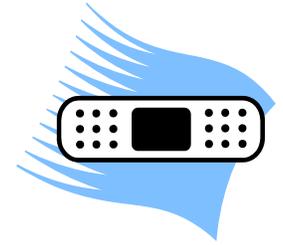
- Mental and Cognitive Disabilities
 - Mental Illness
 - Autism
 - Dementia
- Physical Disabilities
 - Blind
 - Deaf
 - Spinal Cord Injury
- Aging
- Race
- Gender
- Nationality
 - Limited English Proficiency (LEP)

Guiding Principles



- Person First, Disability Second
- Do not treat the individual differently or “with kid gloves” because of the disability
- If the person is deaf and uses an ASL interpreter, look at the person, NOT the interpreter.
- Be patient. Do not interrupt.

Cultural competency factors



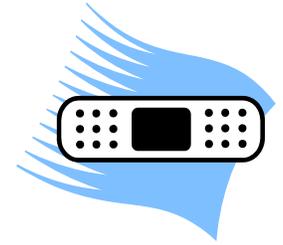
- Place of birth and how long they have been in the country
- Ethnic affiliation
- Major support people
- Primary and secondary languages
- Reading and writing abilities
- Non-verbal communication style
- Religion and its importance in their daily life
- Income

Considerations



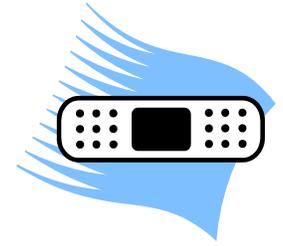
- Best Interest vs. Least Restrictive Environment (LRE)
 - Balancing a person’s dignity and choice with their welfare and ability to make decisions. Keep in mind that your client may not be able to make large decisions about their care, but you should always SEEK ways to allow them to maintain as much choice as possible without diminishing best interest.
 - **SC Rules of Professional Conduct - RULE 1.14: CLIENT WITH DIMINISHED CAPACITY:** Comment [2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.
 - Olmstead, the ADA and Community Integration mandate
- Capacity
 - § 62-5-101(1)"Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property

Communicating



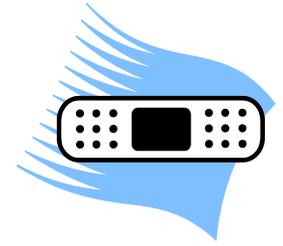
- Be self-aware
 - Do not judge based on differences in income, neighborhood, language, etc.
- Keep in mind that there are 2 kinds of communication – verbal and non-verbal/gestural. Pay attention to what you're doing and what the person you're interviewing is doing.
- Maintain Confidentiality

Gathering Information



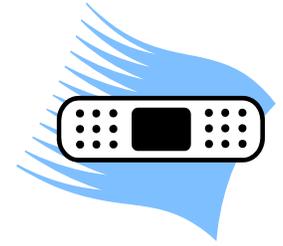
- Make a list of people to interview
- Write questions to ask each person on the list
- Ask them who they recommend you interview for more information
- Ask open-ended questions
- Do not share confidential information with people you interview

Reporting and Monitoring



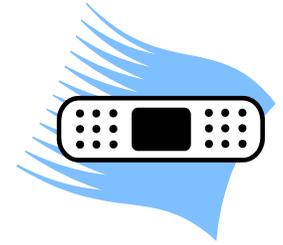
- Report Outline:
 - Names of the parties
 - Petition date and nature of allegations
 - Brief factual history of the prior court involvement
 - Summary of the matter before the court
 - Case status
 - court-ordered services
 - Facts
 - Persons contacted and relationship to client
 - Reports/records reviewed, requested, or read
 - Compliance (or lack of) with previous court orders
 - Changes in circumstances
 - Needs of client
 - Placement
 - Visitation Plan
 - Safety
 - Financial Needs
 - Whether there are available resources to meet the needs

Report Checklist



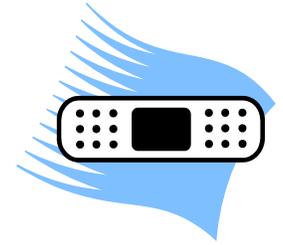
- ✓ Person Contacted
- ✓ Type of Contact
- ✓ Date and Time
- ✓ Place
- ✓ Factual Observations
- ✓ Feelings Expressed by those interviewed
- ✓ Facts gathered
- ✓ Summary of what happened
- ✓ My Plan of Action
- ✓ Recommendations

Resources



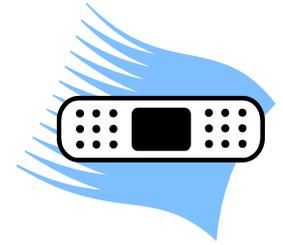
- [National Center on Elder Abuse](#)
- [Department of Health and Human Services Administration on Aging](#)
- [South Carolina Lt. Governor's Office on Aging](#)
- [Lt. Governor's Office on Aging \(Internet Guide for Resources\)](#)
- [South Carolina Department of Health and Environmental Control \(licensing website for Nursing homes and community residential care homes\)](#)
- [South Carolina Department of Mental Health](#)
- [South Carolina Department of Disabilities and Special Needs](#)
- [South Carolina Department of Health and Human Services](#)

Resources cont'd



- [SC Access: Aging and Disability Information](#)

Questions? Contact



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