

**Legal Aspects of
Protective Services for Adults
Update 2012**

Monday, March 12, 2012

Handout Materials



**New York State
Office of
Children & Family
Services**

New York State
Office of Children and Family Services
and
PDP Distance Learning Project

LEGAL ASPECTS OF PSA



2012 UPDATE

Teleconference
March 12, 2012



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LEGAL ASPECTS OF PSA 2012 UPDATE

Teleconference | March 12, 2012

Agenda

INTRODUCTION.....Moderator: **Trish Geary**
SUNY Distance Learning Project

LECTURE I.....**Debra Sacks, Esq.**
Senior Staff Attorney, Sadin Institute,
Brookdale Center for Healthy Aging
of Hunter College / CUNY

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State Legislation
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BREAK

LECTURE II.....**Alan Lawitz, Esq.**
Director, Bureau of Adult Services
Charles Carson, Esq. Assistant Deputy
Counsel, Division of Legal Affairs

Agency Issues

QUESTIONS AND ANSWERS
Debra Sacks, Alan Lawitz, Charles Carson

CLOSING REMARKS
Trish Geary



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LEGISLATIVE DEVELOPMENTS

2011 – 2012

Federal Legislation

Elder Justice Act

The Elder Justice Act remains unfunded for the second year since its passage. President Obama requested \$21.5 million from Congress in startup funds which were not approved.

Garnishment of Accounts Containing Federal Benefit Payments

Treasury, SSA, VA, RRB and OPM (Agencies) are issuing an interim final rule to implement statutory restrictions on the garnishment of Federal benefit payments. The rule establishes procedures that financial institutions must follow when they receive a garnishment order against an account holder who receives certain types of Federal benefit payments by direct deposit. The rule requires financial institutions that receive such a garnishment order to determine the sum of such Federal benefit payments deposited to the account during a two month period, and to ensure that the account holder has access to an amount equal to that sum or to the current balance of the account, whichever is lower. <http://www.federalregister.gov/articles/2011/02/23/2011-3782/garnishment-of-accounts-containing-federal-benefit-payments#p-15Summary>

N.Y. State Legislation – Chapter Laws of 2011

Abuse/Domestic Violence

CHAPTER 9(A00088) Effective 5/12/11

Amends §§530.12 & 530.13, Criminal Procedure Law. Provides clarification to determine the expiration date of an order of protection issued in relation to a family offense. These orders will now commence from the date of the sentencing, not the conviction.

CHAPTER 11(A627) Effective 4/13/11

Amends §459-a, Social Services Law. Includes aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, criminal obstruction of breathing or blood circulation, and strangulation within the criminal offenses which may constitute domestic violence for the purposes of domestic violence prevention. It also makes conforming changes by updating the social Services law to include unrelated persons in an "intimate relationship" within the definition of "family or household members" for purposes of domestic violence prevention.

CHAPTER 309 (A7632) Effective 8/3/11

Amends §821, Family Court Act. Adds criminal obstruction of breathing or blood circulation and strangulation to the list of actionable allegations in family offense petitions.

CHAPTER 502 (A628-A) Effective 6/23/12

Adds §108, Executive Law. Establishes an address confidentiality program in the office of the secretary of state for domestic violence victims who need to maintain confidentiality of their location; authorizes the secretary of state to accept service of process and receipt of mail on behalf of a program participant.

CHAPTER 339 (S4235) Effective 8/3/11

Amends §575, Executive Law. Directs the office for the prevention of domestic violence to develop and promote senior center based domestic violence prevention programs.

Health Care

CHAPTER 167 (A7343-A) Effective 9/20/11

Amends §§2994-a - 2994-d, 2994-g, 2994-m & 2994-aa, Public Health Law. Extends provisions of the Family Health Care Decisions act to decisions regarding hospice care.

CHAPTER 509 (A3304-A) Effective 9/23/11

Adds §22, Public Health Law. Establishes a health-related legal services program to make grants for the purpose of providing on-site legal services without charge to assist, on a voluntary basis, income eligible patients and their families to resolve legal matters or needs that have an impact on patient health.

CHAPTER 512 (A4899-A) Effective 11/23/11

Amends §366-a, Social Services Law. Requires the provision of a model health care proxy form to individuals applying for medical assistance except where doing so would impede the immediate provision of health care services.

CHAPTER 307 (A7465-A) Effective 8/3/11

Amends §2302, Rule 3122, Civil Practice Law & Rules. Clarifies, that in the absence of a patient's authorization, a trial subpoena duces tecum seeking the production of medical records may be issued by the court.

Vulnerable Populations

CHAPTER 222 (A676-B) Effective 10/25/11

Adds §837-f-1, amends §838, Executive Law. Creates the missing vulnerable adults clearinghouse; provides for plan and implementation programs to ensure the most effective use of federal, state, and local resources in the investigation of missing vulnerable adults;

CHAPTER 263 (A544) Effective 8/3/11

Amends §202, Elder Law. Requires the state office for the aging to review programs addressing the needs of the aging veteran population.

CHAPTER 542 (A8322) Effective 12/23/11

Amends §13.34, Mental Hygiene Law. Relates to designating the ombudsman as an employee of the commissioner on quality of care and advocacy for persons with disabilities.

CHAPTER 558 (S5795) Effective 11/23/11

Amends §§7.21, 13.21, 16.13 & 31.11, Mental Hygiene Law. Relates to reporting of crimes at mental hygiene facilities.

CHAPTER 588 (S5793) Effective 1/23/12

Amends §5.05, Mental Hygiene Law. Relates to providing notice of abuse investigations at mental hygiene agencies.

Protective Services for Adults

CHAPTER 412 (A5458-A)8/17/11

Amends §473-c, Social Service Law. Relates to an order to gain access to persons believed to be in need of protective services for adults; requires official to document factors considered to determine whether or not to apply for an order to gain access.

CHAPTER 440 (A7633) Effective 8/17/11

Amends §422, Social Service Law. Relates to permitting social services officials in an adult protective service investigation access to certain confidential records under the child abuse and maltreatment registry when such official has reasonable cause to believe that such person may be in need of protective services due to the actions of an individual or individuals that had access to such adult when he or she was a child.

Cases of Interest 2011

Family Court Act

In the Matter of a Family Offense Proceeding under Article 8 of the Family Court Act, Mabel R., Petitioner, against Rayshawn D., Respondent.

2011 NY Slip Op 21374; 933 N.Y.S.2d 529; 2011 N.Y. Misc. LEXIS 5051

Grandson filed a motion to dismiss his grandmother's family offense proceeding, wherein the grandmother claimed that he and his mother drew large sums of money from the grandmother's saving and checking accounts without her consent and that he would not leave her residence when asked. While petitioner's claims regarding the misappropriation or theft of her property do not themselves constitute family offenses within the meaning of Family Court Act §812 (1) the allegations in this case consist of more than the property claims alleged. Here petitioner alleges that respondent and his mother had misappropriated or stolen her property while she was incapacitated by a stroke and unable to look after her own affairs. Petitioner returned to her house still physically impaired and ordered respondent to leave the premises, and he has refused to do so.

The court found, while a petitioner's age and physical disabilities are not determinative as to whether a respondent committed a family offense, these factors are certainly relevant, and may be considered in conjunction with the other evidence adduced at trial. The allegations in the grandmother's petition might also constitute second-degree harassment under Family Court Act §812 (1) and Penal Law § 240.26(3). Therefore, the petition would not be dismissed. The Motion was denied.

Article 9 MHL Civil Commitment/Assisted Outpatient Treatment (AOT)

In the Matter of Anthony H. (Anonymous), appellant; and Adam Karpati, etc., respondent. 2011 NY Slip Op 2676; 82 A.D.3d 1240; 919 N.Y.S.2d 214; 2011 N.Y. App. Div. LEXIS 2641

Anthony H. moved, in effect, to dismiss the petition on the ground that these records were inadmissible hearsay. The Supreme Court denied the motion, and in a resettled order and judgment dated May 19, 2010, the Supreme Court, finding that Anthony H. met all of the criteria for AOT, granted the petition and directed him to comply with an AOT program for a period of six months. Anthony H. appeals.

Here, even though the order and judgment had already expired, the issues raised on appeal was whether the diagnoses in Anthony H.'s medical records, stating that his hospitalizations resulted from his failure to take his medication, constituted admissible evidence to support the AOT order.

Here, the petitioner presented medical records which contained diagnoses that Anthony H.'s hospitalizations were caused by his failure to take his medication. Contrary to Anthony H.'s contention, these records were admissible under the business record exception to the hearsay rule, because the diagnoses were relevant to his treatment, and could be used to develop a discharge plan that would ensure his safety.

In the Matter of Miguel M., Also Known as Miquel M., Appellant. Charles Barron, M.D., Director of the Department of Psychiatry at Elmhurst Hospital Center, Respondent.

No. 76, Court of Appeals of New York, 2011 NY Slip Op 3886; 17 N.Y.3d 37; 950 N.E.2d 107; 926 N.Y.S.2d 371; 2011 N.Y. LEXIS 751, May 10, 2011, Decided

Respondent physician applied for an order under Mental Hygiene Law § 9.60 requiring "assisted outpatient treatment" for appellant patient. The trial court directed that the patient receive and accept assisted outpatient treatment for a period of six months. The Supreme Court of New York, Appellate Division, Second Department, affirmed. The patient appealed.

At the hearing on the petition, the physician offered in evidence records from two hospitals relating to the patient's hospitalizations. A witness called by the physician testified that the hospitals had furnished the records in response to a request made without notice to the patient. The patient had not authorized the release of the records, and no court order for their disclosure had been sought or obtained. The appellate court found that the Privacy Rule, 45 C.F.R. tit. 160, 164, adopted pursuant to the Health Insurance Portability and Accountability Act, Pub. L. No. 104-191, 110 U.S. Stat 1936, prohibited disclosure of an identifiable patient's health information without the patient's authorization, subject to certain exceptions. The exceptions offered by the physician, permitting disclosure for purposes of "public health" and "treatment" did not fit the facts of this case. Medical records obtained in violation of Health Insurance Portability and Accountability Act or the Privacy Rule, and the information contained in those records, were not admissible in a proceeding to compel assisted outpatient treatment. The decision of the intermediate appellate court was reversed, and the case was remitted to the trial court for further proceedings.

In the Matter of James R. Dolan, Jr., Director of Community Services for the County of Nassau, Petitioner, For an Order Authorizing Assisted Outpatient Treatment - for against Lisa O. (Anonymous), Respondent.

2011 NY Slip Op 21339; 33 Misc. 3d 870; 930 N.Y.S.2d 425; 2011 N.Y. Misc. LEXIS 4613

The trial court ordered petitioner to properly obtain respondent's medical records in this Mental Hygiene Law § 9.60 action for assisted outpatient treatment (AOT), even though the records were obtained before Miguel M. was decided. Obtaining respondent's psychiatric medical records for an AOT proceeding without respondent's authorization, or prior notice, violated the Privacy Rule of HIPAA. Miguel M. did not represent an abrupt shift in controlling case law, and applied retroactively. Respondent's records could not be admitted. Petitioner ordered to properly obtain respondent's medical records, and prohibited from testifying until records were properly obtained.

Article 81 Guardianship

Family Health Care Decisions Act

In the Matter of the Application of Erie County Medical Center Corporation, by Gary Norsen, Associate Administrator, Erie County Home, Personal Guardian, Petitioner, for the Appointment of a Guardian of the Person and Property of Jane Doe, An Alleged Incapacitated Person, 2011 NY Slip Op 51820U; 33 Misc. 3d 1208(A); 2011 N.Y. Misc. LEXIS 4801

Petitioner moved pursuant to Article 81 of the Mental Hygiene Law and Article 29-CC of the Public Health Law, the Family Health Care Decisions Act, for the authority to withhold life sustaining treatment from Jane Doe, including the authority to consent to a Do Not Intubate (DNI) order, to decline and/or withdraw a percutaneous endoscopic gastrostomy (PEG) or nasogastric (NG) tube, and to consent to the issuance of "comfort only" measures.

In sum, based on all of the evidence presented and the findings made, all relevant criteria of both Section 81.22 (8) of Article 81 of the Mental Hygiene Law and Section 2994-d (4) and (5) of Article 29-CC of the Public Health Law have been satisfied and neither the Court Evaluator nor the Court Examiner had raised any objection. Finally, the relief sought comported with the wishes, preferences and desires of Jane Doe, and that it was in her best interests. The court allowed the FHCDA to be applied retroactively.

Powers of attorney

***Matter of Schwarz, ___ Misc3d ___, 2011 N.Y. Misc. LEXIS 4633 (Sup. Ct., Kings Cty., 2011)**

The Supreme Court declined to revoke the advance directives of a 57 year old rabbi, bedridden by multiple sclerosis that had recently been exacerbated by diabetes and leukemia, which were in favor of the AIP's sister, with whom the AIP resided in a room of her home which was comparable to a room at a skilled nursing facility. Noting that the

advance directives allowed for the management of the AIP's activities of daily living, his personal needs, his finances and property, and was consistent with the statutory goal of effectuating the least restrictive form of intervention, the Court invalidated a subsequent power of attorney in favor of the petitioner, the AIP's brother, which the petitioner had recently obtained from the AIP, while he was incapacitated, under false pretenses. Finally, the Court, noting that the petitioner had commenced the proceeding in bad faith "to settle scores and address unresolved issues among siblings rather than advance the best interest of the AIP," held the petitioner responsible for the Court Evaluator's fees.

***Matter of Walter K.H., 31 Misc.3d 1233(A), 2011 N.Y. Misc. LEXIS 2531 (Sup. Ct., Erie Cty)**

The Supreme Court revoked a Power of Attorney in which the AIP, while competent, had designated her adult daughter to serve as attorney-in-fact, due to the daughter's self-dealing and breach of her fiduciary duty, but declined to revoke the Health Care Proxy in which the AIP designated her daughter to also serve as her health care agent, due to the petitioner-son's failure to prove that his sister was unavailable or unwilling to act, or that her actions or inactions rose to the level of incompetence or bad faith. However, due to the fighting between the AIP's children, the Court declined to appoint the petitioner-son, and instead appointed an independent third-party, to serve as full guardian of the IP's property, and limited guardian of her person.

Financial Issues

***Matter of M. H., ___ Misc.3d ___, 2011 N.Y. Misc. LEXIS 4685 (Sup. Ct., Bronx Cty., 2011)**

The Supreme Court denied, without prejudice, a guardian's motion for an order transferring the IP's life-estate interest in real property to the IP's granddaughter, co-owner of the property, who had already entered into a contract for its sale without the court's permission, noting, inter alia, that the guardian had not demonstrated that the transfer was appropriate, and further noting that the court could permit the guardian to enter into a contract for the sale of the property without the need for a transfer.

***Matter of A.M. v L.M., 31Misc3d 1222(A); 2011 N.Y. Misc. LEXIS 2075 (Sup. Ct., Bronx Cty.)**

The Supreme Court declined to appoint the petitioner (the AIP's brother) as guardian of the AIP's person, noting that it had been demonstrated that the conflict of interest posed by the petitioner's desire to protect his financial interests (as co-owner of the house in which the AIP resides) and the interests of his children (as remaindermen of the AIP's trusts), may motivate him, inter alia, to sell her home against her wishes, to place her in a facility (which is medically unnecessary), and to refuse to provide her with needed services (such as health insurance, which the petitioner had recently refused as "too costly").

***Matter of Jones (Lantigua), 2011 NY Slip Op 50501U; 2011 NY Misc. LEXIS 1349 (Sup. Ct., Kings Cty., 2011) (Barros, J.)**

The co-guardian and trustee for a severely disabled child who had received at \$684,700 lump sum net settlement of his wrongful life action was denied commissions and surcharged \$501,425.67 for breach of his fiduciary duty to the child by, inter alia: (1) deliberately purchasing a dilapidated home for the child, from the estate of one of his former wards (for whom he also served as closing attorney), for significantly more than what he had affirmed the house was worth; (2) entering into a contract, without prior court approval, with his business associate, to renovate the home; (3) renting from this same business associate, for the child's use during construction, a \$1,200 a month dilapidated, vermin-infested apartment that was not handicapped-accessible (in violation of the guardianship order and judgment which limited the child's rent obligation to \$300 a month); (4) failing to call this business associate to task when he proved utterly incapable of creating a handicapped-accessible home; and (5) failing to create a supplemental needs trust for the child, which resulted in the child's loss of his Medicaid and SSI income.

In the Matter of Ella C., An Alleged Incapacitated Person. 2011 NY Slip Op 52335U; 2011 N.Y. Misc. LEXIS 6167

This is a guardianship case of extreme familial conflict and dubious financial transactions. This case exemplifies the complications of the mental decline of a mother and her subsequent behavior toward her children. She was subjected to financial abuse by a new friend while her children and grandchildren's actions regarding their mother's property interests were numerous and questionable. The Vera Institute of Justice Guardianship Project acted as temporary guardian. The AIP owned two multiple dwellings in New York City and the complications inherent in navigating the maintenance of these buildings, safeguarding from exploiters her credit accounts, her pension, and the proceeds from a substantial Vioxx wrongful death action for her husband necessitated the appointment of a non-familial property management guardian. A personal needs guardian was not needed as the temporary guardian indicated that the AIP had left the jurisdiction for Belize, where she was managing with the aid of siblings.

Miscellaneous

***Matter of J.J., 32 Misc3d 1215A; 2011 N.Y. Misc. LEXIS 3458 (Sup. Ct. NY Cty. 2011)**
(Lewis, J.)

A community guardian sought to permanently place an IP in a skilled nursing facility in which he was already residing, relinquish his apartment, judicially settle the final account and be relieved as guardian. The nursing home sought to intervene as a party. MHLS opposed all aspects of the motion. Among other things, the court held that: (1) the nursing home could not intervene, reasoning: (1) the fact that it had been served with notice of the proceeding did not provide a statutory entitlement to intervention, especially since it was not even entitled to be served with the petition, and it was not affected by the outcome such that it could be an aggrieved party with standing to appeal; and (2) that in any event, the issue whether the IP should be permanently place raises a conflict of interest for the nursing home which benefits from the Medicaid payments it would receive for the care of the IP.

In the Matter of the Application of Peter Smergut, Executive Director of Life's WORC, INC., Petitioner, For the Appointment of a Special Guardian of the Property of LD, an Alleged Incapacitated Person. 2011 NY Slip Op 21068; 31 Misc. 3d 875; 924 N.Y.S.2d 747; 2011 N.Y. Misc. LEXIS 560

Petitioner proposed a Special Guardian be declared for an alleged incapacitated person (AIP) who could not speak, walk, or perform any activities of daily living on her own, and to serve as property manager on her behalf. The New York State Office for People with Developmental Disabilities (OPWDD) opposed the application. The court found that Mental Hygiene Law §81.19(e)(2) did not apply because the service provider was not seeking to be the guardian of the AIP, rather the AIP's sister would be the special guardian. The court found the AIP was an incapacitated person. Petition was granted.

Note: * These case descriptions were taken from the "Guardianship Collected Cases" for Article 81 and Article 17-A compiled by the NYS Mental Hygiene legal Services and used with their permission.
<http://www.courts.state.ny.us/ip/gfs/index.shtm>

Art 17-A Guardianship

In the Matter of the [*1] Guardianship of JONATHAN EE., a Developmentally Disabled Person, and ALYSSA M. BARREIRO et al., as Coguardians of JONATHAN EE., Respondents- Appellants; ALAN EE. et al., Respondent, et al., Respondent. (Proceeding No. 1.) In the Matter of the JONATHAN EE. TRUST NUMBER ONE. ALYSSA M. BARREIRO et al., as Coguardians of JONATHAN EE., Respondents- Appellants; BARRY EE., as Trustee for the JONATHAN EE. TRUST NUMBER ONE, Appellant- Respondent. (Proceeding Number 2.) (And Another Related Proceeding.)
2011 NY Slip Op 5844; 86 A.D.3d 696; 927 N.Y.S.2d 171; 2011 N.Y. App. Div. LEXIS 5687

The cases concern applications, in two proceedings pursuant to SCPA article 17-A, for guardianship compensation. At issue were both the reasonableness of the fees awarded and the appropriate source for the payment. The courts review of the relevant statutory scheme failed to disclose any authority for the award of such fees to petitioners. The court stated,

“The Legislature has expressly provided for an award of "reasonable compensation" when an individual has been appointed either as a guardian ad litem pursuant to SCPA article 4 or as a guardian of an incapacitated person pursuant to Mental Hygiene Law article 81 (see SCPA 405 ; Mental Hygiene Law § 81.28). No corresponding provision, however, appears in SCPA Article 17-A - the statutory provision under which petitioners were appointed here. Hence, Surrogate's Court was without authority to grant petitioners' fee applications, and any remedy in this regard lies with the Legislature — not this Court.”

Accordingly, the order of the Surrogate's Court was reversed, and petitioners' applications for guardianship fees were dismissed.

sworn to on August 12, 2010, from which it appears ***** has failed to produce a copy of the power of attorney for ***** and has failed to provide a record of all receipts, disbursements, and transactions entered into by ***** on behalf of *****,

NOW THEREFORE,

LET ***** SHOW CAUSE before the Hon. Ferris D. Lebous, Justice of the Supreme Court, at a trial Term of the Court to be held in the County of Broome, at the Broome County Supreme Court, 92 Court St., Binghamton, New York on the 24th day of September, 2010, at 9:30 in the forenoon that day or as soon thereafter as counsel can be heard, and

WHY the Court should not order ***** to produce a copy of the power of attorney for ***** and to provide a record of all receipts, disbursements, and transactions entered into by ***** on behalf of ***** and in addition make a determination of the necessity of any of the following pursuant to General Obligations Law §5-1510:

- a) to determine whether the power of attorney is valid; and
- b) to determine whether the principal had capacity at the time the power of attorney was executed; and
- c) to determine whether the power of attorney was procured through duress, fraud or undue influence; and
- d) to remove the agent upon the grounds that the agent has violated, or is unfit, unable, or unwilling to perform the fiduciary duties under the power of attorney; and
- e) any other relief as to the Court may seem just and proper.

SUFFICIENT CAUSE APPEARING THEREFORE, it is

ORDERED, that a copy of this Order to Show Cause and the Petition upon which it is based shall be served upon ***** on or before the 27th day of August, 2010, by any of the methods authorized under CPLR §308.

Dated: Binghamton, New York
August 17, 2010

ENTER

Hon. Ferris D. Lebous
Supreme Court Judge

STATE OF NEW YORK

SUPREME COURT : COUNTY OF BROOME

In the Matter of the Application of
ARTHUR R. JOHNSON, as Commissioner of the
Broome County Department of Social Services,
Petitioner

PETITION

Index No. CA *****

RJI No. *****

For an Order Pursuant to General Obligations
Law §5-1510 Compelling the Production of
A Copy of the Power of Attorney for *****
And a Record of All Receipts, Disbursements,
And Transactions Entered Into by the Agent
On behalf of *** *****.**

******* ***** , Respondent.**

TO: THE SUPREME COURT, COUNTY OF BROOME

Your Petitioner, ARTHUR R. JOHNSON, respectfully shows to the Court and alleges:

1. He is the duly appointed Commissioner of Social Services of Broome County, State of New York, with offices at 36-42 Main Street, Binghamton, NY 13905.
2. By virtue of my office, I am authorized under the terms of General Obligations Law §5-1505 to bring this proceeding.

3. Broome County Protective Services for Adults received a referral for ***** on or about June 8, 2010, concerning unpaid bills for taxes and water and concerns with a Power of Attorney.
4. The Protective Services for Adults Caseworker, Mary Smith, while investigating the report that ***** may be in need of protective or other services was informed by ***** that she was the agent for ***** pursuant to a power of attorney.
5. ***** refused to cooperate with Ms. Smith in any fashion and has behaved in an uncooperative manner toward Ms. Smith.
6. Ms. Smith verbally requested a copy of the Power of Attorney and also requested a record of all receipts, disbursements and transactions entered into by ***** on behalf of ***** refused this request.
7. Thereafter on or about June 22, 2010, Ms. Smith sent ***** a written demand for a copy of the power of attorney and the record of transactions. A copy of this letter is attached to her Affidavit as Exhibit '1'. ***** failed to produce either the power of attorney or record of transactions.
8. Submitted herewith is an Affidavit of Mary Smith, Adult Protective Caseworker, detailing her efforts to obtain the required items and her concerns.
9. Due to the concerns for ***** it is respectfully requested that in addition to the Court requiring the production of the Power of Attorney and record of transactions, that the Court determine whether the power of attorney is valid; determine whether the principal had capacity at the time the power of attorney was executed; determine whether to remove the agent upon the grounds that the agent has violated, or is unfit, unable, or unwilling to perform the fiduciary duties under the power of attorney pursuant to General Obligations Law §5-1510.

WHEREFORE, Petitioner requests the Court to issue an Order pursuant to General Obligations Law §5-1510 compelling ***** to produce a copy of the Power of Attorney signed by ***** naming ***** as agent, to produce a record of all receipts, disbursements, and transactions entered into by the agent on behalf of *****; and for the Court to determine whether the power of attorney is valid; determine whether the principal had capacity at the time the power of attorney was executed; determine whether the power of attorney was

procured through duress, fraud or undue influence; determine whether to remove the agent upon the grounds that the agent has violated, or is unfit, unable or unwilling to perform the fiduciary duties under the power of attorney, and for such other and further relief as the Court deems just and proper.

Dated: August 12, 2010

Arthur R. Johnson, LCSW
Commissioner, Broome County
Department of Social Services

VERIFICATION

STATE OF NEW YORK)
) SS:
COUNTY OF BROOME)

Arthur R. Johnson, being duly sworn, deposes and says:

That he is the Commissioner of the Broome County Department of Social Services and as such is acquainted with the facts and circumstances of the above-entitled proceeding; that he has read the foregoing Petition and knows the contents thereof; and that upon information and belief, the same is true.

Arthur R. Johnson, LCSW
Commissioner, Broome County
Department of Social Services

Sworn to before me this
12th day of August, 2010.

Notary Public

3. ***** is part of my caseload and I am familiar with the facts and circumstances of this case.
4. The ***** case was assigned to me on approximately June 8, 2010, concerning the care that ***** is receiving.
5. I make this Affidavit in support of the application by the Commissioner of Social Services seeking an order requiring the production of the Power of Attorney for ***** and a record of transactions pursuant to General Obligations Law §5-1510.
6. ***** is ** years old, having been born on ***** 19**, and appears to need assistance to remain safe.
7. Upon information and belief ***** suffers from dementia. I am very concerned about the appropriateness of the care that ***** receives in his home. He is behind in his water bill and has received a shut-off notice. He needs furnace repairs and also has several unpaid New York State Electric & Gas bills.
8. ***** lives at ***** , ***** , New York, together with ***** daughter, ***** , her children, and grandchildren. Upon information and belief, ***** moved these people into live with ***** and they pay no rent or expenses.
9. During one of my first visits on or about June 14, 2010, ***** informed me that she was the Power of Attorney for ***** . I thereafter requested a copy of the Power of Attorney and a record of her transactions on behalf of ***** .
10. ***** has refused to provide the Power of Attorney and record of transactions.
11. On or about June 22, 2010, I sent ***** a letter informing her that she is required to produce the Power of Attorney and record of transactions or the instant proceeding would be commenced. She still failed to produce the required documents. A copy of the letter is attached hereto as Exhibit '1'.
12. Another letter was sent on or about July 9, 2010, by certified mail. A copy of the letter and return receipt is attached hereto as Exhibit '2'.

13. On or about July 10, 2010, ***** faxed a letter to the undersigned stating she could not provide the information requested because it was blueberry season. A copy of her handwritten letter is attached hereto as Exhibit '3'.
14. ***** behavior toward me has become increasingly resistant and non-compliant.
15. Based upon the above, I have concerns about *****'s ability to act appropriately as Power of Attorney and even question whether there is a valid Power of Attorney appointing her as the agent.

Dated: August 12, 2010

Mary Smith, Caseworker
Protective Services for Adults
Broome County Department of Social Services

Sworn to before me this
12th day of August, 2010.

Notary Public

PSA letter requesting records from an Agent under GOL Section 5-1505

Date: 6/22/10

*****, NY *****

Re: *****

Dear: *****

The Broome County Department of Social Services hereby requests a record of all receipts, disbursements, and transactions entered into you as the agent with the Power of Attorney on behalf of *****. We request that you provide these records and this information to the Broome County Department within 15 days of receipt of this letter. The record must include all receipts, disbursements, and transactions for each and every account of *****, and for any financial action otherwise taken by you as Power of Attorney.

Please forward a copy of the records and information to:

Mary Smith, caseworker
Broome County DSS, Protective Services for Adults
36-42 Main Street
Binghamton, NY 13905

New York General Obligation Law Section 5-1505 authorizes this agency to make this request, and requires you to comply with this request within 15 days. Your failure to make the records available may result in the necessity of Broome County DSS commencing a Special Proceeding under Section 5-1510 of that law.

Sincerely,

Mary Smith
Caseworker

*****, MPA
Supervisor, Protective Services for Adults



**NEW YORK STATE
OFFICE OF CHILDREN & FAMILY SERVICES
52 WASHINGTON STREET
RENSSELAER, NY 12144**

Andrew M. Cuomo
Governor

Gladys Carrión, Esq.
Commissioner

Informational Letter

Transmittal:	12-OCFS-INF-01
To:	Commissioners of Social Services
Issuing Division/Office:	Division of Child Welfare and Community Services
Date:	January 17, 2012
Subject:	Sharing of Confidential Client-identifiable Information Between Child Protective Services (CPS) and Protective Services for Adults (PSA)
Suggested Distribution:	Directors of Social Services CPS Supervisors and Staff PSA Supervisors and Staff Agency Attorneys
Contact Person(s):	Please direct questions about this policy to: Buffalo Regional Office Dana Whitcomb (716) 847-3145 Dana.Whitcomb@ocfs.state.ny.us Rochester Regional Office Karen Buck (585) 238-8201 Karen.Buck@ocfs.state.ny.us Syracuse Regional Office Daniel E. Comins (315) 423-1200 Daniel.Comins@ocfs.state.ny.us Albany Regional Office Kerri Barber (518) 486-7078 Kerri.Barber@ocfs.state.ny.us Spring Valley Regional Office Raymond Toomer (845) 708-2498 Raymond.Toomer@ocfs.state.ny.us NYC Regional Office Pat Beresford (212) 383-1788 Patricia.Beresford@ocfs.state.ny.us Native American Services Kim Thomas (716) 847-3123 Kim.Thomas@ocfs.state.ny.us For questions relating to PSA: Director of Adult Services Alan Lawitz (518) 474-9431 Alan.Lawitz@ocfs.state.ny.us
Attachments:	Attachment A: Chapter 440 of the Laws of 2011 Attachment B: Model letter, Authorization for Information
Attachments Available Online:	Attachment A available at: http://public.leginfo.state.ny.us/menugetf.cgi Attachment B is posted, in Word format, with this policy at: http://www.ocfs.state.ny.us/main/policies/external

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR 457, 18 NYCRR 457.16	SSL § 422(4)(A) SSL § 473(1) SSL § 473-e(2)		

I. Purpose

The purpose of this release is to provide guidance to local departments of social services (LDSS) as to permissible means for the sharing of client-identifiable information between Child Protective Services (CPS) and Protective Services for Adults (PSA) units of an LDSS. The release includes information about a new provision of law, enacted as Chapter 440 of the Laws of 2011, as well as information about other applicable longstanding provisions of law. Some LDSSs have sought clarification of permissible means under current law of sharing client identifiable CPS information with PSA, and the enactment of this new chapter law makes it necessary to provide such guidance at this time.

II. Background

CPS: CPS is a state-mandated service provided without regard to income by the CPS unit in an LDSS. CPS investigates reports of suspected child abuse and maltreatment in order to protect children from further abuse or maltreatment. After an investigation, all CPS reports are either “indicated,” if there is some credible evidence that one or more persons abused or maltreated one or more children, or “unfounded,” where no such evidence is found. Reports of child abuse or maltreatment as well as any other information obtained, reports written or photographs taken concerning such reports of child abuse or maltreatment that are in the possession of an LDSS or OCFS are confidential in accordance with Social Services Law (SSL) Section 422. Such information may only be disclosed where authorized by statute. Unauthorized disclosure of confidential CPS information may subject the individual responsible for such disclosure to criminal and/or civil penalties. CPS information contained in reports pending determination or in indicated reports of child abuse or maltreatment may be disclosed only where and to the extent authorized by SSL Section 422(4)(A)(a)-(aa). Among the exceptions in which disclosures are permitted are disclosures made pursuant to court order or upon the authorization of the subject of the report or other person named in the report.

Another exception to the prohibition on disclosing CPS information in reports pending determination or in indicated reports of child abuse or maltreatment, which may be of particular interest to PSA units, is set forth in SSL Section 422(4)(A)(o). That section permits a CPS or an LDSS to provide CPS information to a provider or coordinator of services to which the CPS or LDSS has referred a child named in a CPS report or the child’s family, or to whom the child or the child’s family have referred themselves at the request of CPS or the LDSS, where the child has been reported to the Statewide Central Register of Child Abuse and Maltreatment. The statute authorizes CPS to provide reports or other information necessary to enable the provider or coordinator of services to establish and implement a services plan for the child or family, to monitor the provision or coordination of services, or to directly provide services to the child or family. Such disclosure may not include information that would identify the source of the report, absent the written consent of the source. CPS information received by the provider or coordinator of services is also subject to limitations on redisclosure, as set forth in SSL Section 422(4)(A).

There is no authority in SSL Section 422(4)(A)(o) for the disclosure to providers or coordinators of services of CPS information from an unfounded report of child abuse or maltreatment.

A PSA unit of an LDSS is considered to be a permissible provider or coordinator of services to which CPS may refer a family involved in a CPS case that is pending determination or that is an indicated report.

A new exception permitting disclosure of certain CPS reports to PSA was enacted pursuant to Chapter 440 of the Laws of 2011. Known for the purposes of this release as the “access while a child” exception, this new provision, signed into law on August 17, 2011, and effective immediately upon enactment, added SSL§422(4)(aa) to provide specific authority for PSA to receive confidential CPS records on pending or indicated reports of child abuse or maltreatment when a social services official who is investigating whether an adult is in need of PSA has reasonable cause to believe such adult may be in need of protective services for adults due to the conduct of an individual or individuals who had access to such adult when such adult was a child, and the child abuse or maltreatment reports and information are needed to further the present PSA investigation. A copy of this new law is attached as Appendix A.

PSA: PSA is a state-mandated service which, pursuant to SSL Section 473(1), is provided without regard to income by a PSA unit in an LDSS to assist adults age 18 or older who:

- (a) because of mental or physical impairments,
- (b) are unable to manage their own resources, carry out the activities of daily living, or protect themselves from physical abuse, sexual abuse, emotional abuse, active, passive or self-neglect, financial exploitation or other hazardous situations without assistance from others, and
- (c) have no one available who is willing and able to assist them responsibly.

PSA staff receive and investigate referrals, interview clients and collaterals to determine eligibility for services, assess client risks, develop services plans to address identified risks and, as appropriate, provide or arrange for the provision of protective services in accordance with the services plan. PSA reports, as well as the names of referral sources, photographs and any other information obtained concerning such reports, that are in the possession of the LDSS or OCFS are confidential, pursuant to SSL Section 473-e(2), and may only be disclosed where authorized by that statute. PSA may disclose confidential information to a provider of services of a current or former PSA client when the LDSS believes that such information is necessary to determine the need for or to provide or to arrange for the provision of such services [SSL Section 473-e(2)(b)].

III. Program Implications

PERMISSIBLE MEANS OF SHARING CLIENT IDENTIFIABLE CPS INFORMATION BY CPS TO PSA

A. Referral by CPS to PSA

In accordance with SSL Section 422(4)(A)(o), an LDSS or CPS may disclose client-identifiable CPS information contained in a report pending determination or an indicated report to “a provider or coordinator of services” to which a CPS or an LDSS has referred the child or the child’s family, or to which the child or child’s family has referred themselves at the request of the CPS or LDSS. This authorizes the sharing of CPS information either within the same LDSS or with a PSA unit in a different LDSS to which a referral has been made. PSA is considered to be “a provider or coordinator of services” under this provision.

These provisions apply to an open or indicated CPS report when there is either: (i) a referral made by CPS or the LDSS to PSA of an adult in the child’s family who may be in need of PSA, or (ii) a referral by the child’s family to PSA, made at the request of CPS or an LDSS, where the CPS information is necessary to enable the LDSS PSA to establish and implement a plan of service to a vulnerable adult, or to monitor the provision or coordination of PSA services, or to directly provide PSA services to the child’s family. The term “family” for this purpose includes the children, the parents, and other adults residing in the same household as the children. An example of a situation in which CPS may refer a family to PSA and share CPS information on pending or indicated CPS reports is one where the CPS investigation identifies that there is an adult in the child’s household who may be in need of PSA, as set forth in SSL Section 473. Such referral may be made during or at the conclusion of a CPS investigation. Referral is also appropriate if an individual who is part of a closed CPS case communicates with CPS about an issue relating to the abuse, neglect or financial exploitation of a vulnerable adult.

NOTE:

- CPS information provided to PSA may **not** include the identity of the source of the report, absent the written consent of the source.
- CPS information may be provided by CPS to the PSA unit as a provider or coordinator of services pursuant to SSL Section 422(4)(A)(o) only where there is a CPS report pending determination or an indicated CPS case, but may not be shared where a CPS case is “unfounded.”

B. Release/Consent to Disclose

In accordance with SSL Section 422(4)(A), the subject of a report (i.e., the person who is named in a report as being responsible for the abuse or maltreatment of the child) or another person named in the report (the child named in the report or the child’s parent, guardian, custodian or other person legally responsible for the child who has not been named in the report as being responsible for the abuse or maltreatment) may consent to the disclosure of client-identifiable CPS information in open (pending determination) or indicated reports.

Such consent may be documented through the execution of a written release that expressly refers to the disclosure of CPS information.

In accordance with SSL Section 422(5)(a)(iv), the subject of the report may also authorize the disclosure of an unfounded CPS report to LDSS PSA through a release. Other persons named in the report may not authorize the disclosure of an unfounded CPS report.

Please refer to Appendix B for a model of a consent form authorizing disclosure of CPS information.

C. Multidisciplinary Investigative Team

In accordance with SSL Section 422(4)(A)(x), LDSS CPS may disclose client-identifiable CPS information on pending or indicated CPS reports to members of a local Multidisciplinary Investigative Team (MDT) established by the LDSS. In accordance with SSL Section 423(6), LDSS PSA staff may be members of an MDT. Participation in an MDT would enable LDSS PSA to become aware of CPS reports, including specifically reports of physical abuse, sexual abuse, child fatalities, and serious and/or ongoing maltreatment. PSA would be able to participate jointly with CPS and other appropriate MDT member agencies in the investigation of cases involving vulnerable adults who may be eligible for PSA.

In accordance with SSL Section 422(5)(a)(iii), members of an MDT have access to legally sealed unfounded CPS reports when there is a subsequent report involving the same subject, child, or sibling of a child named in an unfounded report. In such situations, LDSS PSA staff who are members of an MDT might sometimes obtain access to unfounded report information in the context of the investigation of a subsequent CPS report. In accordance with SSL Section 423(6), LDSS PSA staff who are members of an MDT may share client-identifiable PSA information concerning a child or a child's family with other members of the MDT to facilitate the investigation of suspected child abuse or maltreatment.

D. PSA Requests for Access to CPS Information

The situation may arise in which a PSA unit has reason to believe that there may have been prior or ongoing CPS involvement with a family that is also being served by the PSA unit and that the CPS information may be of assistance to the PSA unit in meeting its statutory and regulatory duties and obligations.

In order for the PSA unit to access CPS information, one of the exceptions to the ban on sharing information included in SSL Sections 422(4)(A)(a)-(aa) would have to apply. The applicable exceptions are those pertaining to a court order, MDT, CPS release, provider or coordinator of services, or the new "access while a child" exception noted on page 3.

A PSA unit would have a right to access CPS information on pending and indicated CPS cases if the PSA unit is granted a court order allowing such access. This exception is most likely to occur when the PSA unit is seeking CPS information in the possession of another LDSS. In addition, the PSA unit would have a right to access CPS information from

pending and indicated reports if the subject of the CPS report or any other person named in such report (including the PSA client) executes a release that specifically includes CPS information, subject to the same limitations noted in section B of this Informational Letter. Where access to CPS information is authorized by either a court order or a CPS-specific release, the PSA unit is not required to provide further justification to the CPS unit to gain access to CPS information.

If the PSA unit is not able to access CPS information by either a court order, a CPS-specific release, or through an MDT, the PSA unit may request that the CPS unit share CPS information using the provider or coordinator of services exception in SSL Section 422(4)(A)(o). For this exception to apply, the family must otherwise satisfy the requirements in Section 422(4)(A)(o), which are that:

- the family was referred to the PSA unit by CPS or an LDSS,
or
- the family referred themselves at the request of CPS or an LDSS
and, for either type of referral,
- the PSA unit needs the CPS information to establish and implement a plan of PSA for the family, or to monitor the provision of PSA, or to directly provide PSA, including a PSA investigation.

Should the PSA unit make such a representation to the CPS unit within an LDSS, the CPS unit may share with the PSA information on pending and indicated CPS reports regarding such family, subject to the limitations referenced in section A of this Informational Letter. The PSA unit's request for CPS information should be made in writing to the CPS unit and should set forth the basis for the request. Where CPS information is provided to the PSA unit, the LDSS should document the basis for the transfer of such information.

Finally, the PSA unit may also request confidential CPS records under the "access while a child exception," where the PSA unit is investigating whether an adult is in need of PSA and has reasonable cause to believe such adult may be in need of protective services due to the conduct of an individual or individuals who had access to such adult when such adult was a child, and such records and information are needed to further the present investigation.

RECOMMENDED ACTION:

LDSS staff (Directors of Services, CPS and PSA, together with LDSS attorneys) should review and consider the above mentioned permissible means available under current law to enable CPS, a local or regional MDT, and PSA to share confidential information under certain circumstances; determine how these provisions may apply to future cases; and determine what changes in procedures may be necessary or desirable as a result. In particular, consideration should be given to whether an LDSS may wish to establish an MDT - or expand an existing MDT - to include PSA as well as CPS staff, in order to better address particular PSA cases.

LDSS CPS staff and MDT member agencies should become familiar with the eligibility criteria for PSA, with possible indicators of abuse, neglect and exploitation of vulnerable

adults who may be eligible for PSA, and with the range of services available under PSA. Such information is available under the “Protective Services for Adults” sections of the OCFS Internet and intranet websites; in Publication 1307, “Protecting Adults: A Community Concern”; in Publication 1326, “Protecting Adults From Abuse and Neglect”; and in Publication 4664, “Financial Exploitation of Elderly and Impaired Adults.” More detailed information concerning PSA services, procedures and policies can be found in numerous Administrative Directives, Information Letters and Local Commissioner Memoranda issued in previous years, and may be obtained by contacting the OCFS Bureau of Adult Services.

/s/ Laura M. Velez

Issued By:

Name: Laura M. Velez

Title: Deputy Commissioner

Division/Office: Division of Child Welfare and Community Services

ATTACHMENT A

A07633 Text:

STATE OF NEW YORK

7633

2011-2012 Regular Sessions

IN ASSEMBLY

May 11, 2011

Introduced by M. of A. PAULIN, PEOPLES-STOKES, SCARBOROUGH -- read once and referred to the Committee on Children and Families

AN ACT to amend the social services law, in relation to permitting social services officials investigating whether an adult is in need of protective services to have access to certain confidential reports

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subparagraphs (y) and (z) of paragraph (A) of subdivision 4
2 of section 422 of the social services law, subparagraph (y) as amended
3 and subparagraph (z) as added by section 1 of part A of chapter 327 of
4 the laws of 2007, are amended and a new subparagraph (aa) is added to
5 read as follows:

6 (y) members of a citizen review panel as established pursuant to
7 section three hundred seventy-one-b of this article; provided, however,
8 members of a citizen review panel shall not disclose to any person or
9 government official any identifying information which the panel has been
10 provided and shall not make public other information unless otherwise
11 authorized by statute; [and]

12 (z) an entity with appropriate legal authority in another state to
13 license, certify or otherwise approve prospective foster and adoptive
14 parents where disclosure of information regarding the prospective foster
15 or adoptive parents and other persons over the age of eighteen residing
16 in the home of such prospective parents is required by paragraph twenty
17 of subdivision (a) of section six hundred seventy-one of title forty-two
18 of the United States code[.]; AND

19 (AA) A SOCIAL SERVICES OFFICIAL WHO IS INVESTIGATING WHETHER AN ADULT
20 IS IN NEED OF PROTECTIVE SERVICES IN ACCORDANCE WITH THE PROVISIONS OF
21 SECTION FOUR HUNDRED SEVENTY-THREE OF THIS CHAPTER, WHEN SUCH
OFFICIAL

22 HAS REASONABLE CAUSE TO BELIEVE SUCH ADULT MAY BE IN NEED OF
PROTECTIVE

23 SERVICES DUE TO THE CONDUCT OF AN INDIVIDUAL OR INDIVIDUALS WHO HAD
24 ACCESS TO SUCH ADULT WHEN SUCH ADULT WAS A CHILD AND THAT SUCH
REPORTS

25 AND INFORMATION ARE NEEDED TO FURTHER THE PRESENT INVESTIGATION.

26 S 2. This act shall take effect immediately.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

ATTACHMENT B

AUTHORIZATION FOR INFORMATION

I, _____, currently residing at _____

_____, hereby authorize the New York Statewide Central Register of Child Abuse and Maltreatment to furnish all information which may be contained within the New York Statewide Central Register of Child Abuse and Maltreatment to _____ affiliated with _____ (agency), on my behalf in accordance with the Child Protective Services Act of 1973.

The names and birth dates of the children belonging to the individual listed on the first line of this form as well as previous addresses of this individual are necessary to conduct a thorough and accurate search of the Statewide Central Register database. Please furnish this information below:

Names and birth dates of children:

Previous addresses starting with most recent:

Signature

On this ____ day of _____, 20__, before me personally came _____ (individual) to me known and known to be the same person described in and who executed the within statement, and he/she duly acknowledged to me that he/she executed the same.

Notary Public

CHAPTER 412

AN ACT to amend the social services law, in relation to an order to gain access to persons believed to be in need of protective services for adults

Became a law August 17, 2011, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The opening paragraph of subdivision 1 of section 473-c of the social services law, as added by chapter 413 of the laws of 1986, is amended to read as follows:

A social services official may apply to the supreme court or county court for an order to gain access to a person to assess whether such person is in need of protective services for adults in accordance with the provisions of section four hundred seventy-three of this article when such official, having reasonable cause to believe that such person may be in need of protective services, is refused access by such person or another individual. **A social services official who is refused access shall assess, in consultation with a person in a supervisory role, whether or not it is appropriate to apply for an order to gain access to such person. Such assessment must be made as soon as necessary under the circumstances, but no later than twenty-four hours after the investigating official is refused access. The determination of whether or not to apply for an order to gain access and the reasons therefor shall be documented in the investigation file.** Such application **for an order to gain access** shall state, insofar as the facts can be ascertained with reasonable diligence:

§ 2. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

DEAN G. SKELOS
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

EXPLANATION--Matter in **italics** is new; matter in brackets [-] is old law to be omitted.

NEW STATUTORY REQUIREMENTS FOR PSA ACCESS ORDERS

Chapter 412 of the Laws of 2011. Amends Social Services Law section 473-c. Effective August 17, 2011.

When conducting a PSA investigation to assess an adult’s need for PSA, and the PSA worker is refused access by that person or by someone else, Chapter 412 requires that the following steps be taken:

1. Consultation with Supervisor After the Refusal of Access

A PSA worker who is refused access to an adult believed to be in need of PSA shall assess, in consultation with a person in a supervisory role, whether or not it is appropriate to apply for an order to gain access to such person.

2. Consultation Within 24 Hours After Refusal of Access

Such assessment must be made as soon as necessary under the circumstances but no later than twenty-four hours after the PSA worker is refused access. Local districts will need to make arrangements to have necessary PSDA casework and supervisory staff – and in some cases, agency counsel – available to make such determinations within the 24 hour timeframe, even if this means that such consultations occur after normal office hours.

3. Determinations and Reasons Therefor Must Be Documented

The determination whether or not to apply for an order to gain access at that point in time and the reasons therefor must be documented in the PSA case record.

There is no new requirement that the local district petition for an access order within a certain time frame – or that the district petition at all.

The consultation with the supervisor may be in person, or by telephone, so long as there is sufficient opportunity for PSA worker and supervisor to discuss pertinent details of the case, including, but not limited to:

- Information received from the referral source;
- Information received from collateral contacts;
- The attempt(s) made to obtain access to the person believed to be in need of PSA;
- Whether it is currently believed that the person may be in need of PSA;

- Whether it is believed that the district should seek to apply at this time for an order to gain access, and if so, the reasons therefor
-

Chapter 412 states that such assessments shall be made “as soon as necessary under the circumstances.” The statute, regulations and past administrative directives provide guidance as to what action is necessary in order to determine whether and when to make an application for an order to gain access at a given point in time.

- SSL section 473-c(1)(d)
 - 18 NYCRR section 457.11(b)
 - 87 ADM 6; 93 ADM 23
-

Alan Lawitz, Esq.

Director , Bureau of Adult Services

NYS OCFS

NEW YORK STATE
 DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243



CESAR A. PERALES
 Commissioner

[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.]

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL NO.: 87 ADM-6
 (Adult Services)

TO: Commissioners of Social Services

SUBJECT: Protective Services for Adults:
 Orders to Gain Access to Persons
 Believed to Be in Need of Protective
 Services for Adults (Chapter 413 of the Laws of 1986)

DATE: March 12, 1987

SUGGESTED
 DISTRIBUTION:

County and Agency Attorneys
 Directors of Social Services
 Protective Services for Adults Staff
 Staff Development Coordinators

CONTACT PERSON:

Any questions concerning this release should be directed to the district's Protective Services for Adults Program Representative in the Division of Adult Services by calling 1-800-342-3715; Sharon Lane, ext. 3-8728; Regina Driscoll, ext. 3-1713; Kathleen Crowe, ext. 4-6607; or Irv Abelman, ext. 4-8934 or (212) 488-5097.

I. Purpose

The purpose of this directive is to advise the local social services districts of the provisions of Chapter 413 of the Laws of 1986, which authorizes the districts to petition the court for an order to gain access in order to assess a person's need for Protective Services for Adults (PSA) when the district is refused access by that person or another individual. This transmittal also sets forth the steps which must be taken to effectively utilize this statutory authority. (A copy of the statute is attached as Addendum #1)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous Reference
85 ADM-5 82 ADM-32 81 ADM-57		Part 457	473 473-a 473-c Article 690, Criminal Procedure Law	194	
			30		

DSS-298 (REV. 8/82)

II. Background

Part 457 of the Department's regulations requires a prompt response and investigation of PSA referrals. Districts must commence an investigation as soon as possible but not later than 24 hours after receipt of a PSA referral when it is determined that a life-threatening situation exists. If a life-threatening situation does not exist, an investigation must be commenced within 72 hours of the referral and a visit made to the client within 3 working days of the referral. It is the districts' responsibility to determine whether a life threatening situation exists at the time a referral is made. A PSA referral is defined in Section 457.1(c)(2) of the regulations as any written or verbal information provided to a district in which a specific person is identified as apparently in need of PSA, or any verbal or written information provided to a district on behalf of an adult for whom the district determines that a PSA investigation and assessment are necessary.

Local district staff sometimes encounter serious difficulties in responding to PSA referrals because they are unable to gain access to the potential client. In these situations, access is denied either by the subject of the PSA referral or a family member or friend who is acting as the person's caregiver. Often, the caregiver who is denying access to the potential client is suspected of abusing or exploiting this individual. In order to respond to these cases, local district staff enlist the assistance of family members, friends, neighbors, or staff of other agencies already known to the potential client in order to gain access. However, there are still situations where local district staff cannot gain access. In these cases, staff were advised to request assistance from law enforcement personnel. However, the ability and willingness of law enforcement personnel to effectively intervene in these situations varies greatly depending on the specific situation and the individual police jurisdiction involved. Chapter 413 of the Laws of 1986, which established a new Section 473-c of the Social Services Law (SSL), addresses this problem by providing a mechanism for local districts, in conjunction with law enforcement personnel, to utilize in order to gain access to persons who are believed to be in need of PSA.

III. Program Implications

As previously noted, Chapter 413 establishes a new Section 473-c SSL, which sets forth the provisions pertaining to orders to gain access to persons believed to be in need of PSA. This new statutory authority establishes a judicial proceeding which provides the districts with a means of assessing a person's need for PSA when the district is refused access by that person or another individual. The major provisions of Section 473-c SSL include:

- A. authorizing local social services officials to apply to supreme or county court for an order to gain access to a person to assess whether that person is in need of PSA, when the officials, having reasonable cause to believe that the person may be in need of PSA, are refused access by that person or another individual;

- B. giving the application preference over all other causes in all courts of appropriate jurisdiction, except those with a similar statutory preference;
- C. requiring a court to grant an order to gain access if it is satisfied that there is reasonable cause to believe that a person in need of protective services may be found on the premises and that access to the person has been refused;
- D. establishing the standard for proof and procedure for the authorization to conduct a PSA assessment to be the same as for a search warrant under Article 690 of the Criminal Procedure Law;
- E. requiring a police officer to accompany social services officials and other designated individuals when entering the premises to conduct an assessment of a person's need for PSA pursuant to an order to gain access; and
- F. limiting the provision of involuntary protective services to the completion of the PSA assessment.

IV. Required Action

- A. STEPS TO BE TAKEN BY THE DISTRICT TO ENSURE EFFECTIVE IMPLEMENTATION OF THE STATUTE
 - 1. As part of their mandated outreach and community education efforts for PSA, local districts are required to notify appropriate agencies and professionals of the provisions of Section 473-c SSL, including:
 - a. supreme and county court personnel, since the applications are to be filed in these courts;
 - b. those health and mental health professionals and agencies who may be needed to assist in assessing the person's need for PSA, since the application to the court must include this information; and
 - c. law enforcement agencies, since, if the court grants the order to gain access, local social services officials must be accompanied by a police officer when entering the premises to conduct the PSA assessment.
 - 2. To effectively utilize this new statutory authority, close cooperation between the district's PSA staff and the county or agency attorneys is essential. Therefore, local commissioners must initiate appropriate efforts to ensure the availability of necessary legal resources for the effective implementation of this law. Discussed below are the actions that both a district's PSA staff and the county or agency attorney must take in cooperation with each other to assure the effective use of Section 473-c.

B. PRELIMINARY ACTIONS TO BE TAKEN BY PSA CASEWORK STAFF

1. The initial steps in utilizing the provisions of Section 473-c SSL are the usual steps taken by PSA caseworkers in responding to all referrals. At the time of referral, staff should obtain as much information as possible about the potential client. When responding to a referral and being refused access to assess the person's need for PSA, casework staff must first utilize the other methods currently employed to gain access:
 - a. enlisting the aid of family members, friends, neighbors or staff of other agencies known to the potential PSA client; and/or
 - b. requesting assistance from law enforcement personnel.
2. Should these efforts to gain access fail and the PSA caseworker continues to believe that the person may be in need of PSA, the following information, to the extent the information can be determined or verified, shall be presented to the appropriate supervisor for review and subsequently recorded in the case record:
 - a. the name and address of the person who may be in need of PSA and the premises on which this person may be found;
 - b. the reason that the person may be in need of PSA, including information provided by other agencies or individuals who are familiar with the person;
 - c. the person or persons who are responsible for preventing access to the potential PSA client;
 - d. the efforts made to gain access to the person believed to be in need of PSA;
 - e. the names of any individuals, such as physicians or nurses, or other health or mental health professionals qualified to participate in the assessment, who shall accompany and assist the PSA caseworker in assessing the person's need for PSA; and
 - f. the manner in which the proposed assessment is to be conducted.
3. The documentation of the information cited above in the case record is essential, since Section 473-c.1 SSL requires this information to be contained in the application to the court.

4. If the supervisor concurs with the caseworker's determination of the need for a court order to gain access, the information shall be promptly presented to the county or agency attorney. If the supervisor is not satisfied that sufficient efforts have been made to obtain access voluntarily, the supervisor shall advise the caseworker of the additional effort(s) which must be made. If these additional efforts are unsuccessful, this supplemental information shall be communicated to the supervisor. The supervisor's decision whether or not to support the need for an order to gain access, the reasons for this determination and the information obtained by the caseworker shall be recorded in the case record. If the PSA casework or supervisory staff are unsure about the legal sufficiency of their case for presentation to the court, they should promptly arrange to consult with the county or agency attorney.
- C. PRESENTATION OF MATERIAL TO COUNTY OR AGENCY ATTORNEY AND COMMISSIONER OR HIS DESIGNEE
1. If the county or agency attorney finds that the information presented by the PSA staff is legally sufficient to present in court, the attorney shall immediately prepare an application for an order to gain access. The information gathered by the caseworker as discussed in IV.B.2. above, shall be used in the preparation of the application. In accordance with Section 473-c.1(g) and (h) SSL, the application also must include statements that:
 - a. the order is being sought only for the purpose of assessing the person's need for PSA as set forth in Section 473 SSL and Sections 457.1 and 2 of the Department's regulations; and
 - b. no prior application has been made for an order to gain access or similar type of relief, or if a prior application has been made, the determination of the court and the new facts, if any, that were not previously presented which warrant a renewal of the application.
 2. In addition, Section 473-c.2 SSL requires that any allegations which are not based upon personal knowledge shall be supported by affidavits provided by a person or persons having such knowledge. These affidavits must be attached to the application.
 3. Once the application is prepared, along with the attached affidavits, it shall be presented to the commissioner for approval and signature. The commissioner must then decide whether or not to sign the application. The commissioner's decision and the reason(s) for his determination shall be recorded in the case record.
 4. If the county or agency attorney determines that a case is not legally sufficient for presentation to the court, the attorney shall promptly advise the PSA staff of this decision and the reason for it. In these instances, if the PSA staff still believe that an application for an access order is appropriate, the matter shall be immediately brought to the attention of the commissioner by the PSA supervisor. After reviewing both positions, the commissioner shall make a decision on whether to initiate the application.

If the commissioner deems it appropriate to initiate the application, the attorney shall immediately prepare the application, as discussed above, for the commissioner's signature. As stated above, the commissioner's decision and the reasons for this determination must be recorded in the case record. While the final decision regarding initiation of the application rests with the commissioner, in cases where the commissioner reasonably believes that the case is legally sufficient, the Department recommends that the application be filed.

5. If the commissioner chooses to delegate the responsibility for approving or disapproving applications for access orders to a designee, one person must be delegated to perform this function on the commissioner's behalf. For the purposes of this directive, the term "commissioner" shall mean the local commissioner or his designee.

D. SITUATIONS IN WHICH THE COMMISSIONER DECIDES IT IS NOT APPROPRIATE TO APPLY TO THE COURT FOR AN ORDER TO GAIN ACCESS

In those instances in which the commissioner determines that it is not appropriate to apply to the court for an order to gain access, the caseworker shall notify the potential client, as well as known relatives, friends and interested agencies, of the continued willingness of the district to complete an assessment and provide appropriate services, if the person should agree to accept such services. If the district receives additional information that the situation has deteriorated, the caseworker shall advise the appropriate supervisor and record the information in the case record. The supervisor must then determine whether this additional information is sufficient to warrant being brought to the attention of the county or agency attorney and the commissioner for a redetermination of the decision to apply for an access order. The supervisor's decision on whether or not to bring the new information to the attention of the attorney and the commissioner and the reason for the determination shall be recorded in the case record. If the evidence is considered sufficient to warrant a redetermination, the information shall be promptly presented to the county or agency attorney, and the district shall proceed as discussed under Letter C above. As previously indicated, PSA staff should promptly arrange to consult with the attorney whenever they are unsure about the legal sufficiency of their case.

E. INSTANCES IN WHICH THE COMMISSIONER SIGNS THE APPLICATION FOR AN ORDER TO GAIN ACCESS.

1. In those situations in which the commissioner signs the application, it is the responsibility of the county or agency attorney to file the application and the necessary affidavits and supporting information with a court of appropriate jurisdiction as set forth in Section 473-c.1 SSL. This section provides that a social services official may apply to either supreme court or the county court for an order to gain access. Since the statute does not require notification to any person affected by the order, it is an ex parte application.

2. Once the application is made to a court of appropriate jurisdiction, in accordance with the provisions of Section 473-c.3 SSL, the application is to have preference over all other causes in all courts of appropriate jurisdiction, except those with a similar statutory preference.
- F. INSTANCES IN WHICH THE COURT GRANTS THE DISTRICT AN ORDER TO GAIN ACCESS
1. If the court is satisfied that there is a reasonable cause to believe that a person in need of PSA may be found at the premises described in the application, that such person may be in need of PSA, and that access to such person has been refused, it shall grant the application and issue an order authorizing the social services official and the other health and/or mental health professionals named in the application as being needed to assist in assessing the person's need for PSA, accompanied by a police officer, to enter the premises to conduct an assessment to determine whether the person is in need of PSA. The results of the assessment shall be documented in the case record.
 2. In assessing a person's need for PSA pursuant to an order to gain access, it is necessary to establish whether the person is eligible for PSA as set forth in Section 457.1(b) of the Department's regulations and whether the person is able to make decisions on his/her own behalf if the person refuses services and involuntary services must be considered as discussed in number 3 below. It is not necessary to do a comprehensive assessment. However, districts are encouraged to complete as much of the PSA Assessment/ Services Plan (DSS-3602) as possible when assessing a person's need for PSA pursuant to an order to gain access. This will assure that services can be provided as expeditiously as possible in appropriate situations.
 3. As stated in Section 473-c.5 SSL, the provisions of this statute are not to be construed as authorizing a social services official to remove any person from the premises described in the application, or to provide any involuntary protective services other than to assess a person's need for PSA. If the person is found to be in need of PSA but refuses to accept services voluntarily, involuntary protective services may be provided or court proceedings initiated in appropriate situations to the extent authorized by Sections 473 and 473-a SSL, and Sections 457.1, 457.6 and 457.10 of the Department's regulations. Additional information regarding involuntary interventions may also be found in Bulletin 194, 81 ADM-57, and 82 ADM-32.

G. INSTANCES IN WHICH THE COURT DENIES AN ORDER TO GAIN ACCESS

In those instances in which the court does not issue an order to gain access in order to assess a person's need for PSA, a copy of the decision shall be placed in the case record. The caseworker shall notify the potential client, as well as known relatives, friends and interested agencies, of the continued willingness of the district to complete an assessment and provide appropriate services, upon the request of the person. If the district receives additional information that the situation has deteriorated, this new information shall be recorded in the case record. After a review and approval by the PSA supervisor, this new information shall be promptly shared with the county or agency attorney and the commissioner. The commissioner must then decide whether to again apply for an order to gain access.

H. REPORTS TO THE STATE DEPARTMENT OF SOCIAL SERVICES

1. The districts shall submit semiannual reports to the Department on the utilization of this new statutory authority. This report will be combined with the semiannual report on utilization of Section 473-a SSL, Short Term Involuntary Protective Services Orders (STIPSO). A copy of the form is attached as Addendum #2.
2. The first combined semi-annual STIPSO/Access report shall be submitted to the Department on June 30, 1987 and shall cover the period January 1, 1987 through June 30, 1987 for the STIPSO statute and the period November 18, 1986 through June 30, 1987 for the access statute. The STIPSO report for the period July 1, 1986 through December 31, 1986 shall be made on the form presently in use.
3. The Department will provide each district with a supply of reporting forms. Each report shall be signed by the commissioner or his/her designee prior to being submitted to the Department. The reports shall be sent to:

Deputy Commissioner
Division of Adult Services
New York State Department of Social Services
Floor 9 A
40 North Pearl Street
Albany, NY 12243

4. A case summary for each application for an order to gain access filed during the reporting period must accompany the semiannual report. This case summary form is similar to the form which is completed by the districts each time the STIPSO statute is utilized. A copy of the case summary form for the access statute is attached as Addendum #3.

V. Systems Implications

None

VI. Additional Information

- A. It is anticipated that in many situations in which districts use this statutory authority, access will be denied by a caregiver who is suspected of abusing, neglecting or exploiting the person who is the subject of the PSA referral. These situations are usually very sensitive and caseworkers must be careful not to exacerbate the problems which exist between the suspected abuser and the allegedly abused individual. While the allegedly abused individual is the primary concern of the district, service delivery efforts should also take into consideration the needs of the other household members in order to stabilize the situation and prevent the re-occurrence of abuse.
- B. In recording the appropriate information in the case record as discussed in the "Required Action" section of this ADM, local staff shall comply with the standards set forth in 85 ADM-5 "Process Standards for PSA".
- C. As noted above, Section 473-c SSL established the standard for proof and procedure for the authorization to conduct a PSA assessment to be the same as for a search warrant under the Criminal Procedure Law (CPL), specifically Article 690. If the court issues an order pursuant to Section 473-c SSL, the order must be executed by a police officer in accordance with the provisions of Section 690.50 CPL. The officer must give notice of his authority and purpose before entering the premises or make a reasonable effort to do so. If he is not admitted, the officer is allowed to use reasonable physical force. If additional information regarding this subject is required, it may be found in Article 690 CPL.

VII. Effective Date

This directive is effective March 1, 1987 retroactive to November 18, 1986.



Corinne Plummer
Deputy Commissioner

STATE OF NEW YORK

10515--A

IN ASSEMBLY

March 25, 1986

Introduced by M. of A. KRAMER, DEL TORO, RIVERA -- Multi-Sponsored by -- M. of A. PROUD, DAVIS, CATAPANO, LOPEZ -- (at request of the Department of Social Services) -- read once and referred to the Committee on Social Services -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to protective services for adults

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. The social services law is amended by adding a new section
2 four hundred seventy-three-c to read as follows:
- 3 § 473-c. An order to gain access to persons believed to be in need of
4 protective services for adults. 1. A social services official may apply
5 to the supreme court or county court for an order to gain access to a
6 person to assess whether such person is in need of protective services
7 for adults in accordance with the provisions of section four hundred
8 seventy-three of this article when such official, having reasonable
9 cause to believe that such person may be in need of protective services,
10 is refused access by such person or another individual. Such application
11 shall state, insofar as the facts can be ascertained with reasonable
12 diligence:
- 13 (a) the name and address of the person who may be in need of protec-
14 tive services for adults and the premises on which this person may be
15 found;
- 16 (b) the reason the social services official believes the person may be
17 in need of protective services for adults, which may include information
18 provided by other agencies or individuals who are familiar with the per-
19 son who may be in need of protective services for adults;
- 20 (c) the person or persons who are responsible for preventing the
21 social services official from gaining access to the person who may be in
22 need of protective services for adults;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.

LBD15029-02-6

1 (d) the efforts made by the social services official to gain access to
2 the person who may be in need of protective services for adults;
3 (e) the names of any individuals, such as physicians or nurses, or
4 other health or mental health professionals qualified to participate in
5 the assessment, who shall accompany and assist the social services offi-
6 cial conducting an assessment of the need of a person for protective
7 services for adults;
8 (f) the manner in which the proposed assessment is to be conducted;
9 (g) that the social services official seeks an order solely for the
10 purpose of assessing the need of a person for protective services for
11 adults in accordance with the provisions of section four hundred
12 seventy-three of this article and applicable regulations of the depart-
13 ment;
14 (h) that no prior application has been made for the relief requested
15 or for any similar relief, or if prior application has been made, the
16 determination thereof, and the new facts, if any, that were not
17 previously shown which warrant a renewal of the application.
18 2. Any allegations which are not based upon personal knowledge shall
19 be supported by affidavits provided by a person or persons having such
20 knowledge. Such affidavits shall be attached to the application.
21 3. The applications authorized in this section shall have preference
22 over all other causes in all courts of appropriate jurisdiction, except
23 those with a similar statutory preference.
24 4. If the court is satisfied that there is reasonable cause to believe
25 that a person in need of protective services for adults may be found at
26 the premises described in the application, that such person may be in
27 need of protective services for adults, and that access to such pers(
28 has been refused, it shall grant the application and issue an order
29 authorizing the social services official and such other individuals as
30 may be designated by the said official, accompanied by a police officer,
31 to enter the premises to conduct an assessment to determine whether the
32 person named in the application is in need of protective services for
33 adults. The standard for proof and procedure for such an authorization
34 shall be the same as for a search warrant under the criminal procedure
35 law.
36 5. The provisions of this section shall not be construed to authorize
37 a social services official to remove any person from the premises
38 described in the application, or to provide any involuntary protective
39 services to any person other than to assess a person's need for protec-
40 tive services for adults. Nothing in this section shall be construed to
41 impair any existing right or remedy.
42 § 2. This act shall take effect on the one hundred twentieth day after
43 it shall have become a law.

SEMIANNUAL REPORT TO THE STATE DEPARTMENT OF SOCIAL SERVICES ON THE UTILIZATION OF SHORT TERM INVOLUNTARY PROTECTIVE SERVICES ORDERS PURSUANT TO SECTION 473-a OF THE SOCIAL SERVICES LAW AND ORDERS TO GAIN ACCESS PURSUANT TO SECTION 473-c OF THE SOCIAL SERVICES LAW

District's Name _____

Reporting Period _____ through _____

1. The number of petitions for Short Term Involuntary Protective Services Orders (STIPSO) made by the district _____

(A Case Summary Reporting Form must be submitted for each STIPSO petition filed.)

2. The number of STIPSO petitions granted by the court _____

3. The number of applications for Orders to Gain Access filed by the district _____

(A Case Summary Reporting Form must be submitted for each access application filed.)

4. The number of access orders granted by the court _____

5. Any comments the district may wish to make on the utilization of Short Term Involuntary Protective Services Orders or Orders to Gain Access

Commissioner's Signature _____ Date _____

CASE SUMMARY: REPORT TO THE STATE DEPARTMENT OF SOCIAL SERVICES ON THE UTILIZATION OF ORDERS TO GAIN ACCESS PURSUANT TO Section 473-c OF THE SOCIAL SERVICES LAW

District Name _____

Date of Application to the Court _____

1. Client's Age ____ Sex ____ Race: () White () Black () Other _____
2. Location of client (city; town; borough, if NYC) _____
3. Living arrangements (own home, apartment, motel, trailer, homeless, etc.) _____
4. Client lives alone (); with other(s); relationship _____
5. Referral Source (indicate agency or relationship to client):

6. List all factors which indicate person may be in need of Protective Services for Adults (PSA):

7. Is the person an alleged victim of neglect or abuse? () Yes () No. If yes, what is the relationship of abuser(s)?

8. Who is denying access? Potential client (); caregiver (); relationship _____

9. Briefly describe efforts made to gain access prior to filing application: (use back of form or attach another sheet, if necessary) _____

10. Was an order granted by the court? () Yes () No If no, please indicate what happened to the client. _____

11. Following an assessment for PSA, was the person determined to be in need of PSA? () Yes () No

If no, list reason(s) for this determination _____

If yes, did the person agree to accept services voluntarily () Yes () No
If the person agreed to accept services, what services were provided?

If the person refused to accept services, were other legal or involuntary interventions pursued by the district? () Yes () No

If yes, describe _____

If no, explain why not _____

12. Disposition of the case as of _____ (date of the report) is _____

13. Other pertinent information or comment: (please use back of form or attach another sheet, if necessary.) _____

Name of district staff person to be contacted for additional information

LAWS OF NEW YORK, 2011

CHAPTER 222

AN ACT to amend the executive law, in relation to creating the missing vulnerable adults clearinghouse

Became a law July 25, 2011, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The executive law is amended by adding a new section 837-f-1 to read as follows:

§ 837-f-1. Missing vulnerable adults clearinghouse. There is hereby established within the division a missing vulnerable adults clearing-house to provide a comprehensive and coordinated approach to the problem of missing vulnerable adults.

1. For purposes of this section:

(a) "Vulnerable adult" shall mean an individual eighteen years of age or older who has a cognitive impairment, mental disability, or brain disorder and whose disappearance has been determined by law enforcement to pose a creditable threat of harm to such missing individual.

(b) "Missing vulnerable adult alert" shall mean a method to disseminate information regarding a missing vulnerable adult to the general public in a manner consistent with paragraph (n) of subdivision two of this section.

2. The commissioner shall be authorized to:

(a) plan and implement programs to ensure the most effective use of federal, state, and local resources in the investigation of missing vulnerable adults;

(b) disseminate a directory of resources to assist in locating missing vulnerable adults;

(c) cooperate with the department of health, office of mental health, office for people with developmental disabilities, office for the aging, and other public and private organizations to develop education and prevention programs concerning the safety of vulnerable adults;

(d) assist federal, state, and local agencies in the investigation of cases involving missing vulnerable adults;

(e) utilize available resources to duplicate photographs and posters of vulnerable adults reported as missing by police and disseminate this information throughout the state;

(f) provide assistance in returning missing vulnerable adults who are located out of state;

(g) develop a curriculum for the training of law enforcement personnel investigating cases involving missing vulnerable adults, including recognition and management of vulnerable adults;

(h) operate a toll-free twenty-four hour hotline for the public to use to relay information concerning missing vulnerable adults;

(i) establish a case database that shall include non-identifying information on reported missing vulnerable adults and facts developed in the phases of a search; and analyze such data for the purposes of

EXPLANATION--Matter in *italics* is new; matter in brackets [-] is old law to be omitted.

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assisting law enforcement in their current investigations of missing vulnerable adults, developing prevention programs and increasing understanding of the nature and extent of the problem;

(j) prescribe general guidelines to enable state agencies to assist in the location and recovery of missing vulnerable adults. The guidelines shall provide information relating to:

(i) the form and manner in which materials and information pertaining to missing vulnerable adults, including, but not limited to, biographical data and pictures, sketches, or other likenesses, may be included in stationary, newsletters, and other written or electronic printings, provided such guidelines are consistent with paragraph (n) of this subdivision;

(ii) appropriate sources from which such materials and information may be obtained;

(iii) the procedures by which such materials and information may be obtained; and

(iv) any other matter the clearinghouse may deem important;

(k) maintain and make available to appropriate state and local law enforcement agencies information concerning technological advances that may assist in facilitating the recovery of missing vulnerable adults;

(l) take such other steps as necessary to assist in education, prevention, service provision, and investigation of cases involving missing vulnerable adults;

(m) (i) In consultation with the division of state police and other appropriate agencies, develop, regularly update, and distribute model missing vulnerable adult prompt response and notification plans. Such plans shall be available for use by local communities and law enforcement personnel, and shall involve a proactive, coordinated response that may be promptly triggered by law enforcement personnel upon confirmation by a police officer, peace officer, or police agency of a report of a missing vulnerable adult, as defined in subdivision one of this section.

(ii) Such plans shall, at a minimum, provide that: (A) the name of the missing vulnerable adult, a description of the missing individual, and other pertinent information may be promptly dispatched over the police communication system pursuant to subdivision three of section two hundred twenty-one of this chapter; (B) such information may be immediately provided, in a manner consistent with paragraph (n) of this subdivision, both (1) orally, electronically, or by facsimile transmission to one or more radio stations and other broadcast media outlets serving the community including, but not limited to, those who have voluntarily agreed in advance to promptly notify other such radio stations and broadcast media outlets in like manner and (2) by electronic mail message to one or more internet service providers and commercial mobile service providers serving the community including, but not limited to, those which have voluntarily agreed in advance to promptly notify other such internet service providers in like manner; (C) participating radio stations and other participating broadcast media outlets serving the community may voluntarily agree to promptly broadcast a missing vulnerable adult alert providing pertinent details concerning the missing vulnerable adult's disappearance, breaking into regular programming where appropriate; (D) participating internet service providers and commercial mobile service providers serving the community may voluntarily agree to promptly provide by electronic mail message a missing vulnerable adult alert providing pertinent details concerning the missing vulnerable adult's disappearance; (E) police agencies not connected with the basic police communication system in use in such jurisdiction

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may transmit such information to the nearest or most convenient electronic entry point, from which point it may be promptly dispatched in conformity with the orders, rules, or regulations governing the system;

(F) a statewide response may be initiated as soon as the division deems it is necessary to find the missing vulnerable adult. Such a plan may not require the issuance of an alert if the investigating police department, in its discretion, advises that the release of such information may jeopardize the investigation or the safety of the missing vulnerable adult or the investigating police department requests forbearance for any reason.

(iii) The commissioner shall also designate a unit within the division that shall assist law enforcement agencies and representatives of radio stations, broadcast media outlets, internet service providers, and commercial mobile service providers in the design, implementation, and improvement of missing vulnerable adult response and notification plans. Such unit shall make ongoing outreach efforts to local government entities and local law enforcement agencies to assist such entities and agencies in the implementation and operation of such plans with the goal of implementing and operating such plans in every jurisdiction in New York state.

(n) disseminate specific medical information about a missing vulnerable adult to the extent that such medical information indicates a physical quality or behavioral trait that is readily apparent and contributes to a physical or behavioral description of the missing vulnerable adult, provided that more extensive information relating to the missing vulnerable adult's medical diagnosis and condition may be provided to law enforcement personnel as needed.

3. The commissioner shall submit an annual report to the governor and legislature regarding the activities of the missing vulnerable adults clearinghouse, including statistical information involving reported cases of missing vulnerable adults and a summary of the division's efforts with respect to the activities authorized under subdivision two of this section.

§ 2. Subdivision 7 of section 838 of the executive law, as added by chapter 670 of the laws of 1982, is amended and two new subdivisions 10 and 11 are added to read as follows:

7. (a) When a person previously reported missing has been found, the superintendent of state police, sheriff, chief of police, coroner or medical examiner, or other law enforcement authority shall erase all records with respect to such person and/or destroy any documents which are maintained

pursuant to this section and shall report to the division that the person has been found and that the records and documents have been so erased or destroyed. After receiving such a report, the division shall erase all records with respect to such person and/or destroy any documents which are maintained pursuant to this section.

(b) Nothing in paragraph (a) of this subdivision shall be construed as prohibiting law enforcement agencies from maintaining case files relating to vulnerable adults, as defined in section eight hundred thirty-seven-f-one, who were reported missing, provided, however, that any DNA, fingerprints and/or dental records acquired in the course of such investigation shall be erased and/or destroyed in accordance with paragraph(a) of this subdivision after the person previously reported missing has been found.

(c) (i) Notwithstanding the provisions of paragraph (a) of this subdivision, if a vulnerable adult, as defined in section eight hundred thirty-seven-f-one of this article, previously reported missing has been

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found, the division shall maintain a sealed record of the case file for a period of ten years, after which it shall be erased and/or destroyed. The sealed record shall be unsealed if the individual to whom the record pertains is reported missing on a subsequent occasion or if needed for evidentiary purposes in any civil litigation against the division or its personnel that arises from the investigation. However, in the event that there are grounds for a criminal action arising from the investigation, nothing in this subdivision shall be interpreted as prohibiting the division from allowing such records to remain unsealed until such criminal action is concluded or otherwise resolved.

(ii) The division shall establish rules and regulations relating to the unsealing of records. Such rules and regulations shall require that, pursuant to subparagraph (i) of this paragraph, the process of unsealing such records shall take no longer than two hours from the time the division receives a report that a vulnerable adult, for whom there is a previous record, is missing.

10. Notwithstanding any other provision of law, no criminal justice agency shall establish or maintain any policy that requires the observance of a waiting period before accepting and investigating a report of a missing vulnerable adult as defined in section eight hundred thirty-seven-f-one of this article. Upon receipt of a report of such missing

vulnerable adult, criminal justice agencies shall make entries of such report in the manner provided by subdivision eleven of this section.

11. Whenever a criminal justice agency determines that a person is a missing vulnerable adult, as defined in section eight hundred thirty-seven-f-one of this article, or that an unidentified living person may be a missing vulnerable adult, such criminal justice agency shall enter the report of such missing vulnerable adult in any database of missing persons maintained by the division and the federal government.

§ 3. The provisions of this act shall not be construed to limit in any way the authority of a municipality to enact, implement, and continue to enforce local laws and regulations relating to an alert system to locate missing individuals that were in effect prior to the effective date of this act, or to enact, implement, and enforce any amendments thereto after the effective date of this act.

§ 4. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 5. This act shall take effect on the ninetieth day after it shall have become law. Effective immediately, the addition, amendment, and repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

DEAN G. SKELOS
Temporary President of the Senate

Sheldon Silver
Speaker of the Assembly

Missing Vulnerable Adults Alert System

Chapter 222 of the Laws of 2011. Adds a new Section 837-f-1 to the Executive Law. Effective October 23, 2011.

The law creates a statewide alert system for missing vulnerable adults, similar to the nationwide Amber Alert program for missing children. The new law will assist authorities locate cognitively impaired adults who are missing.

The law is in response to a number of cases where cognitively impaired adults have wandered away from home and gone missing for an extended period of time, often placing themselves at serious risk.

Time is of the essence when a person goes missing; the program allows for the activation of a “Missing Vulnerable Adult Alert”, a rapid dissemination of information to maximize the chances of a safe return.

Criteria for activating a Missing Vulnerable Adult Alert:

1. 18 years of age or older; and
2. (a) “Vulnerable Adult”, meaning an adult who has:
 - (a) * cognitive impairment;
 - * mental disability; or
 - * brain disorder ; and

(b) Law enforcement has determined there is a credible risk of harm to such missing individual .
3. Law enforcement agencies can contact the Missing Persons Clearinghouse (administered by NYS Division of Criminal Justice Services or DCJS) and request a Missing Vulnerable Adult Alert.
4. Family, caretakers and others concerned about an adult who is missing and who may meet the above definition of a “Vulnerable Adult” should contact their local law enforcement (police department or sheriff’s office) as soon as possible. The reporting party must state the fact that the missing person has either a cognitive impairment , a mental disability, or a brain disorder.
5. The local law enforcement agency will determine whether the criteria for an Alert are met. If so, the agency will then contact the Clearinghouse to request an Alert. If the criteria are not met, the law enforcement agency will investigate the case based on its policy for handling missing persons cases .

What Type of Information Should the Family, Caregiver or Other Reporter Convey to Law Enforcement When Reporting a Missing Vulnerable Adult ?

- A photograph, either hard copy or electronic version. A JPEG file format is preferred but not mandatory;
- Medical information related to their condition, and a list of medications;
- What the adult was wearing when last seen;
- Whether the individual is enrolled in a system that tracks his or her whereabouts via GPS;
- Any relevant vehicle information, and whether the individual was the driver or a passenger

How is the Missing Adult Alert Distributed ? Who Gets the Information ?

The Alert is distributed to local, state and federal law enforcement agencies and the public in a variety of ways, including:

- The NYS DCJS website;
- Message signs on the NYS Thruway and other highways;
- Posted at Thruway toll booths, rest stops, and bus , train and airline terminals.

Information is posted geographically, depending on where the person is missing from and where they may travel to.

What Is the Media's Role During a Missing Vulnerable Adult Alert ?

Media outlets have the option of whether to broadcast Missing Vulnerable Adult Alert information; they are not required to do so.

What is the Public's Role During a Missing Vulnerable Adult Alert ?

The public can play an important role in the rescue of persons who are the subject of an Alert. According to the Alzheimer's Association, 95 of individuals who go missing in these situations are found within a quarter mile from their home or the last location they were seen.

If you learn of a Missing Vulnerable Adult Alert in your area, pay attention to the description and any additional information, such as a vehicle involved. Contact 911 if you have any information. Be sure to communicate the person's whereabouts – street, city, county – and vehicle information. Including license plate and description, if applicable.

How Does an Alert Stay Active ?

A Missing Vulnerable Adult Alert is active for up to 14 days; highway message signs are activated for the first eight hours after the Alert is issued. If the individual is not located in 14 days, the case will remain an active missing person's case and continue to be publicized on the DCJS website.

For more information , to request a Missing Vulnerable Adult Alert, or to convey information concerning missing vulnerable adults, contact the NYS DCJS Missing Persons Clearinghouse at 1-800-346-3543 (a toll-free ,24 hour hotline), or view the DCJS website at www.criminaljustice.ny.gov . You can e-mail questions to DCJS regarding this program at missingpersons@dcjs.ny.gov .

Alan Lawitz, Esq.

Director, Bureau of Adult Services

NYS OCFS

12/11 Survey Results: Usage of Selected Tools Relating to Powers of Attorney

Questions Posed

Districts were asked : How many of you have to date, in the course of investigating a PSA financial exploitation referral:

(a) Sent to the agent under a Power of Attorney (POA) a letter directing the agent to send to LDSS/PSA within a 15 day period a copy of the POA and related documents, as authorized under Section 5-1505, subdivision (3) of the General Obligations Law (GOL) ? **(15 day letter Sent)**

(b) Initiated a Special Proceeding in court to compel the agent to provide the documents requested in your 15 day letter, or to ask the court to otherwise review issues relating to the actions of the agent or the enforcement of the POA, as authorized under Section 5-1510 of the GOL ? **(Special Proceedings Initiated)**

(c) **Successfully obtained such documents from the agent after initiating such Special Proceeding?**
(Successful Production of Documents After Special Proceeding)

Responses (All Districts Responded)

(a) **15 day Letters Sent** 16 districts have sent out at least one such letter

Albany(7 sent in 2011), Broome, Cortland, Dutchess (3), Livingston(2), Monroe-West, NYC, Onondaga (15-20), Orange(2), Orleans, Oswego(2), Steuben, Tompkins(2), Warren, Wayne (2-3), Yates.

(b) **Special Proceedings Initiated** 6 districts have initiated GOL Special Proceedings

Albany (7), Broome, Monroe-West, Onondaga (2) , Orleans, Yates

(c) **Successful Production of Documents/Other Action After Special Proceeding** 5 districts have had courts order production of documents and/or revoked the POA. Others have cases pending.

Albany (2), Broome, Monroe-West, Onondaga, Orleans

Of Note:

Several districts responded that they have often received the cooperation of agents in producing requested documents without the need to send a 15 Day letter.

In several other cases, the use of the 15 Day letter resulted in the agent's cooperative production of requested documents without the need to initiate a GOL Special Proceeding. In at least one case the district's statement that it would initiate the Special Proceeding if the agent did not produce resulted in production of documents.

At least 4 districts who had sent 15-Day Letters determined to follow up after the agent failed to produce requested documents, not with a GOL Special Proceeding, but with a MHL Article 81 Guardianship Proceeding, seeking in various cases to obtain the POA and other documents, revoke the agent and name a guardian for an incapacitated client.

Please note that the GOL Special Proceeding can be initiated whenever the agent has failed to produce the documents requested in the 15 Day letter. The GOL does not require that the principal be incapacitated before such Special Proceeding is initiated.

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Director, Bureau of Adult Services

NYS OCFS

SSA/SSI Benefits Direct Deposit
Effective 5/1/11

Exemptions

- 90+ years old as of 5/1/11
- Mentally impaired
- Live in remote area with few banks

New Federal Garnishment Rule:

- Protected income under federal and state law
- 42 U.S.C. Section 407(a)
- NYS Civil Practice Laws and Rules, Article 52

Effective May 1, 2011

Protection of Federal Benefits in Bank Accounts
from Garnishment:

- Strengthens protections for exempt federal benefits deposited into bank accounts
- Applicable to state and federal banks and credit unions
- Requires procedure when *bank* receives a garnishment order

Protects:

- Social Security
- SSI
- Veterans Benefits
- Railroad Retirement and Railroad Unemployment Benefits
- Federal Employee/Civil Service Retirement Benefits

Does *not* protect:

- Military pay or retirement benefits
- Coast Guard payments
- Other federal agencies

Required Financial Institution Notice

- Inform account holder of exempt fund protection
- Notice **MUST** contain certain information
- Notice must be sent within two days of completion of account review by the bank
- Compliance by bank assures protection from liability

Cases of Interest 2011

In the Matter of Mabel R

- Family Court Act §812 (1)
- “**Family Offense**”
- Disorderly conduct, harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, criminal obstruction of breathing or blood circulation or strangulation between spouses or former spouses, or between parent and child or between members of the same family or household.

In the Matter of Mabel R

second-degree harassment ?

- FCA §812 (1)
- Penal Law § 240.26(3)

MHL Section 9.60

- Request for release of medical records to be used in an AOT proceeding
 - In the Matter of Miguel M., Also Known as Miguel M.
 - In the Matter of Lisa O.

HIPAA, 45 C.F.R. tit. 160, 164

- No Notice given to patient
- No patient authorization
- A court order for their disclosure had not been sought or obtained

In the Matter of the Application of Erie County Medical Center

- Family Health Care Decisions Act
- Petition for the authority to:
 - withhold life sustaining treatment
 - authority to consent to a Do Not Intubate (DNI) order,
 - decline and/or withdraw a PEG or NG tube,
 - consent to the issuance of "comfort only" measures.

Applicable Law:

- Article 81.22 (8) of the Mental Hygiene Law
- Section 2994-d (4) and (5) of Article 29-CC of the Public Health Law

**Article 17-A
Guardianship**

**In the Matter of the Guardianship
of JONATHAN EE.**

- Issue: guardianship compensation pursuant to SCPA Article 17-A,
- Statutory authority:
 - guardian ad litem pursuant to SCPA article 4
 - guardian of an incapacitated person pursuant to Mental Hygiene Law article 81.28
 - No corresponding provision, however, appears in SCPA Article 17-A

**In the Matter of the Guardianship
of JONATHAN EE.**

- Issue: guardianship compensation pursuant to SCPA Article 17-A
- Ruling: petitioners' applications for guardianship fees were dismissed.

12-OCFS-INF-01

- Issued January 17, 2012

Referral by CPS to PSA

- Section 422(4)(A)(o) of the Social Services Law

Release/Consent to Disclose

- Section 422(4)(A)(d) of the Social Services Law & Section 422(5)(a)(iv) of the Social Services Law

Multidisciplinary Investigative Team

- Section 422(4)(A)(x) of the Social Services Law

PSA Requests Access to CPS Information

- Section 422(4)(A)(d), (e), (o) or (aa) of the Social Services Law

**NEW STATUTORY REQUIREMENTS
FOR PSA ACCESS ORDERS**

- Chapter 412 of the Laws of 2011
- Amends Social Services Law section 473-c
- Effective August 17, 2011

When conducting a PSA investigation to assess an adult's need for PSA, and the PSA worker is refused access by that person or by someone else, Chapter 412 requires that the following steps be taken:

**1. Consultation with Supervisor
After Refusal of Access**

- A PSA worker who is refused access to an adult believed to be in need of PSA shall assess, in consultation with a person in a supervisory role, whether or not it is appropriate to apply for an order to gain access to such person.

2. Consultation within 24 Hours After Refusal of Access

- Such assessment must be made as soon as necessary under the circumstances but no later than twenty-four hours after the PSA worker is refused access. Local districts will need to make arrangements to have necessary PSA casework and supervisory staff – and in some cases, agency counsel – available to make such determinations within the 24 hour timeframe, even if this means that such consultations occur after normal office hours.

3. Determinations and Reasons Therefor Must Be Documented

- The determination whether or not to apply for an order to gain access at that point in time and the reasons therefor must be documented in the PSA case record

There is no new requirement that the local district petition for an access order within a certain time frame – or that the district petition at all.

The consultation with the supervisor may be in person, or by telephone, so long as there is sufficient opportunity for PSA worker and supervisor to discuss pertinent details of the case, including, but not limited to:

- Information received from the referral source
- Information received from collateral contacts
- The attempt(s) made to obtain access to the person believed to be in need of PSA

The consultation with the supervisor may be in person, or by telephone, so long as there is sufficient opportunity for PSA worker and supervisor to discuss pertinent details of the case, including, but not limited to:

- Whether it is currently believed that the person may be in need of PSA
- Whether it is believed that the district should seek to apply at this time for an order to gain access, and if so, the reasons therefor

- Chapter 412 states that such assessments shall be made “as soon as necessary under the circumstances.” The statute, regulations and past administrative directives provide guidance as to what action is necessary in order to determine whether and when to make an application for an order to gain access at a given point in time.

- **SSL section 473-c(1)(d)**
- **18 NYCRR section 457.11(b)**
- **87 ADM 6; 93 ADM 23**

**Missing Vulnerable Adults
Alert System**

- Chapter 222 of the Laws of 2011
- Adds a new Section 837-f-1 to the Executive Law, effective October 23, 2011
- Creates a statewide alert system for missing vulnerable adults, similar to the nationwide Amber Alert program for missing children
- New law will assist authorities locate cognitively impaired adults who are missing

**Criteria for activating a
Missing Vulnerable Adult Alert:**

1. 18 years of age or older; and
2. (a) "Vulnerable Adult", meaning an adult who has:
 - (a) cognitive impairment;
mental disability; or
brain disorder; and
 - (b) Law enforcement has determined there is a credible risk of harm to such missing individual

**Criteria for activating a
Missing Vulnerable Adult Alert:**

3. Law enforcement agencies can contact the Missing Persons Clearinghouse (administered by NYS Division of Criminal Justice Services or DCJS) and request a Missing Vulnerable Adult Alert

**Criteria for activating a
Missing Vulnerable Adult Alert:**

4. Family, caretakers and others concerned about an adult who is missing and who may meet the above definition of a "Vulnerable Adult" should contact their local law enforcement (police department or sheriff's office) as soon as possible . The reporting party must state the fact that the missing person has either a cognitive impairment , a mental disability, or a brain disorder

**Criteria for activating a
Missing Vulnerable Adult Alert:**

5. The local law enforcement agency will determine whether the criteria for an Alert are met. If so, the agency will then contact the Clearinghouse to request an Alert. If the criteria are not met, the law enforcement agency will investigate the case based on its policy for handling missing persons cases

What Type of Information Should the Family, Caregiver or Other Reporter Convey to Law Enforcement When Reporting a Missing Vulnerable Adult ?

- A photograph, either hard copy or electronic version. A JPEG file format is preferred but not mandatory
- Medical information related to their condition, and a list of medications
- What the adult was wearing when last seen

What Type of Information Should the Family, Caregiver or Other Reporter Convey to Law Enforcement When Reporting a Missing Vulnerable Adult ?

- Whether the individual is enrolled in a system that tracks his or her whereabouts via GPS;
- Any relevant vehicle information, and whether the individual was the driver or a passenger

MISSING ADULT ALERT

Missing From: Somstown, NY Date Missing: 2/19/2012



JOHN DOE

Date of Birth: 11/6/1947 Sex: Male
Race: White Eyes: Brown
Hair: White Weight: 160 lbs.
Height: 5'9"

Other Information: John Doe is a Paranoid Schizophrenic and is an insulin dependent diabetic who also has other life threatening medical conditions. He may be confused and in need of immediate medical attention. John Doe may be using public transportation, such as bus or train and may be attempting to travel to California.

Investigating Agency: Somstown Police Department

Contact the Somstown Police Department at 555-555-5555 or 911

MISSING PERSONS

• **How is the Missing Adult Alert Distributed ?**

• **Who Gets the Information ?**

The Alert is distributed to local, state and federal law enforcement agencies and the public in a variety of ways, including:

- The NYS DCJS website
- Message signs on the NYS Thruway and other highways
- Posted at Thruway toll booths, rest stops, and bus , train and airline terminals

What Is the Media's Role During a Missing Vulnerable Adult Alert ?

- Media outlets have the option of whether to broadcast Missing Vulnerable Adult Alert information; they are not required to do so

What Is the Public’s Role During a Missing Vulnerable Adult Alert ?

- The public can play an important role in the rescue of persons who are the subject of an Alert
- According to the Alzheimer’s Association, 95 of individuals who go missing in these situations are found within a quarter mile from their home or the last location they were seen

What Is the Public’s Role During a Missing Vulnerable Adult Alert ?

- If you learn of a Missing Vulnerable Adult Alert in your area, pay attention to the description and any additional information, such as a vehicle involved
- Contact 911 if you have any information
- Be sure to communicate the person’s whereabouts – street, city, county – and vehicle information. Include license plate and description, if applicable

How Long Does an Alert Stay Active?

- A Missing Vulnerable Adult Alert is active for up to 14 days; highway message signs are activated for the first eight hours after the Alert is issued
- If the individual is not located in 14 days, the case will remain an active missing person’s case and continue to be publicized on the DCJS website

For more information, to request a Missing Vulnerable Adult Alert, or to convey information concerning missing vulnerable adults, contact:

**NYS DCJS Missing Persons
Clearinghouse**
1-800-346-3543 (toll-free, 24 hour hotline)
or view the DCJS website at:
www.criminaljustice.ny.gov

2011 OCFS Survey Results:

**Reported Usage of Selected
Tools**

Re: Powers of Attorney

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How many Districts have to date, in the course of investigating a PSA financial exploitation referral:

(c) Successfully obtained such documents from the agent after initiating such Special Proceeding? (Successful Production of Documents After Special Proceeding)

(a) 15 day Letters Sent

16 districts have sent out at least one such letter:

- Onondaga (15-20)
- Albany (7)
- Dutchess (3)
- Wayne (2-3)
- Livingston, Orange, Oswego, Tompkins (2)
- Broome, Cortland, Monroe-West, Orleans, Steuben, Warren, Yates (1)
- NYC

(b) Special Proceedings Initiated

6 districts have initiated GOL Special Proceedings:

- Albany (7)
- Onondaga (2)
- Broome, Monroe-West, Orleans, Yates (1)

(c) Successful Production of Documents/Other Action After Special Proceeding:

5 districts have had courts order production of documents and/or revoked the POA. Others have cases pending:

- Albany (2)
- Broome, Monroe-West, Onondaga, Orleans

Of Note:

- Several districts responded that they have often received the cooperation of agents in producing requested documents without the need to send a 15 Day letter

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BROOKDALE CENTER for Healthy Aging & Longevity Hunter College / The City University of New York

Continuing Legal Education Credits Instructions for Staff Development Coordinators

You have received a (1) CLE attendance roster and an (2) evaluation form for CLE credits via email from OCFS. These forms are to be used for **attorneys only**. All non-attorneys have separate sign-in sheets and evaluation forms to be filled out and sent back to OCFS.

Please be certain that the attorneys sign in when they arrive and sign out when they leave. We need to confirm that the attorneys fully attended the session.

The evaluation form for CLE credits is to be handed out to the attorneys at the end of the session, only if you can confirm from the attendance roster that they successfully completed this training.

All completed CLE attendance rosters and evaluation forms for CLE credits should be **mailed to the following address:**

Brookdale Center for Healthy Aging & Longevity
Attn: Steven Jones
2180 3rd Avenue, 8th Floor
NY, NY 10035

Do not send any CLE information to OCFS, only send OCFS sign-in and evaluation forms from non-attorneys.

Thank you for your assistance in this task,

Steven Jones
Project Assistant
Brookdale Center for Healthy Aging & Longevity
(212) 481-5393
steven.jones@hunter.cuny.edu

REGISTRY FOR CONTINUING LEGAL EDUCATION CREDITS

FOR ATTORNEYS ONLY

Program Title: Legal Aspects of Protective Services for Adults - 2012 Update

Date of Program: March 12, 2012

Start Time: 1:30pm

End Time: 3:30pm

Print Name	Sign In	Time In	Sign Out	Time Out

Note: You must attend the full session (from 1:30pm – 3:30pm) in order to be eligible for CLE credits. A CLE request form will be distributed at the end of the session to all attorneys who successfully complete this training.

**TRAINING EVALUATION
 &
 CONTINUING LEGAL EDUCATION (CLE) REQUEST FORM**

Your response to the following questions will aid the Law Institute in its efforts to better serve you. Please take a few minutes to respond to the following questions. If you wish to receive Continuing Legal Education (CLE) credit for attending this training, completion of this form is required.

Thank you in advance for your assistance.

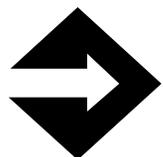
Legal Aspects of Protective Services for Adults - 2012 Update

March 12, 2012

[*Please circle the appropriate answers]

- 1) In general, the quality of the training was:
 Excellent Very Good Good Fair Poor
- 2) The course training materials were:
 Excellent Very Good Good Fair Poor
- 3) The Instructor's presentation of the subject was:
 Excellent Very Good Good Fair Poor
- 4) How many Law Institute trainings/workshops have you attended?
 First time 2-4 4-6 6-8 8+
- 5) How long have you been working in the field covered in this training?
 Beginner 1-3 years 4-6 years 7 years or more
- 6) Would you take another training course given by the Law Institute?
 Yes No (Why? _____)
- 7) How would you rate the training technology used for this event?
 Excellent Very Good Good Fair Poor
- 8) What is your background?
 Law Social Work Other: _____
- 9) If your background is in law, what type:
 Private (elder law) Law Firm (elder law) Private (Other _____.)
 Paralegal (Other _____.)

Please turn over



Training Evaluation (continued)

10) What other benefit program training classes would be of interest to you?

11) How did you hear about this particular training?

mailing co-worker our website other _____

12) Additional Comments / Suggestions:

13) If you would like to be placed on our mailing list to receive training announcements, please complete the following:

Name (*PLEASE PRINT!*): _____

Title: _____

Organization: _____

Address: _____ Rm/Apt/Suite# _____

City: _____ State: _____ Zipcode: _____

Telephone: (_____) _____ Fax: (_____) _____

Email: _____

Continuing Legal Education (CLE) Credit Request:

(Only attorneys may apply)

This will verify that I have attended the “**Legal Aspects of Protective Services for Adults - 2012 Update**” workshop sponsored by the Sadin Institute on Law & Public Policy and request CLE credit for attending this training on March 12, 2012.

Name (*PLEASE PRINT!*) _____

Title _____

Organization/Firm: _____

Address: _____ Floor/Rm/Suite/Apt: _____

City: _____ State _____ Zipcode: _____

Tel # (_____) _____ Fax # (_____) _____

Signature: _____ Date: ____/____/____

Attendance records will be kept on file in our offices. A letter verifying your attendance will be issued upon written request to
The Sadin Institute on Law & Public Policy, Brookdale Center for Healthy Aging & Longevity,
2180 3rd Avenue, NY, NY 10035.

