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Administrative Directive

Transmittal:	12-OCFS-ADM-05
To:	Commissioners of Social Services
Issuing Division/Office:	Division of Child Welfare and Community Services
Date:	May 24, 2012
Subject:	Protective Services for Adults (PSA): Chapter 412 of the Laws of 2011
Suggested Distribution:	Directors of Social Services PSA Supervisors and Staff Agency Attorneys
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Attachments:	Attachment A: Chapter 412 of the Laws of 2011
Attachment Available Online:	Yes, at http://public.leginfo.state.ny.us/menugetf.cgi

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
87 ADM 6 93 ADM 23		18 NYCRR 457.11	SSL section 473-c		

I. Purpose

The purpose of this release is to advise local social services districts (districts) of the steps that must be taken to implement the provisions of Chapter 412 of the Laws of 2011, which clarifies the procedure under Social Services Law (SSL) section 473-c for Protective Services for Adults caseworkers who are refused access to a person believed to be in need of protective services. Chapter 412 of the Laws of 2011 requires that caseworkers who are refused access to such a person obtain a supervisory consultation within 24 hours after a

refusal of access, and assess whether to apply for an order to gain access to the person believed to be in need of protective services.

II. Background

SSL section 473-c, enacted by Chapter 413 of the Laws of 1986, authorizes 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 has reasonable cause to believe that services are necessary and the district is refused access by that person or another individual.

Chapter 412 of the Laws of 2011 amends SSL section 473-c to require that the PSA caseworker, upon a refusal of 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. This assessment must be made as soon as necessary under the circumstances, but no later than twenty-four hours after access is refused. The determination and the reasons for that determination must be documented in the file. A copy of this chapter law is attached as Attachment A.

The 2011 amendment to SSL Section 473-c incorporates the existing regulatory standards into the law and expands upon them to require that supervisory consultation and an assessment occur within 24 hours after a refusal of access. Chapter 412 took effect immediately upon enactment.

III. Program Implications

Chapter 412 of the Laws of 2011 requires that once there has been a refusal of access to a person believed to be in need of PSA, either by the person believed to be in need of PSA or by someone else:

- a) the PSA worker must consult with a supervisor to assess whether it is appropriate to petition for an order to gain access;
- b) such consultation must occur as soon as necessary under the circumstances, but no later than 24 hours after the refusal of access; and
- c) the determination of whether or not to apply for an order to gain access and the reasons for that determination must be documented in the PSA case file.

Not every situation in which the PSA caseworker fails to gain access will trigger the need for a supervisory consult within 24 hours. For example, situations such as an attempted home visit when no one is at home, or when no one is answering the door bell or the knock on the door, and it does not appear that someone is home and deliberately seeking to avoid contact with the PSA worker, do not trigger the need for a supervisory consult within 24 hours.

Chapter 412 of the Laws of 2011 does not create a new requirement that the district petition for an access order within a certain time frame, or that the district petition at all. Chapter 412 of the Laws of 2011 does not specify the form of the supervisory consultation that must

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

- Information received from the referral source;
- Collateral contact information received by the PSA worker;
- 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 reason for that determination.

Such consultation should not occur by e-mail exchange only. It is acceptable for the PSA worker and the supervisor to exchange e-mail or other written communication about the refusal of access that occurred and the circumstances of the case, but in order to have a meaningful consultation there must be an actual conversation between the PSA worker and the supervisor concerning the above-stated information about the case.

Since Chapter 412 of the Laws of 2011 requires that the assessment of whether or not it is appropriate to apply for an order to gain access, in consultation with the supervisor, must be made as soon as necessary under the circumstances, but no later than 24 hours after the refusal of access, each district will need to make arrangements to have necessary PSA casework and supervisory staff available to make such assessments within this prescribed timeframe. This may require that consultations occur after normal office hours. Additionally, it may be necessary for PSA staff to consult with agency counsel to determine whether it is appropriate at that point to apply for an order to gain access. Districts will therefore also need to arrange to have agency counsel available to assist PSA staff in making the determination whether it is appropriate at that point to apply for an order to gain access.

Chapter 412 of the Laws of 2011 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 actions are necessary in order to determine whether and when to make an application for an order to gain access at a given point in time.

The statute requires the district to state in any petition for an order to gain access “the efforts made by the social services official to gain access to the person who may be in need of protective services for adults” [SSL section 473-c (1)(d)]. This language contemplates that the PSA worker will be making efforts to obtain access to an adult who may be in need of PSA, and that such efforts will be documented in the case record.

Existing regulations at 18 NYCRR section 457.11(b) require a PSA worker who is denied access to a person who is believed to be in need of PSA to take the following actions:

- 1) enlist the aid of family members, friends, neighbors or staff of other appropriate agencies, including law enforcement agencies, for the purpose of persuading the individual(s) responsible for denying access to permit the district to complete an assessment of the person’s need for PSA; and

- 2) if the efforts initiated in accordance with paragraph (1) of this subdivision are unsuccessful, the social services district must determine whether or not to apply to the Supreme Court or the County Court for an order to gain access to a person who may be in need of PSA. In deciding whether or not to apply for such an order, the social services district must determine if the information provided by the referral source and other persons familiar with the situation and the observations of staff of the social services district warrant such an action.

Please note that guidance provided in 87 ADM 6 and 93 ADM 23 concerning action to be taken when access is denied should be reviewed as well.

Chapter 412 of the Laws of 2011 requires that “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.” PSA workers should document this information in the progress notes, or reference in the progress notes the inclusion of such documentation in the case record. Regulations require that progress notes be recorded in the PSA case record as soon as possible but no later than 30 days after the date of the event which required use of progress notes [18 NYCRR Section 457.2(c)].

IV. Required Action

Steps to be taken by the district to implement Chapter 412:

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 24 hours after the PSA worker is refused access. 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 time frame, even if this means that such consultations occur after normal office hours.

3. Determinations and Reasons For Determinations Must Be Documented

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

/s/ Laura M. Velez

Issued By:

Name: Laura M. Velez

Title: Deputy Commissioner

Division: Child Welfare and Community Services

Attachment A

Laws of New York, 2011

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.