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Bulletin 194 – PSA Delivery  
Of Protective Services for Persons  
18 Years of Age and Over  
Who Are Unable to Manage Their  
Own Personal and/or Financial  
Affairs

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

BARBARA B. BLUM  
Commissioner



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CONTACT PERSON:

Any questions concerning this release should be directed to  
Christina Hay, Division of Adult Residential Care by  
calling (800) 342-3715 ext. 3-8725, or Sharon Lane,  
ext. 3-1713.

The new pages to Bulletin 194 contain the Annual Plan for the  
Provision of Adult Protective Services and guidelines to  
completing the plan. The Department has developed the plan  
to meet the requirements of Chapter 446 of the Laws of 1979.

Barbara Wellman  
Barbara Wellman  
Assistant Commissioner  
Division of Adult Residential Care

LAST TRANSMITTAL

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The delivery of protective services for persons eighteen years of age and over who are unable to manage their own personal and/or financial affairs.

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Commissioners of Local Health Departments (City, County, District)  
Directors of Department of Health Regional offices  
Directors of Public Health Nursing, Department of Health Regional Offices

The attached Bulletin contains the New York State Department of Social Services program guidelines for the delivery of Protective Services for Adults. These program guidelines were formulated to facilitate the delivery of Protective Services for Adults as required by Social Service Law and Title XX. It consolidates into one document the varied components necessary to the effective delivery of the service. We see this as the first in a series of releases which will provide on-going program information related to this service.

Any questions concerning this release should be directed to Mildred Ferris of the Bureau of Community Services, Section on Aging at 800-342-3710, extension

  
Martha S. Lewis  
Deputy Commissioner  
Division of Services

Last Transmittal

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DEPARTMENT OF SOCIAL SERVICES

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Addendum A

Summary of the New York State Conservatorship Law  
Mental Hygiene Law, Article 77

Addendum B

Summary of the New York State Committee System as amended  
Mental Hygiene Law, Article 78

## I. PURPOSE AND SCOPE

The purpose of this bulletin is to provide guidelines on the provision of Protective Services for Adults. It consolidates into one release through the inclusion of new as well as previously released information, those statutory, informational, and regulatory materials local districts must be aware of in order to effectively provide Protective Services for Adults, a service available to all without regard to financial eligibility.

The provision of this service has varied considerably from district to district, due in part to differences in interpretation of the definition, the absence of State direction and guidelines, and the reluctance to employ the sometimes needed legal court proceedings. There is increasing evidence that a very vulnerable segment of our population - aged persons who for one reason or another are unable to care for themselves or their assets and have no one willing or able to help - is not receiving the service they so urgently need. Newspapers too often carry headlines of the tragic situation of an elderly person who has not been reached in time to prevent a tragedy from developing.

This summary material should bring greater visibility to service programs for the aged, particularly Protective Services for Adults as defined in Title XX, establish program guidelines, underscore public agency responsibility and enhance the particular skills local workers need to serve adults who are incapable of protecting themselves and their assets.

## II. STATUTORY AND REGULATORY BASIS

The basis for Protective Services for Adults rests on Federal and State statutes and regulations. These materials include:

### A. Federal Statute

- Title XX of the Social Security Act  
Sec. 1102, 49 Stat. 647 (U.S.C. 1302)

### B. Federal Regulations

- 45 CFR 228.65(a) provides that protective services are available.
- 45 CFR 228.65(a)(2) defines protective services for adults, the characteristics of persons in need of such services.

### C. Social Services Statutes

- Sect. 131.1 specifies that it shall be the duty of social service officials "... to provide adequately for those unable to maintain for themselves."
- Sect. 131-L<sup>1</sup> specifies that in addition to services provided by social service officials pursuant to other provisions of this chapter, protective services for adults shall be provided in accordance with Federal and State regulations.

- . Sect. 309 provides that "In appropriate cases a social service official shall initiate a special proceeding for the appointment of a Conservator pursuant to Section 77.03 of the Mental Health Law."

D. Mental Hygiene Statute

- . Article 31 establishes responsibilities of local commissioners of Social Services relating to mentally ill persons.
- . Article 77 establishes social services commissioners responsibility to initiate a court proceeding for the appointment of a conservator of the property.
- . Article 78 authorizes local commissioners of social services to initiate Incompetency proceedings.

E. Social Services Regulations-Bulletins

In addition to these specific laws, there are related Social Services regulations and official bulletins which have specific application in a Protective Services for Adults program. Further information will be included in appropriate sections of this bulletin and are cited here indicating the relationship to the service.

- . Comprehensive Annual Social Service Plan defines Protective Services for Adults and lists service activities.
- . Bulletin       Compilation of Requirements for the Provision of Social Services- provides program information relating to all services, including Protective Services for Adults.
- . Social Service Regs. Sects. 400 thru 407 - relates to program requirements which have general and specific application for protective services. (Sect. 405 & 407 to be filed)
- . Bulletin 193 - Emergency Assistance to Adults - emphasizes that the need for emergency assistance will often indicate a possible need for protective services.
- . Social Services Regs. Sect. 397.5(c) - establishes that when emergency assistance is granted "... a referral shall be made for adult protective services ...."
- . Bulletin 106 - Methods of Payment - defines various methods to be utilized whereby the health and welfare of the recipient will be appropriately protected and advises that protective payees be designated from protective services staff.
- . Social Service Reg. Sect. 381.7 - that selection of a protective payee "shall be made preferably from the staff providing protective services."



- . 74 INF 12 - Representative Payee - gives information relating to procedures and the agency's responsibility when serving in this capacity.
- . 70 PWD 61 - Incompetency Proceedings - establishes agency responsibility in relation to such proceedings.

### III. BACKGROUND

Protective Services for Adults is not a new service responsibility of the Department of Social Services. As a service it has been mandated by Federal Regulations, included in our service plan and defined in our State Bulletins for over ten years. However, administrative changes of the past four years which relate to the delivery of services have had the effect of further clouding a not too clearly understood service. The separation of Services and Income Maintenance in 1972 and the advent of SSI in 1974 removed the aged, blind and disabled persons from easy entry into the service delivery system. Further the changes brought about by Title XX, effective October 1, 1975, make it increasingly important to attempt to clarify some of the issues surrounding delivery of this service.

Who are the persons needing these services? The majority will be impaired elderly persons, living alone and fearful of losing control of their lives. They are considered to be the least attractive, the most debilitated of the elderly group, and often neglected even by members of the helping profession who do not know what to do for or with them. The problem is one all of us have or will have occasion to become familiar with at some time in our own families or those of our friends or neighbors. Typically, an elderly person has become increasingly unable to handle daily affairs. There usually is a combination of physical and mental deterioration, senility, hardening of the arteries, failing faculties, intermittent confusion, forgetfulness, irrational fears and phobias. Social isolation sets in with the death of a spouse, departure of children, death or alienation of friends and relatives and diminished mobility. Legal problems arise as checks for social security payments, pensions and dividends from investments pile up in the mailbox, but the rent, utility and other bills are unpaid. Health is endangered because nourishing meals are rare, medical care is neglected, home and clothing are unclean and in disorder. In brief, this person is beginning to be unable to function in the community without some help. How this help is to be provided before it is too late is the problem.

Statistical reports show a growing aged population. In 1900, 4.8% of New York States' population was over 65 years of age. By 1970, 10.8% or approximately 2 million persons were 65 years or older and one-third of this group had reached their 75th birthday.

Best estimates place the number of elderly in need of Protective Services for Adults at 10% or approximately 200,000 persons in New York State. They have widely differing needs and backgrounds, but there are some common denominators by which we can predict that not only will the statistical count of the 65 plus age group increase, but that the percentage of the group in need of protective services may also well increase.

Not only is the aged population growing older, growing in numbers, but they are growing poorer. In 1972, one out of every four individuals over 65 years of age had income below the poverty level in contrast with one out of every nine in the below 65 year old age group. Medical problems, hence medical expenses, increase with age as shown by medical payments which are highest for this age group. Housing problems are numerous and further the elderly pay 35% of their income for this item as contrasted with the 23% spent by the under 65 year old group. As they grow older, poorer and less able to manage, they are faced with increasingly severe financial and social problems. The impact of these factors at a time of life when diminishing capacities make one less able to cope, results in deteriorating conditions. Services to protect, reduce, prevent or retard the debilitating effect of age are increasingly necessary, and while this need crosses all economic lines, poverty adds an extra stress.

With the ever increasing numbers of mentally impaired adults returning to and/or remaining in local communities, one can expect a greater increase in the need for some type of protective services. Estimates of the number of impaired elderly, a certain high risk group in need of these services, range from 45% of the inpatient state hospital population to approximately 100,000 currently living in the community. The need for specialized services to individuals being released from mental hygiene facilities was emphasized by passage of state legislation in 1974 mandating cooperation between Social Services and Mental Hygiene officials in helping those patients toward self-support and self-care. Such specialized help is actually only one part of the overall protective services responsibilities of a local district.

As a means of offering protection to the frail elderly, there has been a tendency to overutilize institutional care and underutilize those services including legal steps which offer protection to such persons in their own homes. Local districts have been concerned about interfering with the individual's civil rights and liberties and with their authority to intervene even when a potentially hazardous situation exists. The districts need to recognize and accept the dual responsibility - the protection of the individual's civil rights - and protection from harm to self and property. Thus a priority concern of this Department has been to insure greater local district emphasis on the delivery of services to meet the protective needs of the elderly.

#### IV. COMPONENTS OF PROTECTIVE SERVICES FOR ADULTS

##### A. General

Protective Services for Adults is a system of care, which includes the availability of a constellation of services brought to bear individually or in concert upon a problem situation of an adult requiring a planned approach of intervention. As a preventive, supportive and surrogate service, it is aimed at maintaining individuals in the community as long as feasible rather than institutionalizing them, though in some cases, the latter may be necessary. More specifically, it can be stated that a protective service system aims at the prevention, reduction or elimination of neglect, exploitation or crisis breakdown through the provision of services appropriate to the individual's needs which will strengthen his capacity to function and maximize his ability at self-direction.

Case management/counseling is the core of an effective protective service program. Local protective service staff must have knowledge and skill to assess and evaluate, to make decisions, to enlist other medical, psychiatric and legal help as necessary in evaluation and treatment and to coordinate those services which should alleviate the individual's plight.

From the point of agency activity, two types of Protective Services for Adults are identified: 1. Social Protective Services and 2. Legal Protective Services.

1. Social Protective Services are the full range of agency services undertaken with or on behalf of an adult client who is unable to manage his money, or carry on the activities of daily living and who has no one ready, willing, and able to act on his behalf.
2. Legal Protective Services include those actions by an agency which involve the readiness to use legal authority and procedures on behalf of an individual who cannot manage his money, is exploited or is in danger; which involve court action to determine whether an older person is incapable of managing his own property or affairs; and which may result in the establishment of some form of trust relationship or commitment to an institution for such an individual.

B. Title XX

Protective Services for Adults in most instances are subject to the requirements of Title XX of the Social Security Act. The following definition and list of service activities are in the Comprehensive Annual Social Service Plan (76-77). To this has been added the Department's interpretation of the general activities which might be involved but this is not intended to be an all inclusive list.

1. Definition: Services to individuals 18 years of age or older who are unable to protect their own interests, harmed or threatened with harm through action or inaction by another individual or through their own action or inaction due to lack of awareness, incompetence or poor health which results in physical or mental injury, neglect, or maltreatment, failure to receive adequate food, shelter, or clothing, deprivation of entitlements due them, or wasting of their resources.

Such services are limited to:

- (a) "Identifying such adults who need assistance and have no one willing and able to help."

Interpretation: (Includes but not limited to the following.)

- Community education and outreach
- Intake screening to identify persons in need of referral to Protective Services for Adults.

133-521 (Rev. 2/68)

- . Review of caseloads by Income Maintenance, Medical Assistance and Services for identification of adults at risk.
- . Referral of those adults as mandated or recommended by other Department regulations or releases e.g. applicants for Emergency Assistance and those adults for whom protective payee or representative payee is designated.
- . Determining the availability of responsible family members and securing such persons help and cooperation.

(b) "Providing prompt response and investigation upon request of adults at risk or other persons acting on their behalf."

Interpretation: (Includes but not limited to the following)

- . Establishes responsibility to take action for voluntary and involuntary clients at risk.
- . Prompt action mandated, agency should set reasonable time schedule.
- . The response may involve securing emergency services.
- . Crisis situations may involve police, legal, medical, and/or psychiatric services.

(c) "Diagnosing the individual's situation and service needs."

Interpretation: (Includes but not limited to the following.)

- . Involvement of client to greatest extent possible.
- . Development of a service plan.
- . Establishes casework - case management role.
- . Identification of specific service needs.
- . Contacting relatives, friends, landlords, neighbors, as well as direct contact with client.
- . Consultation with other resources as medical, psychiatric and legal.

(d) "Providing counseling to such adults, their families, other responsible persons or to surrogates such as representative payees, on handling the affairs of such adults."

Interpretation: (Includes but not limited to the following.)

- . Case management role. Direct services counseling to enable client to accept needed services.

- . Involvement of other concerned persons and resources, relatives, legal resources, health services, Social Security, others as indicated.

(e) "Arranging for appropriate alternate living arrangements in the community or in an institution."

Interpretation: (Includes but not limited to the following.)

- . Case management - action based on case study and diagnosis.
- . Involve client to greatest extent possible.
- . Emergency placement in crisis situations.
- . Securing services such as homemaker, housekeeper to alleviate the harmful conditions, and permit client to stay in own home. Securing needed repairs.
- . Relocation to more appropriate housing and arranging for necessary services (meals, personal care, housekeeping, etc.)
- . Counseling with client and staff of health and/or legal resources about the need for and type of institutional care available. Arranging for such care.

(f) "Assisting in the location of social services, medical care, and other resources in the community including arranging for day care in a protective setting."

Interpretation: (Includes but not limited to the following.)

- . Case management - locating and securing needed services.
- . Includes foster care, health related, home management, homemaker, housekeeper, housing improvement, prevention, social adjustment, social group services.
- . Medical care (including psychiatric) for the purpose of determining the extent of client's physical and/or mental incapacity and the services needed.
- . Other resources - included would be such services as friendly visiting, home delivered meals, help from relatives, friends, churches, senior citizen centers.

(g) "Arranging for guardianship, conservatorship, commitment or other protective placement as needed."

Interpretation: (Includes but not limited to the following.)

- . Guardianship and commitment involves legal consultation and court procedures. Such action mandates study, evaluation and formulation of agency policies.
- . Conservatorship must be considered prior to commitment. Role of agency in initiating conservatorship proceedings or serving as a conservator should be undertaken in consultation with legal representative.
- . Protective placement includes foster homes, relative or friend's home, services in own home which would ensure protection and adequate care, as well as congregate care.
- . Action related to above will often be preceded by arranging for psychiatric and/or medical consultation.
- . Important to differentiate voluntary and involuntary client, and define agency role.
- . Emergency action may be indicated.
- . Agency has responsibility to stay with situation until condition is improved, corrected and danger to client eliminated.

(h) "Providing advocacy and assistance in arranging for legal services to assure receipt of rights and entitlements due to adults at risk."

Interpretation: (Includes but not limited to the following.)

- . Assistance in obtaining SSI, Medical Assistance, pensions, community discounts available for elderly, food stamps. May mean filing applications, help in obtaining necessary documents.
- . Guidance with fiscal matters - security measures re: checks, protection of property. Assistance with income and property tax problems.
- . Evaluate need for protective and/or representative payee and take necessary steps to secure same.
- . Interceding as with landlord to ensure provision of housing services, needed repairs.
- . Assistance in obtaining proof of age.
- . Assistance in obtaining a fair hearing.

(i) "Functioning as a conservator, representative payee, or protective payee where it is determined such services are needed and there is no one else available or capable of acting in this capacity."

Interpretation: (Includes but not limited to the following.)

- . Initially search for responsible family member or friend to serve in such capacity.
- . Establish criteria on need for such services.
- . Differentiation of elements of conservator, representative payee, protective payee.
- . Consultation with legal representative indicated for Conservatorship.

## 2. Client Characteristics

The characteristics of the client in need of protective services are unique and provide the distinguishing components identifying a case as protective in nature. In essence this client is in some ways, (1) incapacitated, (2) in danger, (3) has unmet essential needs, and (4) has no one willing or able to help. These components as quoted below are specifically identified in the definition of the service:

- . Incapacity - "unable to protect their own interests ... due to ignorance, incompetence or poor health."

The impairment is often a combination of physical and mental deterioration or frailty which results in decreased capacity for self care and self determination.

- . In danger - "harmed or threatened with harm through action or inaction by another individual or through their own actions ... resulting in physical or mental injury, neglect or maltreatment ...."

The danger may relate to the person or his assets, perhaps generally to both and be a result of mental and/or physical limitations. Many will be in crisis or near crisis situations, living under hazardous conditions, in squalor in a condemned or dilapidated building with inadequate facilities. Because of an injury such as a fracture, or acute, or chronic illness, the person's health and even life may be seriously threatened. Such persons may also be in danger of bringing harm to others because of their own irrational behavior.

- . Unmet essential needs - "failure to receive adequate food, shelter, or clothing, deprivation of entitlements ...."

The person may be physically incapable of taking action necessary to secure essentials, and/or mentally limited in decision making process needed, without adequate resources to meet these needs, or deprived of resources (e.g. Social Security checks) because of exploitation by others.

- . No one willing or able to "assist them responsibly."

The death of spouse, the departure or alienation of children, relatives or friends and decreased mobility may result in social and physical isolation to a degree that there is no one interested or capable of providing the necessary help. Neighbors and friends having no legal responsibility hesitate to take any action.

The request for service may however be made by someone other than the adult at risk - by "other persons acting on their behalf."

### 3. Goal

Protective Services for Adults are directed only at goal III: "Preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests or preserving, rehabilitating or reuniting families."

### 4. Use of Other Adult Services

There are 12 other adult services listed in CASSP which also include goal III and which might be used in a Protective Services for Adults plan.

These are:

Family Planning	Housing Improvement
Foster Care for Adults	Information and Referral
Health Related	Preventive
Home Management	Social Adjustment
Homemaker	Transportation
Housekeeper/Chore	Unmarried Parents

Some of these services have limited application in a Protective Services for Adults program; others (such as the homemaker, housekeeper/chore services) will be needed more frequently; not all are included in each individual local district's service plan. In the provision of any of these services, the programmatic and income eligibility standard as elected by the local district for the specific services will apply.



While we do not see this as a frequent issue, there may be those isolated situations where the district in exercising its responsibility to provide Protective Services to Adults "without regard", will need to include the provision of a homemaker for a person whose income resources exceed the eligibility criteria as established by the local district. To the extent possible, the caseworker would attempt to arrange for the provision of the service with the homemaker being paid directly by the client, out of the client's resources, or from other sources.

5. Application Form 2560

The DSS 2560 shall be used as in the provision of any service. At a minimum, page one will be completed to establish the basis for SSRR reporting. When one or more additional Title XX services beyond Protective Services for Adults are to be provided, a full application must be completed and eligibility determined for the specific service needed as part of the protective plan. It is recognized that in the provision of services to incapacitated individuals, and especially in emergency situations, there may be a need to "provide prompt response and investigation" before the application form can be completed. In these situations it is important to complete the form to the extent possible and to document in the case record the circumstances and reason for the action taken. Likewise, when the agency representative acts in the capacity of an authorized representative, which includes signing the application form, the circumstances and reasons should be documented in the case record.

6. Eligibility

Those service activities, "a" through "i" as listed in Section IV, B, 1, are provided without regard to financial circumstances. Other adult services which might be utilized in the plan can only be provided to those with an income below the established income standard of the local district's CASSP. Even though a client's income exceeds the eligibility level for a specific service and thus cannot receive that service through Title XX, such persons remain eligible for protective services as defined. This variation in eligibility has implications for the protective service staff which must be understood and related to the plan for protective services.

7. Financing

As in the provision of all services defined in the district component of the then effective Comprehensive Annual Social Services Program Plan, and to the extent that Federal funds are allocated to the Department, Federal financial participation is available for the provision of protective services for adults at the 75 per cent rate for service costs. Likewise State financial participation is available at the rate of 12½ per cent to match Federally allocated funds for protective services for adults.

Notwithstanding these provisions State financial participation is available, when Federal funds allocated to the social service district are exhausted, at the rate of 50 per cent to match expenditures for protective services for adults insofar as State funds are available.

#### V. AGENCY ORGANIZATION - STAFFING CONSIDERATIONS

Providing Protective Services for Adults is a function of the Adult Service Section and in general, agency policies and staffing patterns should be followed. Although there is no requirement for a separate administrative unit, it is important that there is a specific assignment to Protective Services for Adults at all staff levels, including supervisory staff. This is in recognition of the special skills needed in working with impaired adults.

The number of workers assigned to Protective Services for Adults will depend on agency size and to some extent on population characteristics. Thus a county with 15% of its population in the 65 plus year old age group might expect to have a higher percentage of clients needing the service, than the county with 7%.

Careful consideration must be given to secure staff who are qualified by temperament as well as experience and training. Some persons are by disposition and temperament not able to work successfully with impaired older persons who may be more difficult to work with than younger clients.

It is recognized that few agencies will have staff with specific training in the field of aging, but many will have staff who have carried OAA caseloads and are experienced in working with the elderly. As training programs designed to improving skills in this particular area are developed, plans should be made to enable participation by carefully selected, qualified and interested staff.

##### A. Supervisor

The supervisor of Protective Services for Adults should be an experienced social worker with a background of working with adults and an interest and knowledge, and if possible training in the field of gerontology. The supervisor will evaluate referrals, make the determination of whether the situation meets the criteria as in need of protective services and assume the overall responsibilities of supervision as detailed in the particular agency. More supervisory time and effort will be required for this service than is usually deemed necessary for general services. This will be particularly true when knowledge and skill in study and diagnosis are taught, as well as when discussing staff feelings toward clients who have serious physical or mental impairment, who are living in privation and filth and who are probably facing imminent death. Supervisors may need to carry a few cases themselves to be able to effectively train staff.

##### B. Caseworker

The key person is the caseworker whose general functions are defined in overall agency policy and who meets the agency requirements for the Caseworker position. However, it is recognized that some otherwise qualified persons may by nature and temperament not be able to work successfully

with older, impaired persons. There is a need to have workers qualified by temperament, training and experience. Experience with Protective Services for Adults programs supports the belief that the personal qualities of staff are the principal factors to be considered in assigning staff to this service.

The usual desirable characteristics of an employee apply to the protective service staff, but the crucial quality in the Protective Services for Adults worker appears to be an appropriate balance between conflicting characteristics. The worker must be sensitive to a client's wishes, but skillful enough to know when the wishes and needs clash. (S)He must be sympathetic and kind, but firm in taking authoritative action when necessary; aware of what makes for quality living but not unduly upset by extreme illness, destitution, and filth; aggressive but not bossy; capable of exercising professional authority but willing to seek out and use other professionals; willing to work long hours when necessary, but retain proper perspective on work demands; able to make quick decisions when necessary, but patient in working out a situation that requires time and persuasion. A worker should be aware of his values which may clash with those of the client, but should not impose such values on the client.

#### C. Case Aide

In those agencies using case aides, consideration must be given to their ability to work with the older impaired adult. This assignment may involve frequent and to some degree personal contact and the case aide must have empathy with and be able to "relate" to the adult at risk. Under the continuing supervision of the caseworker, the aide may perform such activities as assisting in relocation, packing and unpacking, settling in new home, assisting in locating relatives and friends and making check-in visits to provide encouragement and support in carrying out specific plans as agreed on by the client and caseworker.

#### D. Volunteers

Volunteer workers may have an appropriate role in selected protective service situations. There must be careful evaluation of the services which may appropriately be provided by a volunteer; a careful matching of the volunteer with the client, and a thorough preparation of the volunteer as to the specific assignment. Likewise, the client must be understanding and accepting of the volunteer's role. The caseworker needs to constantly assess the effect of the volunteer's services and respond to indications of a need for a change in the plan. Appropriate activities might include friendly visiting, escort services, assistance in locating and moving to improved housing, transporting client for medical care, shopping, visiting and recreational activities.

#### E. Consultants

A Protective Services for Adults program requires the active involvement of, as a minimum, four professional groups: social work, medicine, psychiatry and law. Social work is the core service providing the case management/counseling component in which there is frequent need to utilize the expertise of the other professionals. The functions of the consultants

(medicine, law and psychiatry) in the Protective Services for Adults program are twofold: (1) to provide on-going professional consultation and action around specific client problems for both diagnostic and therapeutic reasons and (2) to participate in the development of agency policies and in staff training. An effort should be made to enlist the services of socially oriented professionals, with a concern and interest in older persons and some expertise in the field of gerontology. (See Sec. VI)

F. Homemaker-Housekeeper Services

Homemaker and housekeeper/chore services can be indispensable in helping maintain, strengthen and safeguard the functioning of dependent, physically and emotionally ill or handicapped adults. Such services will be provided according to agency policy either directly or through purchase of services. As in the overall agency program, the caseworker will assess the need for the service and with the client and homemaker/housekeeper or providing agency develop a suitable work plan. Generally this person (homemaker/housekeeper) will give assistance in maintaining home and household routines and supply specific supporting services and personal care in accordance with a treatment plan.

G. Post Institutional Planning Services

Protective Services for Adults (PSA) and the Post Institutional Services Planning (PISP) are functionally the same type of service with the same objective of providing needed services to impaired persons who are not capable of total self care and/or self determination. It is expected that there will be appropriate linkages between these two services and that some districts may choose to combine these functions.

VI. THE PROTECTIVE SERVICES FOR ADULTS TEAM OF PROFESSIONAL CONSULTANTS

A. The Role of Professional Consultants

Protective Services for Adults can best be viewed as an interdisciplinary system of care for individuals who usually have multidimensional problems which make them unable to handle their own personal and/or financial affairs. These problems may interact and compound each other, reflecting either a crisis or chronic situation.

A person needing protective services may have health, mental health, shelter, legal, or social problems. The New York State Department of Social Services is mandated by Federal and State law to provide Protective Services to Adults, and has been doing so for more than ten years. During that time it has been necessary to call upon the expertise of various other professionals. However, this effort has not been systematic or uniform across the State and too often tragic situations occurred because a district caseworker was unable to locate or enlist the appropriate help needed in time to avoid a tragedy.

A more effective delivery of Protective Services for Adults would be based on a reliable network of professional consultation and the utilization of many service providers, coordinated by the Protective Service caseworkers in local Departments of Social Services.

While each one of the professional consultants would be acting within their respective system of service, they would be called upon to provide this service to the Protective Services for Adults client in a coordinated effort with whatever other professionals, or services, was required by the particular case.

This coordinated approach does not mean a formal team structure with full time staffing in a centralized location, but rather that specific persons should be designated as consultants who may be called upon to participate in a team effort as needed.

B. The Role of the Local Department of Social Services

The local Departments of Social Services should assume the responsibility for creating an awareness in the Community of the urgent need for Protective Services for Adults. This outreach effort should be directed at the public at large and specifically at the other agencies who must accept the responsibility of taking an active part in the coordination of the delivery of this service.

Resources that should be involved in a community outreach program will include personnel from health and mental health agencies, nursing services, legal agencies, law enforcement groups, public service departments, advocacy groups, church councils and those other social and health agencies involved with services for adults. The county Board of Supervisors and lay committees of local districts should be made aware of the service. It is hoped that community understanding and acceptance of the service will make for earlier identification and referral of these adults at risk and prevent or reduce the incidence of tragedies. It is important for local Departments of Social Services to establish community relationships and identification which include an understanding and acceptance not only of the district's responsibility but also its limitations, as well as the vital role of professional consultants from other community agencies.

C. The Caseworker Role

At the core of this cooperative community effort is the local district caseworker with specialized experience in Protective Services for Adults who assumes the overall responsibility for the client's well being. This overall responsibility is the basis of the caseworker's relationship to the other consultants and the other systems upon which the Protective Services for Adults program must draw.

The caseworkers must see Protective Services for Adults as a system of care during which, although other providers will assume responsibility for aspects of the client's well being, their responsibility will continue. That continuing responsibility primarily entails the obligation to see that appropriate services are being provided. In order to assure that the client does receive the needed services, the caseworker must have a thorough knowledge of services available. This knowledge should include not only social services, but the services, both individual and institutional, provided by other systems of care as well.

It is necessary to have an adequate understanding of the other systems of care to track the client's progress. The purpose of following the client's progress is to assure that, as a client passes from or through one system to another, continuity of care is preserved. To do this effectively, mechanisms acceptable to all providers of care should be developed beforehand.

Knowledge of what services are available and the ability to follow the client's progress imply that several other skills are necessary if the caseworker is to have an effective relationship with other professionals. Among these skills is the ability to make proper referrals. This requires a careful assessment of client problems, their causes, and what is needed to resolve the problems.

In undertaking such an assessment it is critical that caseworkers know their own limits and, when they are reached, draw upon the other team consultants and the caseworker's own knowledge of the resources available. The ability to make referrals to the proper place at the proper time will be significant in building the mutual respect with the other providers that is necessary for the caseworker and the program to function effectively.

The caseworker functions as the core of the Protective Services for Adults consultant team and is the locus for the coordination of the services being provided to the client. This coordinator role reflects the caseworker's overall responsibility for the client's well being and has as its objective the assurance that care will be appropriate and complete. The caseworker must keep the other team consultants informed on the progress of each case. This benefits the present client and, as a learning process for team consultants, benefits future clients.

## VII. THE USE OF AUTHORITY

Due to the possibility of violating individuals rights, there is a tendency on the part of public officials to avoid intervention, sometimes when it is clearly needed. However, there are specific legal procedures and financial management avenues to assist those in need of such services. Legal actions will be indicated in only a small percentage of situations, but it is imperative that the agency be prepared to accept the responsibility when there is a clear cut diagnosis that the adult is in such a state of physical or emotional deterioration that he is unable to continue to function on his own behalf. It is essential that Protective Service workers recognize legal problems, not that they are to practice law.

In the provision of Protective Services for Adults, the request for services may be made by someone other than the client, who may not recognize the hazard of the situation, may not want a service, or may not even know services are available. Although such a person becomes in essence an involuntary client, the initial emphasis by the worker is by "gentle persuasion" to help the client move from an involuntary to a voluntary status. However, it is recognized that such movement will not always take place.

### A. Crisis Intervention

The decision for intervention is not lightly made but the doctrine of self determination cannot always be strictly observed. When the individual is incapable of making choices because of impairments, which might be temporary, intermittent or permanent, the agency has an obligation to see that the help and protection needed is forthcoming. Any action taken without the adult's consent shall be only if there is imminent danger to the person's life or health.

There are two traditional authorizations for intervention in the law:

- 1) The Police Power of the State which gives the State authority to regulate activities that involve the health and safety of the society. An example of this would be the arrest of a person observed to be assaulting another person or damaging property.
- 2) The theory of Parens Patriae, which gives the State authority to act in a parental capacity for persons who cannot care for themselves or who are dangerous to themselves. An example of this is the involuntary hospitalization of a mentally ill, suicidal person.

No intervention of any kind should be undertaken by anyone without statutory authority which observes due process of law in the protection of the person's rights.

Although DSS is mandated by Social Service Law to provide protective services for adults, the authority for the district to protect the life and property of a resisting, unwilling client is established in Mental Hygiene rather than Social Service Law. For those persons whose behavior indicates a "likelihood to result in harm" to themselves or others, there are emergency actions provided in Mental Hygiene law which the district worker may initiate.

The "likelihood to result in serious harm" is established in Mental Hygiene Law to mean:

- 1) "A substantial risk of physical harm to himself as manifested by threats of, or attempts at suicide or serious bodily harm or other conduct demonstrating that he is dangerous to himself, or
- 2) a substantial risk of physical harm to other persons as manifested by homicide or other violent behavior by which others are placed in reasonable fear of serious harm." (MHL Sect. 31.39)

Mental Hygiene Law provides that all officials associated with the public well being, including commissioners of social services, have a duty to see that persons in need of mental treatment receive care. The local district then must be prepared to accept responsibility when an adult is in such a state of physical or emotional deterioration that he is clearly unable to continue to function on his own behalf and is acting in a manner which is likely to bring harm to himself or others. In these crisis situations the local district may:

1. Enlist immediate help of a peace officer - state, county, city, town.  
In these crisis situations it is the peace officer who has the authority to take into custody the person who appears to be mentally ill and whose conduct indicates the likelihood of harm to himself or others. Such officer may remove such persons to a hospital or temporarily detain them in another safe, comfortable place. (Mental Hygiene Law Sect. 31.41; 31.45)
2. Report the situation to the local Director of Community Services (Mental Hygiene) requesting action.  
The director or his designee has the authority to go out and examine such person and of directing the peace officer to bring such patient in. (Mental Hygiene Law Sect. 31.37; 31.45)
3. Initiate application for admission to a Mental Hygiene facility on certification of two physicians.  
A social service official may initiate the application for admission to a mental hospital which includes a statement of the facts upon which the allegation of mental illness and the need for care are based. (Mental Hygiene Law Sect. 31.27)

In those situations where the physical health of the client and others is put in jeopardy because of environmental conditions relating to sanitation and safety, the local district will enlist the help and cooperation of



local public health officials. Such officials are authorized to investigate complaints of unsanitary conditions affecting public health. It is within their scope of responsibility where there is no response to the citing of violations, to file appropriate charges. It is hoped that in the majority of situations, the official citation of violations will serve to stimulate corrective action or the client's acceptance of the action indicated.

There is considerable variation in the readiness and/or availability of peace officers and other public officials to respond to such calls from social agencies. It is therefore suggested that local districts, in consultation with other community resources, including the police departments and community mental health and public health agencies, establish interagency policies and guidelines relating to intervention in crisis situations. (See Section VI)

#### B. Legal Procedures

The foregoing actions of intervention will in some cases result in the use of court procedures such as Conservatorship and Incompetency Proceedings. These procedures, which may also be utilized in non-crisis situations, are established in Mental Hygiene law and involve a formal application or petition and a court proceeding. They provide for long range planning or protection and require more time to implement than afforded in emergency or crisis situations. Both procedures are protective actions to be initiated only for persons who have demonstrated such a degree of incapacity that supportive services alone are not adequate. The Conservatorship provides for control of the property only; the Incompetency Proceeding includes the property and the person. Both are initiated in the State Supreme Court or the County Court.

1. Conservator - Mental Hygiene Law Article 77 sets forth the procedures for the designation of a conservator of the property for a resident who has not been judicially declared incompetent and who by reasons of advanced age, illness, infirmity, mental weakness, intemperance, addiction to drug or other cause is unable to provide for himself. It provides that a proceeding for the appointment of a conservator may be commenced by "a friend" including a corporate body, a public agency or a social service official of the place where the proposed conservatee resides regardless of whether a recipient of public assistance. Furthermore, a social services official may be appointed as a conservator. The conservatorship does not carry the stigma of a declaration of incompetency. Prior to the appointment of a committee, the court must first consider whether the interests sought to be protected could be best served by the appointment of a conservator. (See Addendum A)
2. Incompetency Proceedings - Mental Hygiene Law Article 78 sets forth the procedures for the appointment of a committee for a person who is incompetent to manage himself or his affairs or is a patient in a mental health institution. A committee of one or more persons may be appointed by the court giving them custody of the person or property of the incompetent. Anyone can commence such a proceeding where the property of any person is endangered by reason of his incompetency and where no proceeding has been commenced, the social service commissioner shall bring the proceeding.

The essential element is the finding by the court that the person is incompetent. It is not a procedure to be used for persons who are only partially or sporadically impaired in their functioning and are capable of retaining some independence. The totality of both the disability of the incompetent and the duties and powers of the committee, albeit subject to the supervision of the court, and the resulting dependency of the individual, are the basic deficiencies in the incompetency procedures as a remedy for persons who though limited in their capacities, should not be considered totally incompetent. Thus the law provides that prior to the appointment of a committee, it shall be the duty of the court to consider whether the interests sought to be protected could best be served by the appointment of a conservator. (See Addendum B)

3. Guardianship - A guardian is a person lawfully invested with the power and charged with the duty, of taking care of the person and managing the property and rights of another person, who for some peculiarity of status, or defect of age, understanding or self control, is considered incapable of administering his own affairs. In this state a guardianship is usually confined to the protection of infants and the mentally retarded. It is not an appropriate procedure to be used for the frail impaired older person, but it is a method of providing protection of the mentally retarded adult.
  
4. Power of Attorney - This is a familiar term and questions have been raised as to its use or application in a Protective Services for Adults program. Essentially it is a written agreement between the individual and another person, usually his attorney, a close relative, business associate or financial advisor, authorizing that person to sign documents, and conduct transactions on his behalf. It is defined as an instrument authorizing another to act as one's agent or substitute. Power of attorney may be revoked at will at any time and is terminated at death of the person appointing the attorney. The client at risk may have granted power of attorney to a relative or associate prior to the district's involvement in the situation. It has not been commonly used or initiated by local districts and as a protective procedure it probably has limited application. In most situations more appropriate procedures are available and it is probably not a procedure which the caseworker would initiate or participate in, but one with which he should be familiar.

C. Financial Management

Fiscal mismanagement resulting in unpaid bills, wasting of resources, lost checks, inadequate purchase or use of such essentials as food and clothing are problems which require a different kind of knowledge and skill. Some marginally competent and intermittently incompetent persons may retain control of their income and assets if they can have some supervision and guidance. This is a time consuming process,

requiring patience as well as ingenuity. It may be only working out a plan of expenditure and periodically verifying the ability to follow the plan. The problems might be less acute if arrangements are made for the social security checks to be deposited directly in the bank, or accompanying the adult at risk while the check is cashed, rent paid and groceries purchased. For the more seriously impaired adults, such services will not solve the problem and there are established procedures to protect the assets of those persons.

1. DSS Procedures - Methods of Payment

State Regulations have established procedures designed to help those persons who by reason of physical or mental incapacity are not able to manage funds. These are procedures with which the local district worker will generally be familiar. Case records should clearly document the reason for the restricted payment.

- a. Restricted Money Payments - requiring that the money be used in a specified way, endorsed by a person other than the payee and/or receipted bills are to be submitted.
- b. Indirect or Vendor Payments - means issuance of an order to a vendor or payment to a vendor for furnishing food, living accommodations or other goods or services to a recipient.
- c. Protective Payments - means a check or warrant payable to an individual, other than the recipient where such payment is determined to be in the best interest of the recipient. When the payment is to be made to a staff member of the social service district, selection should be made from the staff providing protective services.

2. Social Security Procedures - Representative Payee

A representative payee is a person selected by the Social Security Administration to receive cash benefits on behalf of a beneficiary receiving either SSI or OASDI benefits when there has been positive legal, medical, or other acceptable evidence presented which establishes the fact that the beneficiary is unable to manage the benefits for himself.

This is a procedure frequently utilized for residents of Congregate Care facilities and as such is one with which local districts are familiar. Its use, however, is not limited to institutionalized persons. It is a means of helping persons to remain in the community by providing help in the management of the person's own funds.

When, in the course of the casework in a Protective Services for Adults case, it becomes apparent that the client is in need of the appointment of a representative payee, the client should be informed of the need for this change in the method of payment and, if possible, the client should participate in the selection of the person designated as the representative payee.

Every effort should be made to involve a legal guardian, spouse, relative, or friend to act as the representative payee. If no such person can be found to accept this responsibility, the local DSS should make application to the Social Security Administration District Office requesting that the Local Social Service Commissioner or the Director of Social Services be designated as the representative payee.

D. Immunity of Public Officials

When a legal action for damages is brought against a public official (such as a county Commissioner of Social Services) charging a denial or deprivation of civil liberties, the official may have "qualified or limited immunity" from prosecution in that the plaintiff must show that the official knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the plaintiff's constitutional rights, or that the official took the action with the malicious intention to cause a deprivation of constitutional rights or other injury.

Guidelines should be developed by the local agency in consultation with legal authorities (agency lawyer, local bar association, local courts) which establishes the special role of the protective services worker in emergency situations.

### VIII. PROGRAM ISSUES

The following topics have been singled out for brief discussion because of questions previously raised. It is not intended to be all inclusive of questions raised.

#### A. The Client's Civil Rights

The Fourteenth Amendment to the United States Constitution provides that "[no] State [shall] deprive any person of life, liberty or property without due process of law." In the provision of Protective Services for Adults, where the district is attempting to improve the situation of persons with diminished capacity for self determination and self care, the most perplexing problems concern the infringement of the adult's civil rights and liberties and his right to control his own person and assets. Although the district is mandated by law to provide Protective Services for Adults, the law does not establish precise guidelines as to at what point intervention is justified or what constitutes "substantial risk." It has been said that bizarre, eccentric behavior of the client, by itself does not justify intervention; that we must refrain from imposing our own personal values and standards. However, the community in which the adult at risk resides, will often not be satisfied with behavior or conditions which do not meet their standards and will pressure the district to take action. This adds another dimension to the district's problem, but in itself does not constitute a basis for action or non-action by the agency.

Some questions, e.g., "Does a person have a right to remain in a dangerous environment if he wishes? Can he be left exploited or neglected, to starve himself to death, to suffer from exposure or discomfort if he chooses?" cannot be precisely answered by reference to a specific law. However, the assumption that such self-destructive behavior comes not from free choice, but rather from deteriorating organic and personality changes, strongly indicates that failure to intervene constitutes social neglect. Herein lies the authority and responsibility of the local Departments of Social Services and other agencies to take action on behalf of the impaired adult at risk. (See Sect. II., Part C & D)

A protective service program then must recognize the responsibility to protect in both areas - protection of civil rights and protection from harm. The two concerns are not conflicting; a prime objective of protective services is to strengthen the individual's capacity for self determination and self care - a fundamental civil right.

Thus while the basic principle of the client's right to accept or reject services must be recognized, for the endangered client who rejects a needed service, the agency has a responsibility to initiate appropriate actions.

The decision as to what constitutes a "substantial risk", the point at which the district must intervene, is not an easy determination to make, but it is one which the district must be prepared to assume. Such decisions will usually not be made alone, but will involve legal, medical, and/or psychiatric consultation.

It follows that in the concern with the client's civil rights and liberties there is a need to distinguish between the client who wants and the client who does not want services, the voluntary and the involuntary client.

B. Voluntary - Involuntary Client

Protective Services for Adults staff shall be responsible for providing services to both the voluntary and the involuntary client.

1. The voluntary client is one who requests the services of the agency or is accepting of the referral for services as made by someone else.
2. The involuntary client is one who is in danger of serious harm and cannot be persuaded to see the peril and accept a viable alternative. Such clients are often referred to the agency by someone else.

The majority of individuals needing protective services will be voluntary applicants or will become voluntary when informed of available services. Appropriate counseling and services - gentle persuasion - will often help the client move from involuntary to a voluntary status and the initial effort will be in this direction. Complete information shall be given to all applicants or referrals for protective services of the alternatives available, including an explanation of the legal procedures that might be taken to protect the person and assets, e.g., conservatorship. The individuals should be encouraged to make their own decisions but may need counseling and explanation of the provision of a specific service item. It may be necessary to accept a less desirable alternative action if that is the decision of the client.

There will however be those clients who have exhibited such a degree of self destructive and dangerous behavior for whom the district must initiate action. It is often the involuntary clients who need the protection of authoritative procedures whereas voluntary clients may accept and understand the need for such help.

C. Identification of Protective Service Activities

Questions often arise as to what it is that distinguishes the service activities provided as a general service from the same or similar service activities provided as a protective service. When a caseworker makes arrangements for the receipt of medical services or placement, that activity is sometimes known as a "health related service" whereas at other times that same service activity is known as protective. The distinction lies in the characteristics of the client not in the nature of the service activities. When the client can be identified with the characteristics noted in Section IV, the service activity would be classified as protective rather than a specific general service such as health related.

Diagnosing the individual's situation and service needs and assessing the need for services are essential steps to be taken before a decision can be made as to the client's level of functioning and the resources he may have to help meet the needs. Through this period, the service will usually be appropriately classified as "Protective". The individual who is evaluated on the basis of this case study as capable of making his own decisions and has someone responsible to help may need general rather than protective services. The important consideration is to provide and see that a necessary service is made available, to carry through and to obtain what is needed to "prevent" or "protect" or "remedy" as each individual situation demands.

D. Short term - Long term Cases

Some agencies providing Protective Services for Adults have tended to identify the service with the short term crisis situation in which the case is closed when the immediate problem is solved. Other agencies have been heavily involved with long term situations and especially with the frail elderly, for whom a continuum of protective services may be indicated. For these clients there is a need to stay with the situation and do or get others to do whatever is needed to help such persons deal creatively and effectively with the life stresses they are facing.

E. Family Responsibility

Although the caseworker will frequently act in the capacity of a substitute family, it is very important to make every attempt possible to enlist the help and support of available family members. This may involve counseling with the family to help them in accepting and understanding the needs and limitation of their impaired relatives.

The amendment to Social Services Law (1966) which eliminated the adult child's responsibility for the financial support of parents, should not be viewed as eliminating the need to involve family members in all planning and action relating to the service needs of their incapacitated parent or relative.

IX. PROTECTIVE SERVICES FOR ADULTS CHART AND NARRATIVE

The procedures for intervention in Protective Services for Adults cases have been prepared in flow chart form which follows as a training guide and desk reference for caseworkers. The following narrative highlights and explains the various casework stages and procedures which may be involved in Protective Services for Adults cases. The chart is not intended to imply that all Protective Services for Adults cases will necessarily proceed through all the stages indicated or that the time sequence is fixed. In some cases the stages may overlap or be unnecessary.

A. Referral

1. Contacts should be made with all other community social services agencies and possible referral sources to acquaint them with the availability of Protective Services for Adults through local DSS and to establish referral procedures and designate staff contact persons.
2. Referrals may be received from many sources.

B. Identification

1. In agencies which have an Intake Unit, whether it is a generic unit or specialized by Division (e.g., I.M., M.A., Services), the intake caseworkers should be included in Protective Services for Adults training to insure that they are able to recognize a possible Protective Services for Adults case.
2. If the case is determined at intake to be a Protective Services for Adults case or a possible Protective Services for Adults case, it should be referred to the Protective Services for Adults caseworker through the usual local DSS intake procedures.
3. Where the provision of Emergency Assistance to Adults is because of lost or mismanaged checks or because of indications of substantial impairment of the persons' ability to care for his property or assets, there shall be referral to Protective Services for Adults for evaluation and determination of service needs.

C. Investigation

1. If, at the initial contact, whether by telephone or in the intake office, it is determined that there is imminent danger, the following steps should be taken:
  - a. The Protective Services for Adults unit or caseworker should be contacted if there is time. The client should be removed with the aid of relatives, friends or clergymen, if possible, to a safe environment or the present environment should be rendered safe.
  - b. If the client resists these measures, it will be necessary to rely on the Mental Health Director of Community Services who has authority under Article 31, Section 31.37 of the Mental Hygiene Law to have the person temporarily removed to a hospital or other place of safety.
  - c. The local DSS has the authority to call upon the police if necessary to enter and remove the person from a situation in which there is potential harm to the client or to others. (Social Services Law, Sect. 131.L; Mental Hygiene Law, Article 31, Section 31.41; 31.45)



- d. At this point in the Protective Services for Adults procedure it is necessary to alert the agency attorney, the county welfare attorney, or whatever attorney has been contacted to consult on Protective Services for Adults issues.
  - e. Once the immediate danger or emergency has been alleviated, the case is referred to the Protective Services for Adults unit or caseworker, if not already involved, for assessment and on-going case management.
2. If, at the initial contact, the caseworker determines that the case is a Protective Services for Adults case or a possible Protective Services for Adults case, and there is no immediate danger apparent the following steps should be taken:
- a. The case should be assigned to the Protective Services for Adults unit or caseworker by whoever receives the initial contact if it is someone other than the Protective Services for Adults unit or caseworker.
  - b. Caseworker should make preliminary investigation to determine if any support or responsibility will be available from family, friends or other interested parties.
  - c. Consideration should be given to temporary removal of the client from a potentially dangerous or unsuitable living situation.

D. Intervention

1. Cooperative or Voluntary Client

- a. If attempts to involve family or friends to assume the responsibility for the safety of the person are successful, the case may be transferred to general services for the provision of support services as needed, or closed if it is determined that no further services are required. Follow up should be made periodically to insure that this solution remains adequate.
- b. If no family or friend can be found, it is the responsibility of DSS to see that a safe environment is provided by:
  - . Providing or arranging for medical, psychiatric, legal, homemaker, housing or other services needed to make the person safe in the present environment;
  - . Arranging for removal of the person from wherever he or she is living to a place of safety and care.

## 2. Uncooperative or Involuntary Client

- a. If attempts to involve family, friends or other social agencies results in their assuming the responsibility, the case may be closed. Follow up should be done periodically to insure that the person is receiving adequate care and protection.
- b. If attempts to involve others fail and the client is not willing to accept intervention on his or her behalf, DSS has the responsibility to involve other agencies or community resources such as Mental Health, Health, Attorneys, Police, Courts, Utility Companies, etc. in a team effort to determine the level and plan of intervention. (See procedures under C. Investigation, Parts 1 a through e of this section)

### E. Assessment and Plan

1. A social study and case assessment should be made after any existing emergency has been handled and the appropriate intervention has been made.
2. A plan for on-going social and/or legal protective services should be made.
3. The Protective Services for Adults caseworker has the responsibility for case coordination and follow up to insure that the needed services are being provided or purchased if necessary.
4. These cases should remain with the Protective Services for Adults worker rather than transferred to a general caseworker at this point on the assumption that almost all of them will continue to be unstable, high risk cases. Some few cases may be considered stable enough to transfer to General Services.

### F. Plan Implementation

1. If the client is cooperative DSS should provide or arrange for needed services as identified in the case assessment including:
  - a. Social Protective Services
    - . Medical
    - . Psychiatric or counseling
    - . Legal
    - . Housing
    - . Homemaker
    - . Financial, e.g. Representative Payee
    - . Personal or environmental safety

b. Legal Protective Services

- . Power of Attorney
- . Guardianship
- . Conservator
- . Committee

2. If the client is uncooperative, DSS should provide or arrange for the above listed services as needed initiating whatever Court procedures are required to insure that the services are provided.

G. Case Termination

The Protective Services for Adults case may be terminated when:

1. the presenting problem has been alleviated and there is no further need for services;
2. the client condition is stabilized without legal controls or need for protective social services and client is transferred to general services;
3. the responsibility for the client has been assured by another agency;
4. the responsibility for the client has been assumed by family or friends.

X. ANNUAL PLAN FOR THE PROVISION OF ADULT PROTECTIVE SERVICES

Since the issuance of this bulletin in 1976, adult protective services has become more visible, and ongoing efforts have been made to strengthen the service delivery system. It has become increasingly apparent that gaps exist in the legislative authority to provide these services. In November and December of 1978 the New York State Assembly Social Services and Aging Committees held joint public hearings to address these barriers to service delivery. The hearings resulted in the drafting of a bill which was signed into law by Governor Carey in July 1979.

Chapter 446 of the Laws of 1979 requires that each local Department of Social Services shall prepare and submit to the Commissioner of the New York State Department of Social Services an annual plan for the provision of adult protective services. Districts are to consult with appropriate public, private and voluntary agencies in developing the plan and are to indicate provisions for interagency relations, interagency agreements, service referral mechanisms, and locus of responsibility for cases with multi-agency services needs. The plan shall also address organization, staffing, mode of operations and financing of the adult protective services.

Prior to the submittal of the plan to the Department, it must be approved by the chief executive officer or the legislative body in those counties without a chief executive officer.

Upon submittal, the Department has thirty days to certify whether or not the plan fulfills the purposes of and meets with the requirements of Chapter 446 of the Laws of 1979.

The Annual Plan for the Provision of Adult Protective Services has been formatted to facilitate writing the plan. As you will note, the plan pages are pre-numbered. If you are unable to incorporate all of your information in the space allocated, you may attach extra pages. Please number the attachments by attaching an alpha indicator (e.g. an attachment page for 01-PSA would be number 01-PSA-A).

Districts are required to submit all the information requested. Guidelines for the plan are found in Section XI of this bulletin.

ANNUAL PLAN

ADULT PROTECTIVE SERVICES

DISTRICT NUMBER

COMMISSIONER

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Date

\_\_\_\_\_  
County Chief Executive  
Officer

\_\_\_\_\_  
Date

Plan Year: October 1, 1980 through September 30, 1981

01-PSA

A. OVERVIEW

1. At-Risk Population

2. Access Points

3. Developing Trends

Reasons

02-PSA

4. Specific Goals or Direction Planned

5. Planning Process

03-PSA

B. NEEDS ASSESSMENT

C. ORGANIZATIONAL STRUCTURE

1. Contact Person \_\_\_\_\_ Title \_\_\_\_\_



04-PSA

2. Staffing

Position	Full Time	Part Time	Equivalent Fulltime
Director of Social Services			
Grade A Supervisor			
Grade B Supervisor			
Sr. Caseworker			
Caseworker			
Case Aide			
Community Services Worker			
Community Services Aide			
Support Staff			
Volunteers			
Other (specify)			

05-PSA

3. Organizational Charts

a. Program Organization

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06-PSA

b. Financial Management System Organization

07-PSA

4. PISP/PSA Relationship

5. Changes are anticipated in the organizational structure

Yes \_\_\_\_\_ No \_\_\_\_\_

6. Potential Impact on PSA

08-PSA

D. RESOURCES

1. Title XX

Method of Provision	Service Family Planning	Foster Care for Adults Health Related	Home Management	Homemaker	Housekeeper/Chore	Housing Improvement	Information and Referral	Preventive	Transportation	Unmarried Parents
Direct										
Purchase Public										
Purchase Private										

2. The agency purchased Protective Services for Adults Yes  No

3. Protective Services for Adults Contracts

09-PSA

4. Changes in services available are anticipated Yes  No
5. Changes

Plan for Resolution						
Impact						
Reason						
Change						
Agency/ Service						

10-PSA

E. COORDINATION/LINKAGES

1. A financial management system is in place. Yes \_\_\_ No \_\_\_
2. Procedures for a financial management system have been written. Yes \_\_\_ No \_\_\_
3. Roles and responsibilities for the delivery of adult protective services, including the financial management system, have been defined for:
  - a. Accounting Yes \_\_\_ No \_\_\_
  - b. Income Maintenance Yes \_\_\_ No \_\_\_
  - c. Medical Assistance Yes \_\_\_ No \_\_\_
  - d. Adult Protective Services Yes \_\_\_ No \_\_\_

11-PSA

e. Services Yes  No

**F. UNMET NEEDS/PROBLEMS**

- 1. Current and future problems exist Yes  No
- 2. Problems/Needs

Problems	Plan of Action



12-PSA

G. TRAINING/EDUCATION

Target Group	Training/Education Needs	Planned Activities	Completed Activities
Adult Protective Services			
Services			
Income Maintenance			
Political Assistance			
Accounting			
Administrative			
Other (specify)			



- . Conservatorship must be considered prior to commitment. Role of agency in initiating conservatorship proceedings or serving as a conservator should be undertaken in consultation with legal representative.
- . Protective placement includes foster homes, relative or friend's home, services in own home which would ensure protection and adequate care, as well as congregate care.
- . Action related to above will often be preceded by arranging for psychiatric and/or medical consultation.
- . Important to differentiate voluntary and involuntary client, and define agency role.
- . Emergency action may be indicated.
- . Agency has responsibility to stay with situation until condition is improved, corrected and danger to client eliminated.

(h) "Providing advocacy and assistance in arranging for legal services to assure receipt of rights and entitlements due to adults at risk."

Interpretation: (Includes but not limited to the following.)

- . Assistance in obtaining Social Security, SSI or public assistance, Medical Assistance, food stamps, pensions, community discounts available for elderly. May mean filing applications, helping to obtain necessary documents
- . Guidance with fiscal matters - security measures re: checks, protection of property. Assistance with income and property tax problems
- . Evaluation of the need for protective and/or representative payee and taking necessary steps to secure same
- . Intervention as with landlord to ensure provision of housing services, needed repairs
- . Assistance in obtaining proof of age
- . Assistance in obtaining a fair hearing

(i) "Functioning as a conservator, representative payee, or protective payee where it is determined such services are needed and there is no one else available or capable of acting in this capacity."

Interpretation: (Includes but not limited to the following.)

- . Initial search for responsible family member or friend to serve in such capacity
- . Establishment of criteria on need for such services

- . Differentiation of elements of conservator, representative payee, protective payee
- . Consultation with Social Security office re representative payee
- . Consultation with legal representative indicated for Conservatorship

(j) "Providing homemaker and housekeeper/chore services when provided as an integral but subordinate part in the provision of PSA to meet the goal of protection for adults who demonstrate specified functional deficits. The provision of such services to be limited to 6 months when provided without regard to financial criteria, with the single exception noted below. When such services are available through other public or private community resources, these should be utilized."

The exception to providing these services beyond 6 months will be allowed on a case-by-case basis under the following conditions:

1. Conservatorship or other financial management proceedings have been started within the first 60 days of the provision of PSA services.
2. The local district must accept the responsibility to function as a conservator, representative payee or protective payee on behalf of a PSA client if no other resources are available within 45 days of a determination by either:
  - a court that a conservator is required;
  - an office of the Federal Social Security Administration or the Railroad Retirement System that a representative payee is required; or
  - the social services district that a protective payee is required.

Under this exception, these services may be provided without regard to financial eligibility criteria until the conservatorship or other financial management proceedings are completed. During this extension, services may be authorized for no longer than one 3 month period, with one reauthorization for an additional 3 months, but in no case shall this exception provision be used to authorize homemaker and housekeeper/chore services without regard to income for longer than an additional 6 months.

2. "Client Characteristics"

Section 473.1 Social Services Law sets forth the client characteristics, whose presence in combination, indicates the need for Protective Services for Adults. The law specifically defines PSA clients as adults who: (1) because of physical or mental dysfunction; 2) are unable, without assistance from others to manage their own resources, carry out the activities of daily living, or protect themselves from neglect or hazardous situations; and 3) have no one available who is willing and able to assist them responsibly. These three criteria are expanded upon below.

"Physical or mental dysfunction"

The dysfunction may result from one or more factors involving physical and mental deterioration or disability which result in a decreased capacity for self care and self determination. Conditions which may contribute to a client's disability include, but are not limited to mental illness, mental retardation, chronic or acute physical illness, conditions associated with aging, physical handicaps, as well as alcohol or substance abuse.

"Unable to manage their own resources, carry out the activities of daily living, or protect themselves from neglect or hazardous situations without assistance from others"

The individual may have considerable assets which are exploited by another person. More often, the condition will result from chronic squandering of limited resources, an unwillingness to pay for essential services and to utilize one's resources to meet essential needs, such as nutrition, clothing, shelter and medical care. The client may be unable to perform essential daily living activities, such as tasks related to nutrition, personal hygiene and housekeeping, or to apply for needed benefits and services, including SSI, Food Stamps and Medical Assistance. The client may be defenseless against physical abuse by another person, have his/her basic needs neglected by relatives or other caregivers, or be vulnerable to the criminal actions of others. The individual's physical surroundings may pose serious hazards such as fire or exposure, or he/she may have untreated injuries, illness or other conditions, including hypothermia, dehydration, and malnutrition, which may present a serious and immediate threat to life. Often a case will involve a combination of the above factors with the client in a crisis or near crisis situation.

"Have no one available who is willing and able to assist them responsibly"

The potential for involvement by adult children or other relatives should be thoroughly explored in light of the total needs of the client. In many instances relatives are not willing to provide care, or if interested, are not able to meet all of the client's needs. Neighbors or friends having no legal responsibility may hesitate to play more than a limited role. While other service providers may be involved or be seen as a potential resource for the provision of services to the client, the ability and willingness of these other agencies to provide services must be weighed against the client's needs. Even when relatives and/or other agencies are involved with PSA clients, it may be necessary for the social services district to maintain an active role in the provision of services to those clients whose needs exceed the service capacity of their relatives and/or other services providers. (See Section VI A - The Role of Other Services Providers)

Individuals who meet the aforementioned client characteristics are in need of Protective Services for Adults because their personal well being and/or assets are threatened by the actions or inactions of themselves or others.

3. Goal

Protective Services for Adults are directed only at goal III of Title XX of the Social Security Act as reflected in the State's Consolidated Services Plan. "Preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests or preserving, rehabilitating or reuniting families."

4. Use of Other Adult Services

There are 11 other adult services listed in the Consolidated Services Plan which also include goal III and which might be used in a Protective Services for Adults plan.

These are:

Family Planning	Housing Improvement
Foster Care for Adults	Information & Referral
Health Related	Preventive
Home Management	Transportation
Homemaker	Unmarried Parents
Housekeeper/Chore	

Some of these services have limited application in a Protective Services for Adults program; others (such as the homemaker, housekeeper/chore services) will be needed more frequently; not all are included in each individual local district's service plan.

The inclusion of room & board (see page 12) (item e) and of homemaker/housekeeper services (page 14) (item j) in the CSP definition of PSA must be recognized as subject to certain limitations in that these services are directed toward the goal of protection and for those persons who meet the criteria of needing PSA. This is of particular significance since PSA is provided without regard to financial eligibility. For situations that are not classified as PSA, financial eligibility of the service to be provided applies. If such services are available for the PSA client from other sources, these are to be utilized.

5. Application Forms

As in the provision of any service, the DSS form 2921 (Common Application for Services) shall be used in WMS districts. At a minimum, Sections 1-8 and 13 will be completed and the client's signature or the signature of the person taking responsibility for the client obtained in Section 15. The caseworker may sign for the client if the client cannot (or will not) sign for him/herself provided that an explanation is included in the ongoing case recording and the supervisor's signature is present on the application form. In non-WMS districts, DSS Form 2560 shall be used. At a minimum, page one will be completed and the application signed in accordance with the preceding provisions.

When one or more additional Title XX services beyond Protective Services for Adults are to be provided, a full application must be completed and eligibility determined for the specific service needed as part of the protective plan. It is recognized that in the provision of services to incapacitated individuals, and especially in emergency situations, there may be a need to "provide prompt response and investigation" before the application form can be completed. In these situations it is important to complete the form to the extent possible and to document in the case record the circumstances and reason for the action taken.

6. Eligibility

Those service activities "a" through "i" as listed in Section IV B1 (pp.10-13) are provided without regard to financial circumstances. Service activity "j" (homemaker and housekeeper/chore services) may be provided without regard to financial circumstances for a period of six months, except that in certain situations this period may be extended for up to an additional 6 months (see pg.10). Other adult services which might be utilized in the plan can only be provided in accordance with the eligibility criteria specified in each local district's Consolidated Services Plan. It is possible that a client may be in need of protective services as defined (primarily "soft services", with the exception of room and board, homemaker and housekeeper/chore services) and, although in need, not be eligible for other services which are included in the Consolidated Services Plan.

7. Financing

As in the provision of all services defined in the district component of the Consolidated Services Plan and to the extent that Federal funds are allocated to the Department, Federal financial participation is available for the provision of protective services for adults at the 75 per cent rate for service costs. Likewise, State financial participation is available at the rate of 12 1/2 per cent to match Federally allocated funds for protective services for adults.

Notwithstanding these provisions State financial participation is available, when Federal funds allocated to the social service district are exhausted, at the rate of 50 per cent to match expenditures for protective services for adults insofar as State funds are available.

V. AGENCY ORGANIZATION - STAFFING CONSIDERATIONS

Providing Protective Services for Adults is a function of the Adult Service Section and in general, agency policies and staffing patterns should be followed. Although there is no requirement for a separate administrative unit, it is important that there is a specific assignment to Protective Services for Adults at all staff levels, including supervisory staff. This is in recognition of the special skills needed in working with impaired adults.

The number of workers assigned to Protective Services for Adults will depend on agency size and to some extent on population characteristics. Thus a county with 15% of its population in the 65 plus year old age group might expect to have a higher percentage of clients needing the service, than the county with 7%.

Careful consideration must be given to secure staff who are qualified by temperament as well as experience and training. Some persons are by disposition and temperament not able to work successfully with impaired older persons who may be more difficult to work with than younger clients.

It is recognized that few agencies will have staff with specific training in the field of aging, but many will have staff who have carried OAA caseloads and are experienced in working with the elderly. As training programs designed to improving skills in this particular area are developed, plans should be made to enable participation by carefully selected, qualified and interested staff.

A. Supervisor

The Protective Services for Adults supervisor should be an experienced social worker with an interest in working with adults. If a new supervisor has not previously worked with adults and has no background in gerontology, mental health or related fields, appropriate training should be secured. The supervisor will evaluate referrals, make the determination of whether the situation meets the criteria as in need of protective services and assume the overall responsibilities of supervision as detailed in the particular agency. More supervisory time and effort will be required for this service than is usually deemed necessary for general services. This will be particularly true when knowledge and skill in study and diagnosis are taught, as well as when discussing staff feelings toward clients who have serious physical or mental impairment, who are living in privation and filth and who are probably facing imminent death. Supervisors may need to carry a few cases themselves to be able to effectively train staff.

B. Caseworker

The key person is the caseworker whose general functions are defined in overall agency policy and who meets the agency requirements for the Caseworker position. However, it is recognized that some otherwise qualified persons may by nature and temperament not be able to work successfully with impaired adults. There is a need to have workers qualified by temperament, training and experience. Experience with Protective Services for Adults programs supports the belief that the personal qualities of staff are the principal factors to be considered in assigning staff to this service.

The usual desirable characteristics of an employee apply to the protective service staff, but the crucial quality in the Protective Services for Adults worker appears to be an appropriate balance between conflicting characteristics. The worker must be sensitive to a client's wishes, but skillful enough to know when the wishes and needs clash. (S)He must be sympathetic and kind, but firm in taking authoritative action when necessary; aware of what makes for quality living but not unduly upset by extreme illness, destitution, and filth; aggressive but not bossy; capable of exercising professional authority but willing to seek out and use other professionals; willing to work long hours when necessary, but retain proper perspective on work demands; able to make quick decisions when necessary, but patient in working out a situation that requires time and persuasion. A worker should be aware of his values which may clash with those of the client, but should not impose such values on the client.

C. Case Aide

In those agencies using case aides, consideration must be given to their ability to work with impaired adults. This assignment may involve frequent and to some degree personal contact and the case aide must have empathy with and be able to "relate" to the adult at risk. Under the continuing supervision of the caseworker, the aide may perform such activities as assisting in relocation, packing and unpacking, settling in new home, assisting in locating relatives and friends and making check-in visits to provide encouragement and support in carrying out specific plans as agreed on by the client and caseworker.



D. Volunteers

Volunteer workers may have an appropriate role in selected protective service situations. There must be careful evaluation of the services which may appropriately be provided by a volunteer; a careful matching of the volunteer with the client, and a thorough preparation of the volunteer as to the specific assignment. Likewise, the client must be understanding and accepting of the volunteer's role. The caseworker needs to constantly assess the effect of the volunteer's services and respond to indications of a need for a change in the plan. Appropriate activities might include friendly visiting, escort services, assistance in locating and moving to improved housing, transporting client for medical care, shopping, visiting and recreational activities.

E. Other Professionals

A Protective Services for Adults program requires the active involvement of, as a minimum, four professional groups: social work, medicine, psychiatry and law. Social work is the core service providing the case management/counseling component in which there is frequent need to utilize the expertise of the other professionals. The functions of these professionals (medicine, law and psychiatry) in the Protective Services for Adults program are twofold: (1) to provide ongoing professional consultation and action around specific client problems for both diagnostic and therapeutic reasons and (2) to participate in the development of agency policies and in staff training. An effort should be made to enlist the services of socially oriented professionals, with a concern and interest in older persons and some expertise in the field of gerontology. (See Sec. VI)

F. Homemaker-Housekeeper Services

Homemaker and housekeeper/chore services can be indispensable in helping maintain, strengthen and safeguard the functioning of dependent, physically and emotionally ill or handicapped adults. Such services will be provided according to agency policy either directly or through purchase of services. As in the overall agency program, the caseworker will assess the need for the service and with the client and homemaker/housekeeper or providing agency develop a suitable work plan. Generally this person (homemaker/housekeeper) will give assistance in maintaining home and household routines and supply specific supporting services and personal care in accordance with a treatment plan.

G. Post Institutional Services Planning

Protective Services for Adults (PSA) and the Post Institutional Services Planning (PISP) are functionally the same type of service with the same objective of providing needed services to impaired persons who are not capable of total self care and/or self determination. It is expected that there will be appropriate linkages between these two services and that some districts may choose to combine these functions.

VI. THE PROTECTIVE SERVICES FOR ADULTS TEAM APPROACH

A. The Role of Other Service Providers

Protective Services for Adults can best be viewed as an interdisciplinary system of care for individuals who usually have multidimensional problems which make them unable to handle their own personal and/or financial affairs. These problems may interact and compound each other, reflecting either a crisis or chronic situation.

A person needing protective services may have health, mental health, shelter, legal, or social problems. The New York State Department of Social Services is mandated by State law to provide Protective Services to Adults, and has been doing so for more than ten years. During that time it has been necessary to call upon the services of other agencies. However, this effort has not been systematic or uniform across the State and too often tragic situations occurred because a district caseworker was unable to locate or enlist the appropriate help needed in time to avoid a tragedy. Recognizing this problem, the New York State Legislature amended Section 131-2 of the Social Services Law (now Section 473 SSL) to mandate that local social services districts plan with other public, private and voluntary agencies (including but not limited to health, mental health, aging, legal and law enforcement agencies) for the purpose of assuring maximum local understanding, coordination and cooperative action in the provision of appropriate services.

In the development and maintenance of a reliable PSA service delivery network, the ongoing participation of other services providers is required. The local district shall be responsible for initiating efforts to establish specific roles and responsibilities for the various agencies involved in the provision of services to PSA clients. As stated above, these agencies include, but are not limited to, health, mental health, aging, legal and law enforcement agencies. It is also crucial that the various divisions/units of the local department of social services, such as legal, accounting, medical assistance and income maintenance, as well as services, be effectively integrated into the PSA service delivery network.

While other services providers will determine a client's need for their services in accordance with their own standards, it is the responsibility of the district to assure that the efforts of each service provider are coordinated with the actions of other professionals or services providers which are involved in meeting the needs of PSA clients. This coordinated approach does not mean a formal team structure with full time staffing in a centralized location, but rather that contact persons and service referral mechanisms be established with each appropriate agency and other divisions of the local department to assure that a prompt community based response is available to meet the needs of PSA clients.

B. The Role of the Local Department of Social Services.

The local Departments of Social Services should assume the responsibility for creating an awareness in the community of the urgent need for Protective Services for Adults. This outreach effort should be directed at the public at large and specifically at the other agencies who must accept the responsibility of taking an active part in the coordination of the delivery of this service.

Resources that should be involved in a community outreach program will include personnel from health and mental health agencies, nursing services, legal agencies, law enforcement groups, public service departments, advocacy groups, church councils and those other social and health agencies involved with services for adults. The county Board of Supervisors and lay committees of local districts should be made aware of the service. It is hoped that community understanding and acceptance of the service will make for earlier identification and referral of these adults at risk and prevent or reduce the incidence of tragedies. It is important for local Departments of Social Services to establish community relationships and identification which include an understanding and acceptance not only of the district's responsibility but also its limitations, as well as the vital role of the staff from other community agencies.

C. The Caseworker Role

At the core of this cooperative community effort is the local district caseworker with specialized experience in Protective Services for Adults who assumes the overall responsibility for the client's well being. This overall responsibility is the basis of the caseworker's relationship to the other professionals and the other systems upon which the Protective Services for Adults program must draw.

The caseworkers must see Protective Services for Adults as a system of care for which they have continuing responsibility, although other providers will assume responsibility for certain aspects of the client's well being. That continuing responsibility primarily entails the obligation to see that appropriate services are being provided. In order to assure that the client does receive the needed services, the caseworker must have a thorough knowledge of services available. This knowledge should include not only social services, but the services, both individual and institutional, provided by other systems of care as well.

It is necessary to have an adequate understanding of the other systems of care to track the client's progress. The purpose of following the client's progress is to assure that, as a client passes from or through one system to another, continuity of care is preserved. To do this effectively, mechanisms acceptable to all providers of care should be developed beforehand.

Knowledge of what services are available and the ability to follow the client's progress imply that several other skills are necessary if the caseworker is to have an effective relationship with other agencies. Among these skills is the ability to make proper referrals. This requires a careful assessment of client problems, their causes, and what is needed to resolve the problems.

In undertaking such an assessment it is critical that caseworkers know their own limits and, when they are reached, draw upon the other team members and the caseworker's own knowledge of the resources available. The ability to make referrals to the proper place at the proper time will be significant in building the mutual respect with the other providers that is necessary for the caseworker and the program to function effectively.

The caseworker functions as the core of the Protective Services for Adults team and is the locus for the coordination of the services being provided to the client. This coordinator role reflects the caseworker's overall responsibility for the client's well being and has as its objective the assurance that care will be appropriate and complete. The caseworker must keep the other team members informed on the progress of each case. This benefits the present client, and, as a learning process for team members, benefits future clients.

#### VII. THE USE OF AUTHORITY

Due to the possibility of violating individuals rights, there is a tendency on the part of public officials to avoid intervention, sometimes when it is clearly needed. However, there are specific legal procedures and financial management avenues to assist those in need of such services. Legal actions will be indicated in only a small percentage of situations, but it is imperative that the agency be prepared to accept the responsibility when there is a clear cut diagnosis that the adult is in such a state of physical or emotional deterioration that he is unable to continue to function on his own behalf. It is essential that Protective Service workers recognize legal problems, not that they are to practice law.

In the provision of Protective Services for Adults, the request for services may be made by someone other than the client, who may not recognize the hazard of the situation, may not want a service, or may not even know services are available. Although many of these individuals may at first resist services, the initial emphasis by the worker is by gentle persuasion to help the client accept services. It must be recognized that it will not always be possible for the district to convince clients to accept needed services. In these situations, legal intervention may be necessary. However, once the district is providing services to an involuntary client pursuant to the appropriate legal intervention, reasonable efforts shall be made to convince the client to voluntarily accept those services which are necessary on a continuing basis. District staff are encouraged to utilize family members, friends and other collateral contacts in order to convince an involuntary client to voluntarily accept services.

#### A. Crisis Intervention

The decision to intervene in the life of another individual is not to be taken lightly but the doctrine of self determination cannot always be observed. For this reason, state law contains several legal authorities which are available for the districts to utilize in crisis situations. When there is an immediate and identifiable danger to life or health and the person is incapable of making choices because of impairments, either temporary, intermittent or permanent, the agency has an obligation to secure the necessary help and protection against the wishes of the client. Under these circumstances, the caseworker should take special care to observe the principle of "least restrictive alternative". Crisis interventions should always be limited in scope to include only those specific actions required to remove or alleviate endangering conditions. Efforts should be made to provide needed services in the adult's own home. If temporary removal from the individual's home is required, every effort must be made to return the adult back to his residence as soon as the endangering conditions are removed or satisfactorily alleviated. However, it should be recognized that in some situations alternative living arrangements including long term institutional placements will be necessary. In these situations, PSA staff shall be involved in arranging for an appropriate placement utilizing the alternative living arrangements which are available in the community.

There are two traditional authorizations for intervention in the law:

- 1) The Police Power of the State which gives the State authority to regulate activities that involve the health and safety of the society. An example of this would be the arrest of a person observed to be assaulting another person or damaging property.
- 2) The theory of Parens Patriae, which gives the State authority to act in a parental capacity for persons who cannot care for themselves or who are dangerous to themselves. An example of this is the involuntary hospitalization of a mentally ill, suicidal person.

No intervention of any kind should be undertaken by anyone without statutory authority which observes due process of law in the protection of the person's rights.

Although DSS is mandated by Social Services Law to provide protective services for adults, authority to protect the life and property of an unwilling client is established in Mental Hygiene Law, Public Health Law, Family Court Law, as well as Social Services Law.

1. Mental Hygiene Law provides that all officials associated with the public well being, including commissioners of social services, have a duty to see that persons in need of mental health treatment receive appropriate care. The local district then must be prepared to accept responsibility when an adult is found in the community, is in need of treatment, is in such a state of physical or emotional deterioration that he is unable to function in his own behalf, is acting in a manner likely to bring harm to himself or others, and has no one else willing and able to help.

The "likelihood to result in serious harm" is defined in Mental Hygiene Law to mean: "substantial risk of physical harm to himself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that he is dangerous to himself or "a substantial risk of physical harm to others as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm." (MHL Section 9.39)

For those persons who can be demonstrated to be "mentally ill" and "in need of treatment" and whose behavior can be shown to indicate a "likelihood to result in harm" to themselves or others, the local districts may initiate the following actions:

Enlist the immediate help of a state, county, city or town peace officer.

Any peace officer who observes an individual who appears to be mentally ill and whose conduct indicates the likelihood of harm to himself or others may remove the person to a hospital or temporarily detain him in another safe, comfortable place. (Mental Hygiene Law, Sections 9.41; 9.45)

Request action by the local Mental Hygiene Director of Community Services.

The director or his designee has the authority to examine and remove a mentally ill person to a psychiatric facility for treatment and care. In addition, the director has the authority to direct any peace officer to transport the individual to the facility when required. (Mental Hygiene Law, Sections 9.37; 9.45)

Initiate application for admission to a Mental Hygiene facility on certification of two physicians.

A social services official may initiate the application for admission to a psychiatric facility which contains a statement of the facts upon which the allegation of mental illness and need for care are based. The application must be accompanied by the certificates of two examining physicians. (Mental Hygiene Law, Section 9.27) It should be recognized that the decision to admit an individual pursuant to this procedure rests with the facility. A more detailed summary of appropriate sections of Article 9 of the Mental Hygiene Law may be found in Addendum A.

2. The Social Services Law, as amended by Chapter 991 of the Laws of 1981, provides social services officials with the authority to initiate involuntary interventions on behalf of certain PSA clients. To a large degree, this new statutory authority was enacted because in many instances the provisions of Article 9 of the MHL were not applicable to individuals in imminent risk situations without the capacity to act on their own behalf.

Chapter 991 established a new section 473-a SSL which authorizes local social services officials to petition the supreme or county court for a Short Term Involuntary Protective Services Order (STIPSO) on behalf of adults who are at imminent risk of death or serious physical harm and do not understand the consequences of remaining in their situation or condition. The other major provisions of this law include:

- a requirement for the appointment of counsel at public expense to represent the interests of the client;
- a limit on the services which can be provided pursuant to a STIPSO to those authorized under section 473 of the Social Services Law (see section IV B(1) of this Bulletin for a full description of services which may be provided);
- a requirement for a hearing to be held by the court no later than 48 hours after the commencement of the proceeding unless the court is not in session on the day in which the 48 hour period ends;

- a limit on the duration of a STIPSO to 72 hours subject to one 72 hour extension;
- a specific prohibition on utilizing a STIPSO to authorize the removal of a client to a psychiatric facility;
- a requirement that the court give preference to proceedings brought under section 473-a over all other proceedings before the court;
- empowering the court to order other public and law enforcement agencies to cooperate with the districts in the provision of services pursuant to a STIPSO; and
- allowing for the simultaneous commencement of proceedings for a STIPSO under 473-a SSL, a conservatorship or committee pursuant to Articles 77 and 78 of the MHL and for an involuntary admission pursuant to section 9.43 MHL.

A copy of Chapter 991 of the Laws of 1981 is attached to this document as ADDENDUM D.

In the utilization of this statutory authority, the local districts must comply with the procedures set forth in the Department's applicable Administrative Directives (ADMs). These ADMs are 81 ADM-57 and 82 ADM-32. In addition to complying with the requirements set forth in the aforementioned ADMs, appropriate local district staff also should be aware of the following information. First of all, in making a determination regarding an individual's inability to understand the consequences of remaining in his situation or condition, the judgment of the caseworker is very important. Although it is advisable for the caseworker's judgment to be supported by the assessment of a mental health professional, in some situations this type of professional support may not be readily available. Since an assessment by a mental health professional is not required by the law, its absence should not delay an otherwise well-documented case. In fact, there have been several districts which have obtained a STIPSO without an assessment by a mental health professional regarding the capability of an adult to understand the consequences of his situation.

Secondly, since obtaining a STIPSO involves a legal proceeding, each district should establish procedures between its PSA and legal staff so that potential STIPSO cases can be responded to in a thorough and timely manner. The caseworker will be required to testify before the court in most cases in which a district petitions for a STIPSO. The districts' procedures should, therefore, provide for pre hearing discussions between PSA and legal staff regarding court appearances.

Finally, as with most PSA cases, the provision of services pursuant to a STIPSO will usually require the involvement of other agencies. Because of this, the districts should initiate efforts to make other appropriate public and voluntary agencies/organizations aware of this statutory authority, how it can be utilized and what their role should be in the provision of services pursuant to a STIPSO. This type of community education effort should enhance the ability of the districts to effectively utilize Section 473-a SSL in appropriate situations.

The following are four summaries of cases in which a court has granted a STIPSO on behalf of a district. Please note that in these cases, as in the substantial majority of all cases in which a STIPSO has been obtained, the client accepted services voluntarily once under the care of the district.

● Mrs. C., an 85 year old widow, lived alone in a deteriorating three story building in a run down city neighborhood. The building was in danger of collapsing and the exterior doors were unlocked making Mrs. C. vulnerable to crime. Also, uninsulated live wiring was visible throughout the living area, exposing her to electrocution or fire. Mrs. C. was unable to leave her home due to physical infirmity, lacked adequate clothing, would no longer eat and had serious untreated medical problems. She refused numerous offers of food, clothing, rehousing and medical care by local PSA staff. A psychiatrist testified in court that Mrs. C. was unable to understand the consequences of her actions due to the effects of organic brain syndrome. The judge ordered her removed to a city hospital for evaluation. Her furniture was placed in bonded storage pending her relocation. Once under the care of the district, Mrs. C. became a voluntary client and willingly accepted placement into a health related facility following her release from the hospital.

● Ms. F., a mentally ill 48 year old woman, was found living in an inoperable automobile on a city street during a recent winter cold wave. She had inadequate clothing and was in immediate danger of death or serious physical harm due to hypothermia. Ms. F. resisted all efforts by the caseworker at verbal communication, including offers of emergency shelter. There was no indication that she understood the seriousness of her condition. Based on the observations of the caseworker, the district petitioned the court for a STIPSO. Subsequently, the court ordered Ms. F. removed to a municipal hospital for evaluation. Once under the care of the district, she became a voluntary client and willingly accepted placement in an adult home following her release from the hospital.

● Mr. R., a 68 year old blind man, lived alone in his trailer in an isolated rural area. He was refusing medical treatment for a seriously ulcerated and possibly gangrenous leg which, if left untreated, might have resulted in his death. A caseworker testified in court that the seriousness of Mr. R.'s condition was obvious to her and to others who saw his leg, but not to Mr. R, in part due to his blindness. The judge agreed and ordered Mr. R. removed to a hospital. Once in the hospital and confronted by the opinions of doctors regarding the seriousness of his condition, Mr. R. consented to treatment. He was later discharged from the hospital to the home of relatives who had been subsequently located by the caseworker.



• Mrs. H., an 89 year old, non-English-speaking widow, was locked in her own home by her son who lived in a building next door on a small farm. The caseworker was initially denied access to Mrs. H. and threatened with harm by her son. With the assistance of the state police, the caseworker was able to interview Ms. H. in her home with an interpreter and a psychiatrist from a local mental health agency. Mrs. H. was mentally disoriented, was locked in the house which was uninhabitable and appeared to need immediate medical attention. Although she seemed to want help, Mrs. H. refused to be hospitalized in accordance with the wishes of her son. The psychiatrist was of the opinion that Mrs. H. was unable to understand the consequences of her actions, but refused to appear in court. The judge ordered the psychiatrist to testify based on the testimony of the local district caseworker. The court subsequently ordered Ms. H. removed to a local hospital where she voluntarily consented to treatment. Following her release from the hospital, Ms. H. moved into her son's home with the agreement that the caseworker would be able to continue to monitor conditions and provide necessary services.

3. Public Health Law. In those situations where the physical health of the client and others is put in jeopardy because of environmental conditions relating to sanitation and safety, the local district should enlist the help and cooperation of local public health officials. Such officials are authorized to investigate complaints of unsanitary conditions affecting public health. It is within their scope of responsibility where there is no response to the citing of violations, to file appropriate charges which are subject to fines up to \$1000 and in some cases imprisonment. It is hoped that in most situations, the official citation of violations will serve to stimulate corrective action or the client's acceptance of the action indicated. (Public Health Law Sec. 12; 12-b; 12-c; 206; 309; 1303; 2120)
4. The Family Court Act may be utilized in situations involving abuse. The Family Court Act authorizes any person of relation to, or living with, the "respondent", as well as "a duly authorized agency, association, society, or institution", to initiate family court proceedings for an order of protection against an abusive household or family member. (Family Court Act, see Article 8 generally, Family Offenses Proceedings, and Sections 822, 828, 842)

There is considerable variation in the readiness and/or availability of peace officers and other public officials to respond to such calls from social agencies. It is therefore suggested that local districts, in consultation with other community resources, including the police departments and community mental health and public health agencies, county or agency attorneys, and the courts establish interagency policies and guidelines relating to intervention in crisis situations. (See Section VI)

**B. Legal Procedures of Long Term Consequence**

The foregoing actions of intervention will in some cases result in the use of court procedures such as Conservatorship and Incompetency Proceedings. These procedures, which may also be utilized in non-crisis situations, are established in Mental Hygiene law and involve a formal application or petition and a court proceeding. They provide for long range planning or protection and require more time to implement than afforded in emergency or crisis situations. Both procedures are protective actions to be initiated only for persons who have demonstrated such a degree of incapacity that supportive services alone are not adequate. The primary purpose of a Conservatorship proceeding is to preserve, maintain and care for the proposed conservatee's income and assets. However, the court must approve a plan for the conservator to provide for the conservatee's well being, including the provision of necessary personal and protective services. Therefore, a conservator may be granted additional powers, including control over personal care decisions, which are specified in the court order. The Incompetency Proceeding includes control over the property and the person. Whether a person requires a Conservator or Committee is determined by the degree of the individual's mental impairment. Both proceedings are initiated in the State Supreme Court or the County Court.

1. Conservator - Mental Hygiene Law Article 77 sets forth the procedures for the designation of a conservator of the property for a resident who has not been judicially declared incompetent and who by reasons of advanced age, illness, infirmity, mental weakness, intemperance, addiction to drug or other cause is unable to provide for himself. It provides that a proceeding for the appointment of a conservator may be commenced by "a friend" including a corporate body, a public agency or a social service official of the place where the proposed conservatee resides regardless of whether a recipient of public assistance. Furthermore, a social services official may be appointed as a conservator. The conservatorship does not carry the stigma of a declaration of incompetency. Prior to the appointment of a committee, the court must first consider whether the interests sought to be protected could be best served by the appointment of a conservator.

Chapter 489 of the Laws of 1982 amended Article 77 MHL to expand the powers of the court in providing protection to the property and welfare of a proposed conservatee, pending appointment of a conservator. Under provisions of the law, the court, upon a showing of good cause, may issue a temporary restraining order preventing any specified person from affecting the property of the proposed conservatee, or from doing or allowing any act or omission endangering the welfare of the proposed conservatee. In addition, the law empowers the court to give the temporary restraining order the effect of a restraining notice to persons currently having custody of the property of the proposed conservatee. (See Addendum A)

2. Incompetency Proceedings - Mental Hygiene Law Article 78 sets forth the procedures for the appointment of a committee for a person who is incompetent to manage himself or his affairs or is a patient in a mental health institution. A committee of one or more persons may be appointed by the court giving them custody of the person or property of the incompetent. Anyone can commence such a proceeding. Where the property of any person is endangered by reason of his incompetency and where no proceeding has been commenced, the social service commissioner shall bring the proceeding.

The essential element is the finding by the court that the person is incompetent. It is not a procedure to be used for persons who are only partially or sporadically impaired in their functioning and are capable of retaining some independence. The totality of both the disability of the incompetent and the duties and powers of the committee, albeit subject to the supervision of the court, and the resulting dependency of the individual, are the basic deficiencies in the incompetency procedures as a remedy for persons who though limited in their capacities, should not be considered totally incompetent. Thus the law provides that prior to the appointment of a committee, it shall be the duty of the court to consider whether the interests sought to be protected could best be served by the appointment of a conservator. (See Addendum B)

3. Guardianship - A guardian is a person lawfully invested with the power and charged with the duty, of taking care of the person and managing the property and rights of another person, who for some peculiarity of status, or defect of age, understanding or self control, is considered incapable of administering his own affairs. In this state a guardianship is usually confined to the protection of infants and the mentally retarded. It is not an appropriate procedure to be used for the frail impaired older person, but it is a method of providing protection of the mentally retarded adult.
4. Power of Attorney - This is a familiar term and questions have been raised as to its use or application in a Protective Services for Adults program. Essentially it is a written agreement between the individual and another person, usually his attorney, a close relative, business associate or financial advisor, authorizing that person to sign documents, and conduct transactions on his behalf. It is defined as an instrument authorizing another to act as one's agent or substitute. Power of attorney may be revoked at will at any time and is terminated at death of the person appointing the attorney. The client at risk may have granted power of attorney to a relative or associate prior to the district's involvement in the situation. It has not been commonly used or initiated by local districts and as a protective procedure it probably has limited application. In most situations more appropriate procedures are available and it is probably not a procedure which the caseworker would initiate or participate in, but one with which he should be familiar.

C. Financial Management

Fiscal mismanagement resulting in unpaid bills, wasting of resources, lost checks, inadequate purchase or use of such essentials as food and clothing are problems which require a different kind of knowledge and skill. Some marginally competent and intermittently incompetent persons may retain control of their income and assets if they can have some supervision and guidance. This is a time consuming process, requiring patience as well as ingenuity. It may be only working out a plan of expenditure and periodically verifying the ability to follow the plan. The problems might be less acute if arrangements are made for the social security checks to be deposited directly in the bank, or accompanying the adult at risk while the check is cashed, rent paid and groceries purchased. For the more seriously impaired adults, such services will not solve the problem and there are established procedures to protect the assets of these persons.

1 (d) The order to show cause shall be made returnable within forty-  
2 eight hours following its issuance, unless such forty-eight hour period  
3 ends on a day in which the court is not in session, in which case the  
4 return date shall be the first business day following issuance of the  
5 order to show cause.

6 6. Service. (a) Service of the order to show cause, the petition, and  
7 supporting affidavits, if any, shall be made upon the respondent by any  
8 of the methods permitted by section three hundred eight of the civil  
9 practice law and rules. Notwithstanding any other provision of law to  
10 the contrary, Saturday and Sunday service is valid.

11 (b) The respondent shall be authorized to answer either orally or in  
12 writing.

13 7. Hearing. (a) Upon the return date designated in the order to show  
14 cause issued pursuant to subdivision five of this section a hearing  
15 shall be held forthwith.

16 (b) The allegedly endangered adult shall be entitled to be present at  
17 the hearing.

18 (c) Adjournments shall be permitted only for good cause shown. In  
19 granting adjournments the court shall consider the need to provide  
20 short-term involuntary services expeditiously.

21 (d) At the conclusion of the hearing the court shall issue for the  
22 record a statement of its findings of fact and conclusions of law.

23 8. Preference. The special proceeding authorized by this title shall  
24 have preference over all other causes in all courts of appropriate  
25 jurisdiction.

26 9. Findings. After a hearing, the court must find, in order to  
27 authorize the provision of short-term involuntary protective services,  
28 that all of the material allegations as specified in paragraph (c) of  
29 subdivision four of this section have been admitted or proven by clear  
30 and convincing proof.

31 10. Judgment. (a) The court, upon making the findings required by sub-  
32 division nine herein, shall direct the entry of a judgment authorizing  
33 the provision of short-term involuntary protective services to an en-  
34 dangered adult.

35 (b) A judgment authorizing short-term involuntary protective services  
36 to be provided to an endangered adult:

37 (i) shall prescribe those specific protective services, authorized by  
38 section four hundred seventy-three of this article, which are to be  
39 provided and what person or persons are authorized or ordered to provide  
40 them; and

41 (ii) shall not provide for any forcible entry unless the persons so  
42 entering are accompanied by a peace officer, acting pursuant to his spe-  
43 cial duties, or a police officer, who is a member of an authorized  
44 police department or force or of a sheriff's department;

45 (iii) shall require persons acting under subparagraphs (i) and (ii) of  
46 this paragraph to submit a written report to the court within one week  
47 following the commencement of the ordered protective services.

48 (c) The judgment may order any other public or law enforcement offi-  
49 cial to render such assistance and cooperation as shall be within his  
50 legal authority, as may be required to further the objects of this  
51 title.

52 (d) The judgment shall not order removal to a hospital, as that term  
53 is defined in section 1.03 of the mental hygiene law.

54 (e) Issuance of the judgment shall not be evidence of the competency  
55 or incompetency of the endangered adult.

1 (f) No order issued pursuant to this title shall extend for more than  
2 seventy-two hours. An original order may be renewed once for up to  
3 another seventy-two hour period upon showing by the petitioner to the  
4 court that continuation is necessary to remedy the original situation or  
5 condition. No further renewals shall be permitted.

6 (g) In no event shall the short-term involuntary services authorized  
7 to be provided to an endangered adult by the judgment be broader than  
8 those which are necessary to remedy the situation or condition which  
9 poses an imminent risk of death or imminent risk of serious physical  
10 harm to the endangered adult.

11 (h) Notice of the judgment rendered by the court shall be given to the  
12 respondent personally, or if personal service is not possible in  
13 whatever other fashion the court shall prescribe.

14 11. Appeal. Appeals arising from the issuance of judgments pursuant to  
15 the provisions of this title shall be expedited.

16 12. The assigned counsel and the guardian ad litem appointed by the  
17 court pursuant to this title shall be reimbursed for their services pur-  
18 suant to section thirty-five of the judiciary law.

19 13. Nothing in this title precludes the simultaneous commencement of a  
20 proceeding under this title and a proceeding under section 9.43 of the  
21 mental hygiene law, or a proceeding under article seventy-seven or arti-  
22 cle seventy-eight of such law does not preclude commencement of a  
23 proceeding under this title.

24 14. No existing right or remedy of any character shall be lost, im-  
25 paired or affected by reason of this title.

26 § 2. Section one hundred thirty-one-1 of such law, as amended by chap-  
27 ter four hundred forty-six of the laws of nineteen hundred seventy-nine,  
28 is renumbered section four hundred seventy-three.

29 § 3. Section thirty-five of the judiciary law is amended by adding a  
30 new subdivision five to read as follows:

31 5. Assigned counsel and guardians ad litem appointed pursuant to the  
32 provisions of title two of article nine-B of the social services law  
33 shall be compensated in accordance with the provisions of this section.

34 § 4. This act shall take effect on the ninetieth day after it shall  
35 have become a law.

NEW YORK STATE  
DEPARTMENT OF SOCIAL SERVICES  
40 NORTH PEARL STREET, ALBANY, NEW YORK 12243  
CESAR A. PERALES  
Commissioner

*Complete Package*  
*Chris*



**MANUAL - BULLETIN TRANSMITTAL**

TRANSMITTAL NO.: 83 MB-31

DATE: December 15, 1983

TITLE: Protective Services for Adults

BULLETIN OR CHAPTER: 194

DISTRIBUTION:	Commissioners of Social Services	PAGES	
	Directors of Social Services	ATTACHED:	1-37
	Medical Assistance & Income Maintenance		Addendum D (New)
	Supervisors of Social Services	PAGES	
	Adult Service Caseworkers	SUPERSEDED:	1-32
	County Social Services Attorneys		

CONTACT PERSON: Any questions concerning this release should be directed to the Division of Adult Services by calling (800) 342-3715, Christina Hay, ext. 3-1713, Sharon Lane, ext. 3-8728 or Irv Abelman, ext. 131-5097.

This document has been revised to reflect the impact on the Protective Services for Adults (PSA) program resulting from the implementation of Chapter 991 of the Laws of 1981, which authorizes districts to petition the court for short term involuntary protective services orders for certain PSA clients. Other changes are technical and conforming in nature and have no significant impact on the program. For your convenience, the proposed revisions are described below.

1. Subsection A of Section VII which pertains to the Use of Authority and Crisis Intervention, and Subsections 1 and 2 of Section IX which provide instructions on casework and related activities in PSA cases, have been revised to incorporate the provisions of the new Section 433-a (SSL) established by Chapter 991 of the Laws of 1981.

2. Throughout this document Section 251-j of Social Services Law (SSL) is referred to. Since this section has been renumbered as Section 453 (SSL), references contained in the Bulletin have been corrected.

3. Subsections A and B of Section 11 identify Federal Statutes and Regulations which provide the statutory basis for PSA. This has been revised to reflect the new federal statutes and regulations which pertain to Title XX of the Social Security Act (Block Grants to States for Social Services).

LAST TRANSMITTAL

81 MB-18

DSS 3-09 (11/78)

4. Subsection E of Section II, which delineates all Department releases pertaining to Protective Services for Adults has been updated.

5. Section III, which provides historical and demographic background on Protective Services for Adults, has been revised to include 1980 census statistics.

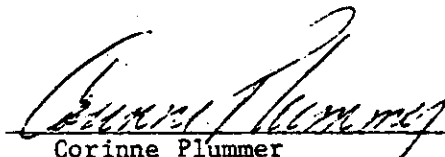
6. Subsection A of Section VI, which pertains to the role of professional consultants in the provision of PSA, has also been revised. The revisions further reflect the requirements of Section 473.2(a) SSL and the State's Consolidated Services Plan, which mandate the local district to plan for the provision of PSA with other appropriate agencies.

7. The language of Subsection B.2 of Section IV, which pertains to the Client Characteristics of PSA, has been refined to more accurately reflect the provisions of section 473.1(a) of the Social Services Law. These revisions do not change the types of clients served by the PSA program.

8. Subsection B of Section VII has been revised to incorporate the provisions of Chapter 489 of the Laws of 1982 which amended Article 77 Mental Hygiene Law to expand the powers of the court in providing protection to the property and welfare of a proposed conservatee, pending the appointment of a conservator.

9. Throughout the document, reference is made to the Comprehensive Annual Social Services Plan (CASSP). Since the CASSP has been incorporated into the Consolidated Services Plan effective 10/1/81 through 9/30/84, references contained in the Bulletin have been corrected.

10. Finally, in Section IX the Chart entitled "Protective Services for Adults: Intervention Procedures" is not included in this document because it is undergoing revisions. When completed, the revised chart will be distributed to the districts under a separate cover.



Corinne Plummer  
Deputy Commissioner  
Division of Adult Services





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ADDENDA

Addendum A

Summary of Appropriate Sections of Article 9, Mental Hygiene Law  
(Hospitalization of the Mentally Ill)

Addendum B

Summary of the New York State Conservatorship Law  
Mental Hygiene Law, Article 77

Addendum C

Summary of the New York State Committee System as amended  
Mental Hygiene Law, Article 78

Addendum D

A copy of Chapter 991 of the Laws of 1981: Short Term  
Involuntary Protective Services Orders

## I. PURPOSE AND SCOPE

The purpose of this bulletin is to provide guidelines on the provision of Protective Services for Adults. It consolidates into one release through the inclusion of new as well as previously released information, those statutory, informational, and regulatory materials local districts must be aware of in order to effectively provide Protective Services for Adults, a service available to all without regard to financial eligibility.

The provision of this service has varied considerably from district to district, due in part to differences in interpretation of the definition, the absence of State direction and guidelines, and the reluctance to employ the sometimes needed legal proceedings. Because of changing demographics and the emphasis on providing services in the least restrictive setting, the number of frail elderly and other impaired adults in need of PSA continues to increase. In response to this situation, state and local efforts to improve the provision of this service have been expanded to assure that the needs of this vulnerable population are more adequately met.

This summary material should bring greater visibility to service programs for impaired adults, particularly Protective Services for Adults as defined in Title XX, establish program guidelines, underscore public agency responsibility and enhance the particular skills local workers need to serve adults who are incapable of protecting themselves and their assets.

## II. STATUTORY AND REGULATORY BASIS

The basis for Protective Services for Adults rests on Federal and State statutes and regulations. These materials include:

### A. Federal Statute

- . Title XX of the Social Security Act - Block Grants to States for Social Services  
Sections 2001 through 2008 of the Social Security Act (42 U.S.C.A. 1397) provides for federal reimbursement for Protective Services for Adults

### B. Federal Regulations

- . 45 CFR 96 provides for implementation of the Social Services Block Grant and transfers primary administrative responsibility for use of the funds to the States

### C. State Social Services Statutes

- . Section 131.1 specifies that it shall be the duty of social services officials "... to provide adequately for those unable to maintain themselves."
- . Section 309 provides that "In appropriate cases, a social services official shall initiate a special proceeding for the appointment of a conservator pursuant to Section 77.03 of the mental hygiene law."
- . Section 473 specifically pertains to the provision of PSA. The major provisions include:

- a requirement which specifies that in addition to services provided by social services officials pursuant to other provisions of the law, Protective Services for Adults shall be provided in accordance with federal and state regulations;
  - a requirement that local social services districts plan with other public, private and voluntary agencies, including but not limited to health, mental health, aging, legal and law enforcement agencies in order to promote maximum understanding and cooperation in the provision of services to PSA clients; and
  - a provision which provides immunity from civil liability to any social services official acting within the scope of his employment in the provision of Protective Services for Adults.
- . Section 473-a authorizes local districts to petition the court for short term involuntary protective services orders on behalf of certain involuntary clients in need of Protective Services for Adults.

D. Mental Hygiene Statute

- . Article 9 establishes responsibilities of local commissioners of social services relating to mentally ill persons.
- . Article 77 establishes social services commissioners responsibility to initiate a court proceeding for the appointment of a conservator of the property.
- . Article 78 authorizes local commissioners of social services to initiate Incompetency proceedings.

E. Social Services Regulations - Bulletins, Administrative Directives, Informational Letters

In addition to these specific laws, there are related Social Services regulations, official bulletins, administrative directives and informational letters which have specific application in a Protective Services for Adults program. Further information will be included in appropriate sections of this bulletin and are merely cited here, indicating the relationship to the service.

- . Consolidated Services Plan (CSP), effective 10/1/81 through 9/30/84 defines Protective Services for Adults and lists service activities.
- . Social Services Regs. Part 457 - Protective Services for Adults - establishes general guidelines as to districts responsibilities in the provision of this service, including the need to involve other community resources.
- . Social Services Regs. Sect. 397.5(c) - establishes that when emergency assistance is granted for lost or mismanaged cash ... "a referral shall be made for adult protective services ..."

- . Social Services Regs. Sect. 381.7 - states that selection of a protective payee "shall be made preferably from the staff providing protective services" when a staff member of a social services district is to be designated as protective payee.
- . Bulletin 195 - Requirement for Delivery of Service - provides general program information relating to all services, including Protective Services for Adults.
- . Bulletin 193 - Emergency Assistance to Adults - emphasizes that the need for emergency assistance will often indicate a possible need for protective services.
- . Bulletin 106 - Methods of Payment - defines various methods to be utilized whereby the health and welfare of the recipient will be appropriately protected and advises that protective payees be designated from protective services staff.
- . 70 PWD 61 - Incompetency Proceedings - establishes agency responsibility in relation to such proceedings.
- . 76 ADM 14 - Preparation of local districts component of Comprehensive Annual SS Plan - mandates Protective Services for Adults contingent on the availability of state funds. This requirement has been incorporated into the Consolidated Services Plan.
- . 79 ADM-80 - Fuel Non-Delivery Program - describes the role of the state and local districts in the New York State Energy Office's Fuel Non-Delivery Program.
- . 80 ADM-16 - Annual Plan for the Provision of Adult Protective Services - outlines the requirements for an annual plan for PSA to be submitted by each local district.
- . 80 ADM-71 - The Responsibilities of Local Districts to Provide Financial Management Services to Protective Services for Adults cases - advises the districts of their responsibility to function as a conservator, representative payee, or protective payee when such services are required by a Protective Services for Adults client, and when there is no one else capable or willing to act in this capacity.
- . 81 ADM-57 - Chapter 991, Laws of 1981: Short Term Involuntary Protective Services Orders - advises the districts of the provisions of the law pertaining to short term involuntary protective services orders and steps to be taken to effectively utilize this statutory authority.
- . 82 ADM-32 - Chapter 991, Laws of 1981: Short Term Involuntary Protective Services Orders - advises districts of a change in the procedures for implementation of Chapter 991 (81 ADM-57).

- 82 ADM-69 - Social Services District Implications of Chapter 713 of the Laws of 1981 (Home Energy Fair Practices Act) - advises districts of the provisions of the Chapter 713 which clarifies and extends protections to residential utility customers who are facing termination of service, and provides information on procedures which will aid in the identification and referral to local districts of individuals with suspected serious impairments who are potentially suffering from neglect, who may be in hazardous situations.
- 83 ADM-3 - Reporting of Title XX staff time spent on the investigation and assessment components of Protective Services for Adults.
- 83 ADM - 15 - Financial Management Procedures for PSA Clients - advises the districts on the requirements which must be adhered to in the provision of the financial management services to PSA clients.
- 83 ADM-24 - Eased Medical Assistance Verification Requirements for Protective Services for Adults Clients - advises the districts of alternate medical assistance verification procedures for PSA clients who do not have the normally required documentation.
- 74 INF-12 - Representative Payee - gives information relating to procedures and the agency's responsibility when serving in this capacity.
- 79 INF-18 - Financial Management Procedures for Individual Clients - outlines the responsibility of local districts in the use of financial management procedures.
- 80 INF-24 - Community Services Act for the Elderly - informs the districts about the requirements of the Community Services Act for the Elderly as they relate to programs under the jurisdiction of the Department and the local districts, including PSA.
- 82 INF-6 - Revised Definition for Protective Services for Adults - informs the local districts of the revised definition for PSA contained in the Statewide Consolidated Services Plan and Part 457 of the Department's regulations which permits the extended provision of homemaker and housekeeper/chore services as an integral but subordinate component of Protective Services for Adults in certain limited situations.
- 82 INF-18 - Chapter 154, Laws of 1982 Short Term Involuntary Protective Services Orders - informs the local districts of Chapter 154 of the Laws of 1982 which makes two minor technical changes in section 473-a(11) and (13) of the Social Services Law.

### III. BACKGROUND

Protective Services for Adults is not a new service responsibility of the Department of Social Services. As a service it has been mandated by Federal and/or State Regulations, included in our service plan and defined in our State Bulletins for over ten years. However, administrative changes of the past several years which relate to the delivery of services have had the effect of further clouding a not too clearly understood service. The separation of Services and Income Maintenance in 1972 and the advent of SSI in 1974 removed the aged, blind and disabled persons from easy entry into the service delivery system. Further the changes brought about by Title XX, effective October 1, 1975, make it increasingly important to attempt to clarify some of the issues surrounding delivery of this service.

Who are the persons needing these services? The majority will be impaired elderly persons, living alone and fearful of losing control of their lives. They are among the most debilitated of the elderly group, and often may be neglected even by members of the helping profession who do not know what to do for or with them. The problem is one all of us have or will have occasion to become familiar with at some time in our own families or those of our friends or neighbors. Typically, an elderly person has become increasingly unable to handle daily affairs. There usually is a combination of physical and mental deterioration, senility, hardening of the arteries, failing faculties, intermittent confusion, forgetfulness, irrational fears and phobias. Social isolation sets in with the death of a spouse, departure of children, death or alienation of friends and relatives and diminished mobility. Legal problems arise as checks for social security payments, pensions and dividends from investments pile up in the mailbox, but the rent, utility and other bills are unpaid. Health is endangered because nourishing meals are rare, medical care is neglected, home and clothing are unclean and in disorder. In brief, this person is beginning to be unable to function in the community without some help. How this help is to be provided before it is too late is the problem. As previously noted, due to demographic changes there are an increasing number of these frail elderly individuals residing in the community who are in need of services.

Statistical reports show an elderly population which is growing in number with a significant increase occurring in the 75 and over age cohort. In 1900, 4.8% of the population of New York State was 65 years of age or older. By 1980, 12.8%, or approximately 2.1 million New Yorkers were 65 years of age or older. Of these, a full 40% had reached their 75th birthday, compared to one third in 1970. Furthermore, in the last two decades the number of elderly persons living alone has more than doubled.

Best estimates place the number of elderly potentially in need of Protective Services for Adults at 10% or approximately 200,000 persons in New York State. They have widely differing needs and backgrounds, but there are some common denominators by which we can predict that not only will the numbers of persons aged 65 and over increase, but that the percentage of the group in need of protective services may also well increase.

Poverty is an added stress which can have a devastating effect on the lives of the elderly. More than one in every ten New York households have incomes below the poverty level according to the 1980 Census. This statistic is also applicable to the elderly. Medical problems and medical expenses increase significantly with age. A 1979 study found that the elderly pay an average of 13.3% of their income for out of pocket medical expenses, up from 12% in 1977. This trend is expected to continue for the foreseeable future. Rapidly rising energy and housing costs have resulted in severe housing problems for the elderly. The impact of these economic hardships at a time of life when diminishing capacities make one less able to cope, can be catastrophic in terms of an older persons basic survival in the community. Services to prevent, retard or protect adults from the debilitating effects of age are increasingly necessary. While this need crosses all economic lines, poverty is an added stress which must be given special consideration.



With the ever increasing numbers of mentally impaired adults returning to and/or remaining in local communities, one can expect a greater increase in the need for some type of protective services. Estimates of the number of impaired adults, a certain high risk group in need of these services, range from 45% of the inpatient state hospital population to approximately 100,000 currently living in the community. The need for specialized services to individuals being released from mental hygiene facilities was emphasized by passage of state legislation in 1974 mandating cooperation between Social Services and Mental Hygiene officials in helping those patients toward self-support and self-care. Such specialized help is actually only one part of the overall protective services responsibilities of a local district.

As a means of offering protection to the frail elderly, there has been a tendency to overutilize institutional care and underutilize those services including legal steps which offer protection to such persons in their own homes. Local districts have been concerned about interfering with the individual's civil rights and liberties and with their authority to intervene even when a potentially hazardous situation exists. The districts need to recognize and accept the dual responsibility: the protection of the individual's civil rights and the protection from harm to self and property. Thus a priority concern of this Department has been to insure greater local district emphasis on the delivery of services to meet the protective needs of the elderly.

#### IV. COMPONENTS OF PROTECTIVE SERVICES FOR ADULTS

##### A. General

Protective Services for Adults is a system of care, which includes the availability of a constellation of services brought to bear individually or in concert upon a problem situation of an adult requiring a planned approach to intervention. As a preventive, supportive and surrogate service, it is aimed at maintaining individuals in the community as long as feasible rather than institutionalizing them, though in some cases the latter may be necessary. More specifically, it can be stated that a protective service system aims at the prevention, reduction or elimination of neglect, exploitation or crisis breakdown through the provision of services appropriate to the individual's needs which will strengthen his capacity to function and maximize his ability at self-direction.

Case management/counseling is the core of an effective protective service program. Local protective service staff must have knowledge and skill to assess and evaluate; to make decisions; to enlist other medical, psychiatric and legal help as necessary in evaluation and treatment and to coordinate those services which should alleviate the individual's plight.

From the point of agency activity, two types of Protective Services for Adults are identified: 1. Social Protective Services and 2. Legal Protective Services.

1. Social Protective Services are the full range of agency services undertaken with or on behalf of an adult client who is unable to manage his money, or carry on the activities of daily living and who has no one ready, willing, and able to act on his behalf.

2. Legal Protective Services include those actions by an agency which involve the readiness to use legal authority and procedures on behalf of an individual who cannot manage his money, is exploited or is in danger; which involve court action to determine whether an older person is incapable of managing his own property or affairs; and which may result in the establishment of some form of trust relationship or commitment to an institution for such an individual.

B. Title XX

Protective Services for Adults in most instances are subject to the requirements of Title XX of the Social Security Act. The following definition and list of service activities are contained in the Consolidated Services Plan and Sec. 457.1(b) and (c) of the Department's Regulations. To this has been added the Department's interpretation of the general activities which might be involved, but this is not intended to be an all inclusive list.

1. Definition: Services to individuals 18 years of age or older who are unable to protect their own interests, harmed or threatened with harm through action or inaction by another individual or through their own action due to lack of awareness, incompetence or poor health which results in physical or mental injury, neglect, or maltreatment, failure to receive adequate food, shelter, or clothing, deprivation of entitlements due them, or wasting of their resources.

Such services are limited to:

- (a) "Identifying such adults who need assistance and have no one willing and able to help."

Interpretation: (Includes but not limited to the following.)

- . Community education and outreach
- . Intake screening to identify persons in need of referral to Protective Services for Adults
- . Review of caseloads by Income Maintenance, Medical Assistance and Services for identification of adults at risk
- . Referral of those adults as mandated or recommended by other Department regulations or releases e.g. applicants for Emergency Assistance and those adults for whom protective payee or representative payee is designated
- . Determination of the availability of responsible family members and securing such person's help and cooperation

(b) "Providing prompt response and investigation upon request of adults at risk or other persons acting on their behalf."

Interpretation: (Includes but not limited to the following.)

- . Establishes responsibility to take action for voluntary and involuntary clients at risk
- . Mandates prompt action: the agency should set a reasonable time schedule
- . The response may involve securing emergency services
- . Crisis situations may involve police, legal, medical, and/or psychiatric services

(c) "Assessing the individual's situation and service needs."

Interpretation: (Includes but not limited to the following.)

- . Involvement of client to greatest extent possible
- . Development of a service plan
- . Establishment of a casework - case management role
- . Identification of specific service needs
- . Contact with relatives, friends, landlords, neighbors, as well as direct contact with client
- . Consultation with other resources as medical, psychiatric and legal

(d) "Providing counseling to such adults, their families, other responsible persons or to surrogates such as representative payees, on handling the affairs of such adults."

Interpretation: (Includes but not limited to the following.)

- . Case management role. Direct services counseling to enable client to accept needed services
- . Involvement of other concerned persons and resources, relatives, legal resources, health services, Social Security, others as indicated

(e) "Arranging for appropriate alternative living arrangements in the community or in an institution, providing room and board as an integral but subordinate part of the provision of PSA for a period not to exceed 30 days."

Interpretation: (Includes but not limited to the following)

- . Case Management - action based on case study and diagnosis
- . Involvement of client to greatest extent possible
- . Emergency placement in crisis situations including the provision of room and board for 30 days
- . Relocation to more appropriate housing and arranging for necessary services (meals, personal care, housekeeping, etc.)
- . Counseling with client and staff of health and/or legal resources about the need for and type of institutional care available

(f) "Assisting in the location of social services, medical care, and other resources in the community including arranging for day care in a protective setting."

Interpretation: (Includes but not limited to the following.)

- . Case management - locating and securing needed services
- . Includes foster care, health related, home management, homemaker, housekeeper, housing improvement, prevention, social group services
- . Medical care (including psychiatric) for the purpose of determining the extent of client's physical and/or mental incapacity and the services needed
- . Other resources - included would be such services as friendly visiting, home delivered meals, help from relatives, friends, churches, senior citizen centers

(g) "Arranging for guardianship, conservatorship, commitment or other protective placement as needed."

Interpretation: (Includes but not limited to the following.)

- . Guardianship and commitment involves legal consultation and court procedures. Such action mandates study, evaluation and formulation of agency policies.