

90 INF – 16

**Protective Services for Adults:
Mental Health Evaluations for Certain
Involuntary Clients**

NEW YORK STATE
 DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243 - 0001
 CESAR A. PERALES
 Commissioner



INFORMATIONAL LETTER

TRANSMITTAL: 90 INF-16

TO: Commissioners of
 Social Services

DIVISION: Adult Services

DATE: April 9, 1990

SUBJECT: Protective Services for Adults: Mental Health
 Evaluations for Certain Involuntary Clients

SUGGESTED DISTRIBUTION: Director of Services
 Adult Services Staff
 Agency Attorneys
 Staff Development Coordinators

CONTACT PERSON: Any questions concerning this release should be
 directed to your district's Adult Services
 Representative at 1-800-342-3715 as follows:

- Irvin Abelman, 1-800-342-3715, ext. 432-2980 or
 (212) 804-1247
- Kathleen Crowe, 1-800-342-3715, ext. 432-2996
- Cheryl Flanigan, 1-800-342-3715, ext. 432-2997
- Sharon Lane, 1-800-342-3715, ext. 432-2985
- Marsha Ross Meyers, 1-800-342-3715, ext. 432-2864

ATTACHMENTS: Two Memorandums from the State Office of
 Mental Health

(not available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
88 ADM-23		Part 457	Article 9-B Secs. 33.13 (d), 41.01 and 41.13MHL		

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The purpose of this release is to clarify state policy regarding the completion of mental health assessments for certain Protective Services for Adults (PSA) clients.

As indicated in Section IV.D of 88 ADM-23 "Protective Services for Adults: Serving Involuntary Clients", the State Office of Mental Health (OMH) has advised us that it is the responsibility of local mental health departments to provide or to arrange for the provision of mental health evaluations on behalf of involuntary Protective Services for Adults (PSA) clients for whom the district is contemplating legal intervention. Also indicated in this section of the ADM is OMH's position that these evaluations may be shared with the districts pursuant to Section 33.13(d) and the provisions of Sections 41.01 and 41.13 of the Mental Hygiene Law, without violating client confidentiality. Despite this policy, in recent weeks a number of districts have contacted the Department about the problems they are encountering in obtaining psychiatric evaluations from local mental health providers on behalf of PSA clients.

In response to these problems, we requested OMH to clarify state policy on this issue for its regional offices and local mental health departments. Attached for your information are copies of a recent memorandum from Senior Deputy Commissioner Alice Lin to the OMH Regional Directors on this subject and a related memorandum from OMH's Counsel, which should result in the satisfactory resolution of any problems districts are having in obtaining mental health evaluations on behalf of PSA clients.


Judith Berek
Deputy Commissioner
Division of Adult Services



STATE OF NEW YORK
OFFICE OF MENTAL HEALTH

COUNSEL

44 HOLLAND AVENUE
ALBANY, NEW YORK 12229
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RICHARD C. SURLES, Ph.D.
Commissioner

JOHN PETRILA
Deputy Commissioner and Counsel

JOHN B. CARROLL
House Counsel

M E M O R A N D U M

ATTACHMENT B

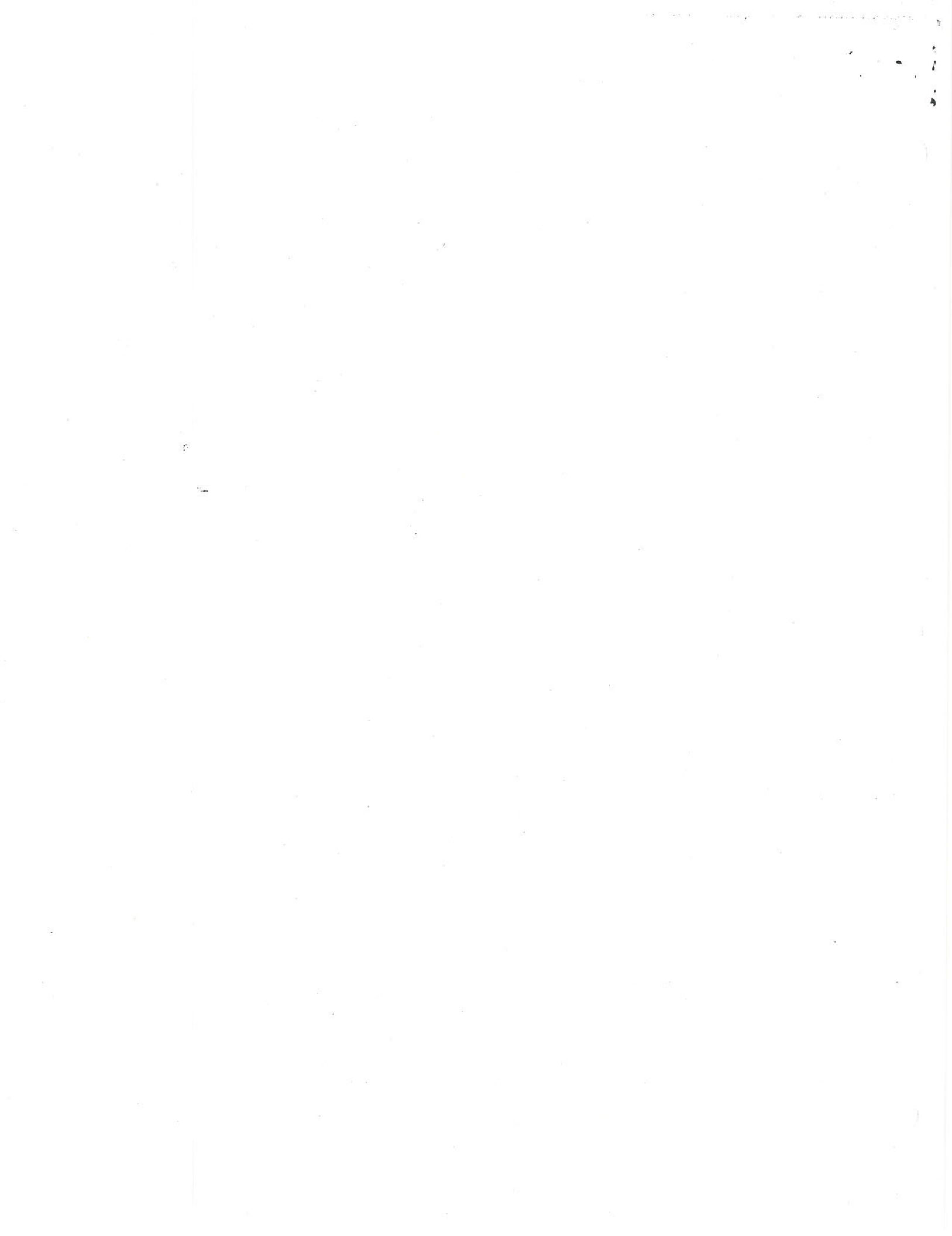
TO: Alice Lin
FROM: Pamela Tindall-O'Brien *pro*
RE: Release of Records/Protective Services for Adults
DATE: March 6, 1990

The question that has been posed to this office is whether local mental health providers and/or OMH staff can provide psychiatric evaluations for clients being evaluated for Protective Services for Adults (PSA) by a local Department of Social Services without the client's consent. Evidently, OMH and/or local mental health staff in Westchester County have refused to provide such evaluations without a release from the client for fear of violating Section 33.13 of the Mental Hygiene Law.

Although Section 33.13(c) provides that "Clinical records are not a matter of public record and generally should not be disclosed", there are exceptions to this rule. Section 33.13(d) provides that information can be provided to "(i) facilities or others providing services for such patients or clients pursuant to an approved local or unified services plan, as defined in article forty-one, or pursuant to agreement with the department and (ii) the department or any of its facilities. Information so exchanged shall be kept confidential and any limitations on the release of such information imposed on the party giving the information shall apply to the party receiving the information."

As can be seen by a reading of the above statute, the local mental health agencies and OMH staff can and should provide psychiatric evaluations to local DSS for purposes of evaluating PSA eligibility regardless of the client's consent. Local DSS must be cautioned, however, that the information furnished must be retained in a confidential manner.

cc: Sarah Rose
Ann Boughtin





NEW YORK STATE
OFFICE OF MENTAL HEALTH

44 Holland Avenue, Albany, New York 12229

RICHARD C. SURLS, Ph.D., Commissioner

OPERATIONS DIVISION
ALICE P. LIN, ACSW, DSW, Senior Deputy
Commissioner

MEMORANDUM

ATTACHMENT A

TO: Robert Hettenbach
John Iafrate, M.D.
William Morris
C. Richard Orndoff
Bryan Rudes

FROM: Alice P. Lin, ACSW, DSW *AL*
Senior Deputy Commissioner

DATE: March 20, 1990

SUBJECT: Release of Records/Protective Services for Adults

It has been brought to my attention via the Department of Social Services that the local Social Services districts have experienced difficulty in obtaining mental health assessments for the clients referred by Adult Protective Services due to the interpretation of release of records under Section 33.13 of the Mental Hygiene Law.

I have asked our Counsel's Office for an opinion and have the attached memo from Pamela Tindall-O'Brien for your reference. I would appreciate your notifying your local mental health commissioners of the attached.

As always, I appreciate your assistance in resolving this issue.

APL/mm

Att.

cc: Ms. Tindall-O'Brien
Ms. Berek ✓
Ms. Rose

