



PROTECTIVE SERVICES FOR ADULTS

DESK GUIDE

A GUIDELINE TO PSA



BROOKDALE CENTER
for Healthy Aging

Hunter College / The City University of New York



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PROTECTIVE SERVICES FOR ADULTS ELIGIBILITY



1

PROTECTIVE SERVICES FOR ADULTS ELIGIBILITY

WHO IS ELIGIBLE FOR HELP FROM PROTECTIVE SERVICES FOR ADULTS (PSA)?

PSA is available, without regard to income, to adults 18 years of age and older who:

- Have a **physical or mental impairment**, and
- Are **in need of protection from actual or threatened harm** due to an inability to meet their essential needs for food, shelter, clothing or medical care, secure entitlements due them or protect themselves from physical, sexual or emotional abuse, active, passive or self-neglect or financial exploitation, and
- Have **no one available who is willing and able to assist them responsibly.**

SOURCE: 18 NYCRR section 457.1(c), *PSA Client Characteristics, 90-OCFS-ADM-40*



PRINCIPLES TO ASSESS BY



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PRINCIPLES TO ASSESS BY

RIGHT TO SELF-DETERMINATION

Adults have the right to exercise free choice in making decisions, even if some of those decisions may seem harmful. Persuasive efforts should be made to encourage a resistant client to accept services voluntarily, through discussions with the client, their family, friends and other service providers. The establishment of trust and respect will often persuade an adult to accept help. When there is reason to believe that there is a serious threat to an adult's well being, and that the adult is incapable of making decisions in his or her own behalf due to a mental impairment, there is a basis to seek a determination of mental capacity to support a possible involuntary intervention that may be needed to protect the client. An adult has capacity if he or she can provide reasons for their choices, those reasons have a basis in fact and reality, and the person can understand the consequences of their decisions.

LEAST-RESTRICTIVE INTERVENTIONS

Interventions should be limited in scope to address the identified risks. Efforts should be made to provide services to promote the adult's safety within their own home if possible. If a person's safety is seriously threatened in his or her current environment and alternative living arrangements are needed, then the least restrictive intervention necessary to effectively protect the adult must be employed.

SOURCE: 18 NYCRR section 457.6, *PSA Serving Involuntary Clients*, 88-OCFS-ADM-23

AUTHORITY TO INTERVENE

PSA has an obligation, under Social Services Law and regulations, to provide services involuntarily if there is an imminent risk to the safety and well-being of an adult who is incapable of making choices on their own behalf. Two traditional legal principles, based in the **Common Law**, are the basis of this obligation: the police power of the State, and the theory of *parens patriae*. This means that New York State has authorized PSA to act in a parental capacity for persons who cannot care for themselves or who are dangerous to themselves .

PARENS PATRIAE

refers to the power of the state to intervene to act as the parent of any child or individual who is in need of protection.

NOTE:

(Involuntary services may involve crisis intervention procedures and/or other legal interventions. see page 22)

THE REFERRAL



3

THE REFERRAL

WHEN SHOULD A PSA INVESTIGATION BE INITIATED?

A PSA investigation must be initiated following a referral if the adult appears to be eligible or if eligibility cannot be ruled out based on the referral information.

EMERGENCY REFERRALS

PSA SHALL COMMENCE AN INVESTIGATION AS SOON AS POSSIBLE BUT NOT LATER THAN 24 HOURS AFTER RECEIPT OF THE REFERRAL, IF THE DISTRICT HAS DETERMINED THAT A LIFE-THREATENING SITUATION EXISTS.

A situation should be deemed life threatening if circumstances are present which may result in death or irreparable harm to the adult unless emergency action is taken. Appropriate emergency medical and/or police assistance must be obtained.

NON-EMERGENCY REFERRALS

If a life threatening situation does not exist, an investigation must commence within 72 hours and a visit made to the client within 3 working days.

SHOULD I KEEP THIS CASE?

A decision must be made within 3 working days of the referral concerning whether the case should be assigned for further assessment.

If there is any doubt about the adult's physical or mental capacity, and if the adult's needs or risk exceed the ability of others who may be assisting, then the referral should be accepted for assessment.

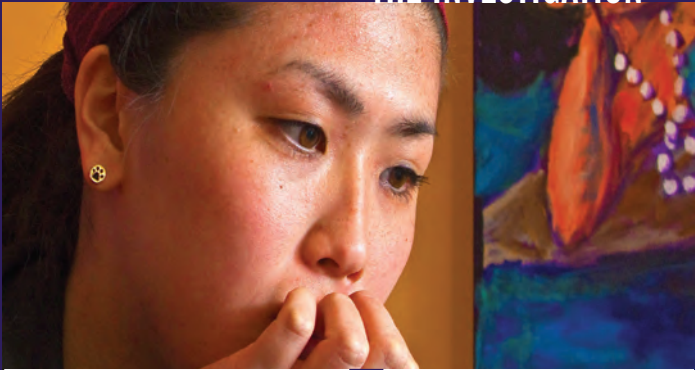
SOURCE: *PSA Intake, 93-OCFS-ADM-23*

BEFORE THE INITIAL HOME VISIT

Always review the Referral Information (in ASAP or for NYC on OCFS form 3602A) before making a home visit.

Always attempt to contact the referral source -- the referral source may have more or new information.

THE INVESTIGATION



4

THE INVESTIGATION

WHAT SHOULD BE DONE ON THE INITIAL HOME VISIT?

SAFETY FIRST

READ THIS SECTION BEFORE
MAKING THE HOME VISIT!

For any effective home visits, the PSA Caseworker must Be Safe (not just feel safe) before attempting to interact with the client:

BE SAFE!

- **Always trust your instincts** and do not enter if the situation looks unsafe. Be aware of people entering and exiting.
- **When you enter a home, be alert to your surroundings.** If there are other exits, note them. If you have a cell phone, have it readily available.
- **Do not remain in the home if you see drugs, alcohol, firearms, violence, etc.** (It is imperative to be aware of situations which you are unable to control: you may be at risk.)
- **If you are uncertain about your safety** once you have entered a client's home/apartment remain near an exit and do not allow anyone to come between you and the exit door.
- **Threats made by the client or someone else in the home should be taken seriously;** immediately stop the interview and assess whether or not steps must be taken to safeguard your person.

BUILDING THE RELATIONSHIP & GATHERING INFORMATION ON THE INITIAL VISIT

This is an important interaction with a two-fold purpose:

1. **Relationship:** Be mindful of the importance of establishing a relationship with the client
2. **Information:** Gather as much information as possible: from the client, from the client's environment, from family, friends, neighbors, etc. to determine if the risks alleged in the referral exist.
 - **Be alert:** It is also important to be alert for other risks not in the original referral.
 - **First-hand Information:** Always try to get first-hand information about the adult's impairments and how it affects his or her ability to meet essential needs.
 - **Does the client understand?** Try to assess the client's understanding of all the identified risks. It is also important to identify risks that were not identified in the referral.
 - **Are others Willing and Able?** If the client is receiving assistance from friends, family, and/or a community-based organization, assess whether that help is sufficient to meet all the identified risks.

THE INVESTIGATION - CONTINUED

What do I do if the client becomes agitated during the home visit?

READ THIS SECTION BEFORE MAKING THE HOME VISIT!

Initial home visits are often challenging. The client may be uncomfortable with a stranger in their home asking questions about them and their life. Some clients may become agitated during the home visit. If this happens, here are some tips for de-escalation:

- **Appear calm, centered, and self-assured even if you don't feel it.** Use a modulated, low, monotonous tone of voice.
- **Do not be defensive.** Even if the comments or insults are directed against you, they aren't about you.
- **Be respectful.** Even when setting limits firmly or calling for help.
- **Never turn your back for any reason.** Always be at the same eye level, but do not maintain constant eye contact. Allow extra physical space between you. Keep your hands out of your pockets.
- **Do not try to yell louder than a screaming person.** Wait until he or she takes a breath; then talk.
- **Empathize with feelings, but not with the behavior.** Do not interpret the client's feelings in an analytic way; do not argue or try to convince.
- **Trust your instincts.** If you feel the de-escalation isn't working, STOP! LEAVE! If you are unable to leave, call for help immediately.

EMERGENCIES:

How can I tell if a case is an emergency?

PSA client emergencies usually revolve around psychiatric crises or medical crises. If left unaddressed, your client will present an increased risk to themselves and/or others. This can mean that your client could perish if action is not taken immediately. The following are signs and/or symptoms that could signal the need for emergency intervention.

PSYCHIATRIC EMERGENCIES:

- Suicidal statements, intent, plan, attempts;
- Homicidal or violent statements, intent, plan, attempts;
- Hallucinations that tell client to hurt self or others;
- Wandering and/or disoriented and no one in the home to responsibly assist.

MEDICAL EMERGENCIES:

- Choking or can't breathe;
- Open wound, serious infection, bleeding;
- Chest pain, shortness of breath; *(continued on the next page)*

THE INVESTIGATION - CONTINUED

...CONTINUED EMERGENCIES:

How can I tell if
a case is
an emergency?

- Feeling faint, unable to move;
- Suffering from effects of extreme heat or cold;
- Extremely thin, wasted appearance.

PSA client emergencies usually revolve around psychiatric crises or medical crises. If your client is exhibiting any of these indicators, prompt, decisive action must be taken. Depending on the nature and severity of the emergency, PSA must take action to safeguard the client. In some cases this will include calling 911 for assistance from emergency responders. If you can, contact your supervisor. When help arrives, always note names and badge numbers of emergency services providers. See page 22 for other possible crisis intervention options.

IMPORTANT: *If a client is being abused, the intensity of the abuse can escalate to levels that may warrant emergency intervention.*

EVICITION:

What do I do if my
client is facing
eviction from their
home?

You will frequently encounter clients who are facing eviction. In New York State, a person can be evicted for not paying rent, among other grounds. A landlord may also bring a summary holdover eviction proceeding if, for example, a tenant significantly violates a substantial obligation under the lease, such as using the premises for illegal purposes, committing or permitting a nuisance, or staying beyond the lease term without permission. For PSA-eligible clients, the following services may be provided:

- **Determine eviction date and type of eviction action: nonpayment or holdover.**
- **Find Money for Rent Arrears** - Attempt to identify service providers who can assist with payment of rent arrears.
- **Advocate** - Apply for income benefits and services: Public Assistance, SSI, Food Stamps, emergency Public Assistance rent arrears payment, Senior Citizen Rent Increase Exemption (SCRIE), Home Care/Housekeeping, and financial management.
- **Willing and Able** - Seek assistance from family, friends, agencies: contributions, roommate and assistance with care.
- **Support Services** - Engage support services needed to address holdover issues: Heavy Duty Cleaning, Home Care/Housekeeping, Order of Protection, and medical/mental health treatment.

SOURCE: www.rentlaw.com

THE INVESTIGATION - CONTINUED

What Do I Do If The Client is Not Home?

- **Contact collateral(s)** to attempt to verify the whereabouts, condition and safety of the client. Collaterals may include relatives, neighbors, superintendent, landlord, community organizations, senior center, doctor, social worker/therapist, or other client contacts or service providers.
- **Notify the Client** - Complete and leave notification of the visit attempt.
- **Document attempts** to visit client and other actions taken.
- **Prompt and continuous follow up** efforts must be made to locate client and to obtain access to client in client's home.
- **Reassess** - After attempted visit or visits where the client is not at home, consult with supervisor.

What if the client or someone else is refusing to allow me into the home?

- **Try to enlist the help of others** (neighbors, family, friends, superintendent) to gain access.
- **Seek Guidance** - Contact supervisor from the field.
- **Evaluate presenting risk(s)** - If imminent emergency risks are identified, call 911. If there is reason to believe a person in need of PSA is there, access is refused, and you have made at least more than one attempt to gain access, then an order to gain access is an option. Consult with your supervisor. See page 26 for more information on Orders to Gain Access.



DISCLOSURE OF INFORMATION, IMMUNITY AND NOTIFICATION TO REFERRAL SOURCES

Client Confidentiality

Generally, a social services district must not release PSA reports or other information in their possession concerning such reports which pertain to a person who is the subject of a report without the approval of such subject or their authorized representative. However, there are several statutory exceptions to this general rule. Confidential information can be released to the following entities without the approval of the subject of the report or their authorized representative:

- **Subject of Report or Authorized Representative**
- **Service Provider where social services official has determined such information is necessary**
- **Courts**
- **Grand Jury**
- **DA/Law enforcement official**
 - if the information is necessary to conduct a criminal investigation or criminal prosecution of a person;
 - if there is reasonable cause to believe that a criminal investigation or prosecution involves or otherwise affects a person who is the subject of a PSA referral or application or is receiving or has received PSA; and
 - if it is reasonable to believe that due to the nature of the crime under investigation or prosecution, such records may be related to the criminal investigation or prosecution.
- **Court Evaluator or Article 81 Guardian**
- **Miscellaneous - any person entitled to such record in accordance with applicable law.**

SOURCE: *Social Services Law section 473-e; 18 NYCRR section 457.16*

Releasing Confidential Information to an Authorized Representative

Prior to the release of a record, or other persons, officers and agencies requesting this information, the department or a social services district **must** be satisfied that the agency or person receiving the confidential information will maintain the confidentiality of the information in accordance with applicable law, and that such information will be used solely for the purposes for which it was made available.

SOURCE: *18 NYCRR section 457.16*

DISCLOSURE OF INFORMATION, IMMUNITY AND NOTIFICATION TO REFERRAL SOURCES

Withholding Confidential Information about a PSA client

PSA may withhold in whole, or in part, the release of any information in their possession which they are otherwise authorized to release if it is determined that:

- The release of the information would identify the referral source or an application for PSA on behalf of another person who cooperated in the investigation and assessment of a person's need for PSA; and
- It is reasonably determined that the release of such information would be detrimental to the client's safety or interests.

SOURCE: 18 NYCRR section 457.16

Referral Source Confidentiality

The confidentiality of referral sources and other collateral contacts may be protected even when such information is being subpoenaed or otherwise sought as part of a legal proceeding. This should encourage the cooperation of individuals and other agencies in the PSA assessment and service delivery process, which should enhance a district's ability to address these situations.

SOURCE: Social Services Law Section 473-e; 18 NYCRR Part 457.16; 92 INF-26.

Immunity

Any social services official or his designee authorized or required to determine the need for or to provide or arrange for the provision of protective services for adults has immunity from any civil liability that might result from providing PSA. The PSA worker is immunized as long as they were acting in the discharge of their duties and within the scope of their employment, and that such liability did not result from the willful act or gross negligence of such official or his designee.

Referral Source Immunity - The Social Services Law gives immunity from civil liability to anyone who in good faith reports the existence of a situation which he/she believes involves a person in need of protective or other services and to anyone who gives testimony in a related civil or judicial proceeding.

SOURCE: Social Services Law Section 473.3, 18 NYCRR section 457.9

DISCLOSURE OF INFORMATION, IMMUNITY AND NOTIFICATION TO REFERRAL SOURCES

Informing a PSA Referral Source

Accepting or Rejecting a PSA Referral - When PSA accepts or rejects a referral, the referral source must be informed orally or in writing of the client's eligibility or ineligibility for PSA within 15 calendar days of the completion of the PSA assessment required by 18 NYCRR section 457.2 (b).

Network sources: When information provided by a referral source is accepted as a PSA referral, the referral source must be informed orally or in writing of the client's eligibility or ineligibility for PSA ,within 15 calendar days of the completion of the PSA assessment required by 18 NYCRR 457.2(b). When such information is not accepted as a PSA referral, the referral source must be informed orally or in written within 15 days of the decision.

Non-Network sources:When information provided by a referral source is accepted as a PSA referral, the referral source must be informed orally or in writing that the district will or will not provide services to the client, within 15 calendar days of the completion of the PSA assessment. The information provided to the referral source must not specify the nature of the services that will or will not be provided. When such information is not accepted as a PSA referral, the referral source must be informed that the district will or will not provide services to the client (again, without specifying the services), within 15 calendar days of the decision.

Note: When referrals are made to a social services district from sources other than community resources which are part of a PSA delivery network, the time frames remain the same for accepting or rejecting a referral.

SOURCE: 18 NYCRR section 457.14



DOCUMENTATION



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DOCUMENTATION

REQUIRED DOCUMENTATION & DOCUMENTATION TIMEFRAMES

DID YOU KNOW

- ...that date of supervisory signature is considered the completion date for documents?
- ...that your supervisor's signature authorizes your Service Plans and Service Plan Reviews?

INTAKE CASE DISPOSITION

The Intake Disposition must be completed within 3 working days of the referral. **Remember:** If there is any doubt about the adult's physical or mental capacity, and if the adult's needs or risk exceed the ability of others who may be assisting, then the referral should be accepted for assessment.

- **Initial Assessment** - Assessment/Services Plan (Eligibility Determination) or Determination of Ineligibility must be completed within 60 days of the referral (in ASAP or for NYC on OCFS forms 3602B or 3602C).
- **Service Plan Review** - Assessment/Services Plan Review/Update must be completed for all open cases within 6 months of the referral date and every 6 months thereafter (in ASAP or for NYC on OCFS form 3603).
- **Case History or Progress Notes** - Progress Notes providing a chronological description of casework activity must be completed as soon as possible, but always within 30 days of the occurrence of the event. Progress notes should document all contacts with the client, other agencies or units within social services, and collaterals. Significant events which result in new service needs or affect service provision should be recorded. **Progress Notes are an important part of the official case record and as such may be subject to subpoena and/or introduction into court.**
- **ASAP/NYC Automated Systems** - Document important events in a case through use of the Adult Services Automation Project (ASAP) or the NYC automated system as appropriate.

SOURCE: *Process Standards, 96-OCFS-ADM-18*

MANDATED PSA ASSESSMENT TASKS

WHAT ARE THE MAJOR TASKS THAT MUST BE ACCOMPLISHED DURING THE INITIAL 60 DAY ASSESSMENT PERIOD?

The overarching task during the assessment phase is to gather sufficient information to make an eligibility determination, identify risks and service needs, and promptly address risks and services needs.

- **Information** - Gather information on the nature of the client's physical or mental impairment through observations, medical or mental health sources, family, other agencies, referral source, etc.
- **Client's Ability to Make Decisions** - Determine the client's ability to make reasoned decisions about risks/dangers.

DOCUMENTATION - CONTINUED

...CONTINUED MANDATED PSA ASSESSMENT TASKS

IMPORTANT:

If you suspect that a crime may have been committed against the client, you must contact the police and the district attorney (if the DA's office has requested to be notified about such cases.)

SOURCE:

18 NYCRR section 457.15

- **Risks** - Is the client at risk for...?:

1. Actual or threatened harm, including neglect, abuse or exploitation by others,
2. Self-endangering behaviors,
3. Incapacitating illnesses or conditions,
4. Environmental hazards,
5. Inability to manage finances,
6. Inability to access benefits,
7. Assistance with daily activities.

AS PART OF THE ELIGIBILITY ASSESSMENT, PSA MUST ASSESS FOR THE FOLLOWING:

- **Willing and Able** - Assess the ability and willingness of others to assist responsibly. Document this assessment.
- **Collateral Supports** - Determine if the services and supports already in place are adequate to meet the client's needs. If unmet needs exist, take steps to resolve the risks.
- **Information Releases** - Obtain financial and housing information and appropriate releases of information.
- **Complete Assessment for Ongoing Service Needs** - Determine client's eligibility for ongoing PSA services. Complete Assessment Services Plan or Ineligibility screen on ASAP. If client is eligible, develop services plan, identifying services and tasks for each identified risk.

What if the assessment determines that the client is ineligible for PSA?

Complete the **Ineligibility Determination on ASAP**. Supervisor must review and approve.

Cased Closed! - 8 Reasons why a PSA case can be deemed ineligible:

- **Client has capacity** - Investigation has determined that the adult has sufficient mental and physical capacity to manage own affairs.
- **Risks Resolved** - Problems or risks have been resolved, or did not exist as alleged.
- **Willing and Able** - Another agency is willing and able to meet the adult's needs.
- **Willing and Able** - A family member or other responsible person is willing and able to meet the client's needs.
- **Refusing Services** - Client retains decision making capacity and is refusing all offers of assistance.
- **Not Found** - Client cannot be located.
- **Moved** - Client moved out of the district (however, consider a referral to new district or State if warranted).
- **Deceased** - Client died.



THE SERVICE PLAN



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THE SERVICE PLAN

What should the Service Plan contain if the adult is eligible for ongoing services?

- **Risks and Services** - For each risk identified, select the service(s) that will address the risk. Note: always indicate if the provision of services is voluntary or involuntary.
- **Least Restrictive** - Document that the least restrictive alternatives have been proposed.
- **Emergency?** - Evaluate whether emergency interventions are needed. Does the client need an emergency mental health evaluation?
- **Prioritize the identified risks** - The life-threatening risks must be addressed first; identify the name(s) of the service provider(s) and the nature of the tasks. For example: eviction prevention, heavy duty cleaning, etc.
- **Will the client accept services?** - Indicate client concurrence, and how the right to self-determination is being addressed if the client is refusing needed services.
- **Develop a client contact schedule.**
- **Sign off on case and obtain supervisory review and approval.**

What services are available under PSA?

- **Eligibility Determination** - Investigation and Assessment
- **Counseling** - Counseling for the individual, family members or other involved persons.
- **Advocacy** - Advocacy to obtain benefits and services, including arranging for legal services and applying for entitlements.
- **Money Management** - Money management, including acting as representative payee.
- **Relocation** - Finding alternative living arrangements, including arranging for adult home placement, nursing homes or other supported housing. Emergency room and board for up to 30 days as part of a PSA services plan can be authorized.
- **Case Management** - Including arranging for medical or psychiatric assessments and treatment, home health care, home delivered meals, homemaker or housekeeper chore services.
- **Crisis Intervention** - Crisis interventions such as Access orders, STIPSO's, assistance in obtaining orders of protection, assistance in obtaining treatment in a psychiatric facility or developmental center.
- **Other Legal Interventions** - Includes petitioning for and/or serving as guardian under MHL Article 81 or SCPA Article 17-A (see pages 27-29)

SOURCE: *Social Services Law 473 and OCFS Regulations Part 457*

CLIENT CONTACTS AND HOME VISITS



7

CLIENT CONTACTS AND HOME VISITS

What are the home visiting requirements for PSA clients?

- **At a Minimum-** For PSA clients living in the community, a face-to-face contact must be held at least once every calendar month. In many cases, more frequent contact may be necessary.
- **At a Minimum-** At least once every 3 calendar months, the face-to-face contact must be conducted in the client's home.
- **When all face-to-face home visits must be in the home-** When there is abuse, neglect and/or exploitation in the client's home, or when abuse, neglect and/or exploitation is suspected, all face-to-face contacts must be done in the client's home. All face-to-face visits must be in the home when environmental conditions exist in the home which are a threat to the health and safety of the client, or when the client is homebound, or when there is no other way to have face to face contact.
- **For clients who reside in residential facilities -** For clients who are permanent residents of residential care facilities, face to face contact is not required, but phone contact with facility staff should be conducted at least once every 3 months. **However, these requirements may be superceded if an Article 81 Guardianship is in place and the court orders more frequent contact.**

What do I do if client is not at home or access is denied for the required home visit ?

- **Right Away -** Prompt and continuous efforts must be made to obtain access to the adult in their home. This should include contacting the referral source, family members, friends, neighbors, landlord and other service providers.
- **When to Try Again -** The number, frequency, time of the day and day of week of follow-up attempts should be discussed with the supervisor and be based on the severity of the risks in the case.
- **If there is reason to believe that the client is eligible -** Efforts to locate and/or to obtain access to the adult must continue as long as there is reason to believe that the adult may be in need of PSA.
- **Consider Access Order only as a last resort -** If reasonable efforts have been made to obtain access to an adult, and access continues to be denied by the adult or other persons, steps must be taken to pursue an Access Order in accordance with Part 457.11 of Department regulations.
- **Document attempts to make visit and other actions taken.** Consult with supervisor as necessary. Consult with agency counsel if access order is being considered.

SOURCE: 18 NYCRR section 457.5, 93-OCFS-ADM-23 PSA Intake (required contacts and home visits) See page 26 for more on Orders to Gain Access.

INVOLUNTARY INTERVENTIONS



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INVOLUNTARY INTERVENTIONS...ONLY IF YOU MUST!!

One of the primary goals of Protective Services for Adults is the provision of services that maximize an individual's independence, freedom and decision-making ability. First consider whether a voluntary solution is possible. When all efforts to provide services voluntarily fail, and the client remains at risk, consideration must be given to involuntary protective services intervention(s).

In cases when an involuntary protective services intervention is sought, PSA must determine that there are no feasible voluntary service alternatives. Where court approval is sought for a Short Term Involuntary Protective Services Order (STIPSO), a Guardianship, or nearly any other legal intervention, the court will inquire whether there is any less restrictive alternative that will adequately protect the needs of the impaired individual. This concept is written into the Social Services Law and the Mental Hygiene Law of the State of New York.

ORDER TO GAIN ACCESS

DID YOU KNOW

that an OGA is essentially a civil search warrant? The standard for proof is the same as that required for a search warrant.

A social services official may apply to the supreme court or county court for an Order to Gain Access (OGA) to a person to assess whether the person is in need of protective services when PSA has reasonable cause to believe that the client may be in need of protective services, and PSA is refused access by the client or another individual. The court must be satisfied that there is reasonable cause to believe that the person is in need of PSA and that access is being denied.

Okay, I need to apply for an OGA. What do I need to do?

PSA must be able to prove the following:

- A person who may be in need of PSA may be found at a specified address;
- PSA has made one or more attempts to gain access to such person for purposes of assessing the need for PSA;
- The person who may be in need of PSA or others have refused access.

PSA must petition the supreme or county court for an OGA to the person to assess whether such person is in need of protective services. If the court finds reasonable cause to believe the allegations made in the petition, it will grant the OGA and authorize PSA, accompanied by a police officer, to enter the premises to conduct an assessment. PSA may request the court to include in the OGA approval for others to accompany PSA in the assessment, such as a physician, nurse or other health or mental health professionals.

NOTE: *The OGA is only for the purpose of assessment. A person may not be removed from their premises under this statute. Other laws, such as mental hygiene statutes may apply if emergency conditions are present.*

SOURCE: *SSL section 473-c, 18 NYCRR section 457.11, 87-OCFS-ADM-6, Orders to Gain Access*

What if a client is at risk of death or serious physical harm?

PSA has the ability to obtain a STIPSO in these circumstances. Caseworkers should contact their supervisors and legal staff to initiate this crisis intervention.

If an adult is at imminent risk of death or serious physical harm, is refusing services and is unable to understand the risk because of an impairment, PSA should apply to the supreme or county court for authority to provide involuntary emergency services for a 72 hour period, with one renewal for an additional 72 hours. If granted, the adults may be removed to a hospital or receive other services available through PSA.

SOURCE: *Source: Social Services Law 473-a*

MENTAL HYGIENE LAW AND ARTICLE 81 GUARDIANSHIP

When should I consider filing for Mental Hygiene Law Article 81 Guardianship?

Guardianship should only be considered as a last resort and only when the alternatives are not sufficient or reliable to meet the needs of the allegedly incapacitated adult.

The legal standard for a Mental Hygiene Law Article 81 Guardianship is that:

- The appointment is necessary to provide for the personal needs or to manage the property and financial affairs of the person, or both; AND
- The person is deemed incapacitated or agrees to the appointment of a guardian.

Only a court can deem a person to be incapacitated. A determination of incapacity requires clear and convincing evidence that a person is likely to suffer harm because:

- The person is unable to provide for personal needs or unable to manage property and financial affairs, and the person cannot adequately understand and appreciate the nature and consequences of such inability.

Cases considered for guardianship must be discussed with supervisory and legal staff to identify what specific authority is needed to protect the incapacitated adult.

Are there special requirements for developmentally disabled clients who receive services through the Office of Mental Retardation and Developmental Disabilities (OMRDD)?

Yes. A recent law requires OMRDD to investigate reports of physical, sexual or emotional abuse, or active, passive or self neglect of any adult, living in the community presumed to be diagnosed with mental retardation or a developmental disability, known by the OMRDD. Districts are required to execute a memorandum of understanding covering referral procedures, information sharing, service delivery procedures, high-risk cases and conflict resolution.

SOURCE: *Mental Hygiene Law section 16.19, 07-OCFS- ADM-04, PSA: MOU with OMRDD*

WHAT IS AN ARTICLE 17-A GUARDIAN?

Under the former Guardianship law a Guardian was often appointed during the childhood of a mentally retarded person but terminated when the mentally retarded person reached adulthood at which point a separate committee proceeding had to be instituted. In 1969, Article 17-A was adopted, combining the two-step procedure into one. In 1990, Article 17-A was replaced by a new Article 17-A which allows other developmentally disabled persons to receive the services of a court-appointed Guardian.

Legal Authority - Surrogate's Court Procedure Act (SCPA), Article 17-A.

Applicable To Whom - Mentally retarded persons, of any age. Certain developmentally disabled individuals.

When should I consider filing for an Article 17-A Guardian?

The Petitioner must include a statement detailing why guardianship is needed. The Petitioner must prove that the disability of the individual is attributable to one of the following:

- cerebral palsy
- neurological impairment
- autism
- traumatic head injury.

Consent of Parents, SCPA Section 1754

Consent of both parents or the survivor is required.

If consent is withheld - If one or more parent withholds consent, the Court must hold a hearing, or may dispense with the consent of the parent or need for hearing upon proof that the parent has abandoned the mentally retarded or developmentally disabled person.

Best Interest Standard

The Court must determine that the appointment of the Guardian is in the mentally retarded or developmentally disabled person's best interest.

Powers, Duties and qualifications of Guardian

The Guardian may be appointed over the person or property or both of the mentally retarded or developmentally disabled person.

Limited Guardianship, NY Code - Section 1756

If the mentally retarded or developmentally disabled person for whom the Guardianship application is being made is over the age of 18 and is wholly or substantially self-supporting by reason of employment, a limited Guardian of the property may be appointed, who shall manage only property other than the mentally retarded or developmentally disabled person's wage or earnings.

Standby Guardianship, NY Code - Section 1757

Upon application, a standby Guardian of the person or property or both of the mentally retarded or developmentally disabled person may be appointed by the court, who can automatically assume Guardianship upon death of the parents or Guardian, subject only to court confirmation within 60 days.

WHAT IS AN ARTICLE 17-A GUARDIAN?

Corporate Guardianship, NY Code - Section 1760

A non-profit corporation interested solely in the mentally retarded or developmentally disabled may be named as Guardian when no relative or other person is available or willing to do so, or if the mentally retarded or developmentally disabled person does not need a high degree of additional supervision because he or she resides in a state school or is able to work in the community.

Medical Decision Making

- Legal Authority - Surrogates Court Procedure Act Section 1750-b (2002 N.Y. Laws chapter 500, The Health Care Decision Act for Persons with Mental Retardation).

NOTE: *An amendment to the Surrogates Court Procedure Act (effective March 2003) clarified that Guardians of persons with mental retardation and developmental disabilities have the authority to make health care decisions, including decisions regarding life-sustaining treatment under certain circumstances. At the same time it includes many provisions to ensure the rights of persons with mental retardation and developmental disabilities are adequately protected.*

Section 1750 of the Surrogate's Court Procedure Act require the certification that a mentally retarded or developmentally disabled person is incapable of taking care of him/herself, and must also include a specific determination as to whether the person has the capacity to make health care decisions for him/herself. The law provides that the absence of such a determination in the case of Guardians appointed prior to the acts effective date of 2003 shall not preclude their making such decisions.

All decisions must be based on a best interests standard which requires:

- a consideration of the person's dignity and uniqueness;
- the preservation, improvement or restoration of the person's health;
- the relief of the person's suffering;
- the unique nature and effort of artificially provided nutrition and hydration; and
- the person's entire medical condition.

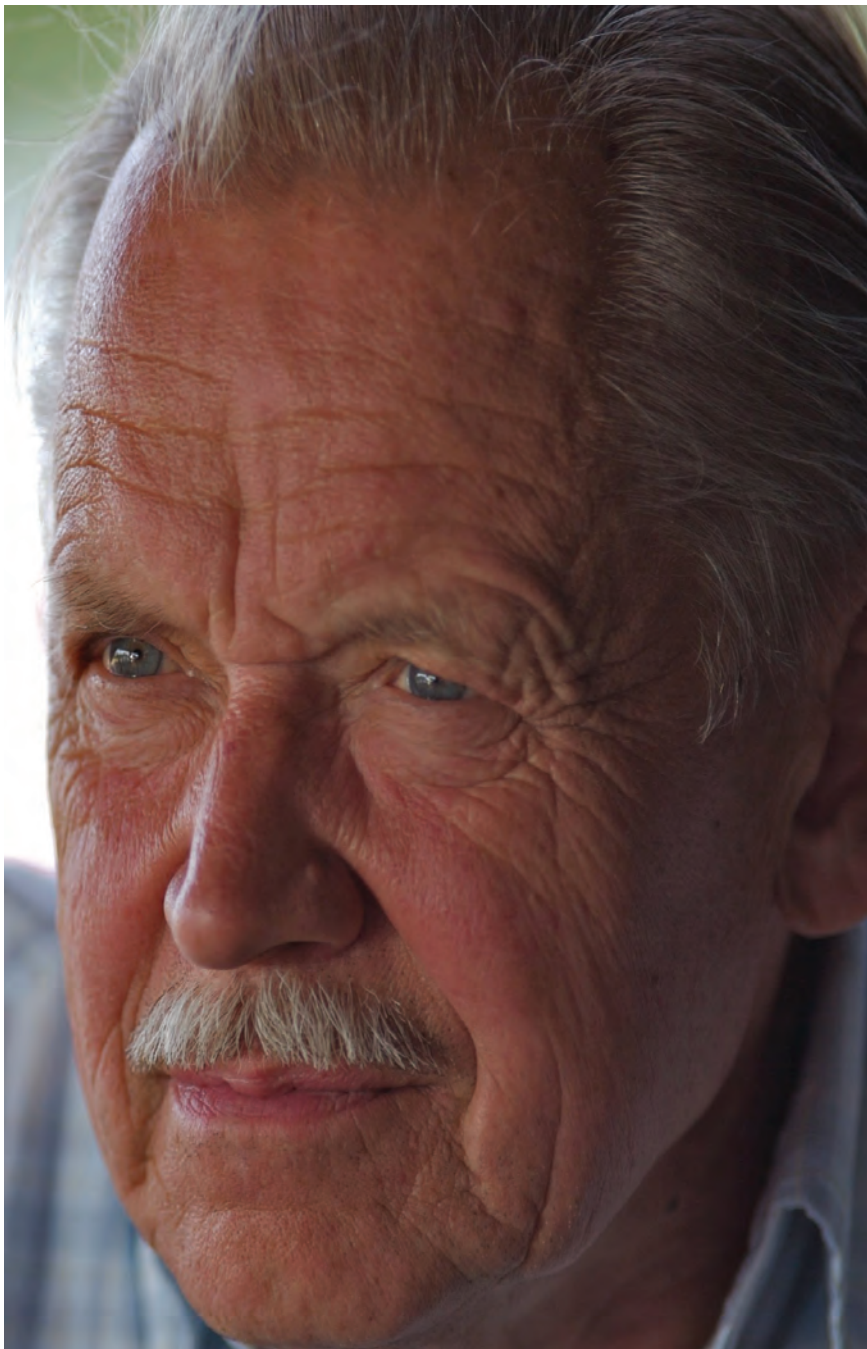
To facilitate this requirement, the Guardian is entitled to all medical records necessary to make informed decisions.

Immunity

Guardians and providers are granted immunity for any decision made reasonably and in good faith.

Termination of Guardianship

Guardianship under Article 17-A does not automatically terminate at the age of majority or upon marriage, but requires a court review instead.



WHAT IS THE SERVICE DELIVERY NETWORK?



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WHAT IS THE SERVICE DELIVERY NETWORK?

PSA is required to coordinate and plan with other service agencies in the community from the fields of aging, health, mental health, legal and law enforcement. Districts are encouraged to develop working agreements that cover referral procedures, roles and responsibilities of each agency, service coordination and dispute resolution.

SOURCES

Social Services Law 473 and OCFS regulations Part 457 *99 INF-6 Confidential Information Sharing Agreement*
92 INF-55 PSA Model Hospital Agreement *98 INF-5 Mental Health Evaluation Referral Instrument*
95 INF-10 Model Protocol between Police and PSA

| Agency | Contact Person | Phone Number |
|--|----------------|--------------|
| Office for the Aging | | |
| Dept. of Public Health | | |
| Dept. Of Mental Health | | |
| Mobile Crisis Team | | |
| Developmental Disabilities Services Office | | |
| County Sheriff | | |
| Local Police Departments | | |
| District Attorney | | |
| Legal Aid | | |
| Hospital Discharge Planners | | |
| Home Health Agencies | | |
| Domestic Violence Liaison | | |
| Medicaid | | |
| Temporary Assistance | | |
| Housing Office | | |
| Social Security | | |
| Banks | | |
| Other Service Providers | | |

How do I access online information on PSA?

Internet site: <http://ocfs.state.nyenet/>



BROOKDALE CENTER
for Healthy Aging

Hunter College / The City University of New York

