



APS Legal Practice- Part 1

2021 AATI CONFERENCE

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APS Legal Practice

Introduction

APS Legal Practice

Housekeeping

APS Legal Practice

The “Law” of APS and its application to practice

- Statutes
- Regulations
- Agency Directives

Statutes

APS Specific Statutes:
Social Services Law §§473- 473-e

Statutes

Social Services Law §473

- ▶ Defines what APS is and what it does
- ▶ APS services must be part of each LDSS's local plan
- ▶ Immunity
- ▶ Demonstration projects
- ▶ Reporting of potential crimes by APS to law enforcement
- ▶ Definitions of terms
- ▶ Requires OCFS "best practices" on website

Statutes

Social Services Law §473-a

Short Term Involuntary Protective Services Orders

- ▶ Definitions
- ▶ Jurisdiction/venue
- ▶ Requirements for petition
- ▶ Procedure

Statutes

SSL §473-b

Reporting of Endangered Adults; Persons in Need of Protective Services

- ▶ Note that there is no mandated reporting to APS in New York
- ▶ Note that a person may report or refer an endangered adult to the department, office for the aging, or any local social services district office or designated area agency on aging, law enforcement agency, or any other person, agency or organization that such person, in good faith, believes will take appropriate action
- ▶ This statute provides immunity for persons making good faith reports or testifying in any judicial or administrative proceeding arising from such report or referral.

Statutes

SSL §473-c

An Order to Gain Access to Persons Believed to be in Need of Protective Services for Adults

- ▶ Procedure
- ▶ Petition requirements
- ▶ Note- there is also a regulation, two agency directives, and a “best practices” guide that are specific to access orders.

Statutes

SSL §473-d

Community Guardianship

“Community guardian program” means a not-for-profit corporation incorporated under the laws of the state of New York or a local governmental agency which has contracted with or has an agreement with a local social services official to provide conservatorship or committeeship services to eligible persons as provided in this title.

Statutes

SSL §473-e

Confidentiality of Protective Services for Adults Records

- ▶ Defines what the records include
- ▶ Sets forth the circumstances under which APS records may be released and to who they may be released
- ▶ One of the few types of DSS records which may be released pursuant to written authorization by the subject of the report- unlike, for example, CPS records

Statutes

Some other statutes that you may encounter in APS practice

Statutes

Mental Hygiene Law Article 81
(guardianship)

Mental Hygiene Law Article 83 (jurisdiction)

Statutes

Surrogate's Court Procedure Act Article 17-a

- ▶ SCPA §1750. Guardianship of persons who are intellectually disabled
- ▶ SCPA §1750-a. Guardianship of persons who are developmentally disabled
- ▶ SCPA §1750-b. Health care decisions for persons who are intellectually disabled
- ▶ SCPA §1751. Petition for appointment; by whom made

Statutes

- ▶ Surrogate's Court Procedure Act Article 17-a (cont'd)
- ▶ SCPA §1752. Petition for appointment; contents
- ▶ SCPA §1753. Persons to be served
- ▶ SCPA §1754. Hearing and trial
- ▶ SCPA §1755. Modification order
- ▶ SCPA §1756. Limited guardian of the property

Statutes

Surrogate's Court Procedure Act Article 17-a (cont'd)

- ▶ SCPA §1757. Standby guardian of a person who is intellectually disabled or person who is developmentally disabled
- ▶ SCPA §1758. Court jurisdiction
- ▶ SCPA §1759. Duration of guardianship
- ▶ SCPA §1760. Corporate guardianship
- ▶ SCPA §1761. Application of other provisions

Statutes

General Obligations Law Article 5- Power of Attorney

- ▶ GOL §5-1501. Application and definitions
- ▶ GOL §5-1501A. Power of attorney not affected by incapacity
- ▶ GOL §5-1505. Standard of care; fiduciary duties; compelling disclosure of record

Statutes

Public Health Law Article 29-c- Health Care Proxy (portions)

- ▶ PHL §2980. Definitions
- ▶ PHL §2981. Appointment of health care agent; health care proxy
- ▶ PHL §2985. Revocation
- ▶ December 15, 2020- amendments signed into law- effective in June.

Statutes

New York Public Health Law Article 29-CC – Family Health Care Decisions Act (Portions)

- ▶ PHL §2994-b. Applicability; priority of certain other surrogate decision-making laws and regulations
- ▶ PHL §2994-d. Health care decisions for adult patients by surrogates

Statutes

NYS Family Court Act (portion)

- ▶ Family Court Act §812- Procedures for family offense proceedings

Statutes

NY Elder Law §225

- ▶ Authorizes NYSOFA to create a program to establish E-MDT's at the county or regional level.
- ▶ Effective July 1, 2021.

APS Regulations

18 NYCRR 457.1 General

- ▶ Definitions
- ▶ Client characteristics
- ▶ APS services

APS Regulations

18 NYCRR 457.2 PSA client case record

- ▶ Application.
- ▶ PSA assessment/services plan.
- ▶ Progress notes.
- ▶ Other information.

APS Regulations

- ▶ 18 NYCRR 457.3 Eligibility for PSA.
- ▶ 18 NYCRR 457.4 Staffing standards.
- ▶ 18 NYCRR 457.5 Duties and responsibilities.

APS Regulations

18 NYCRR 457.6 Serving involuntary clients.

- ▶ Crisis intervention
- ▶ Other legal procedures

APS Regulations

- ▶ 18 NYCRR 457.7 Coordination and utilization of community resources.
- ▶ 18 NYCRR 457.8 Annual plan for the provision of PSA.
- ▶ 18 NYCRR 457.9 Immunity from civil liability.
- ▶ 18 NYCRR 457.10 Short-term involuntary protective services orders.
- ▶ 18 NYCRR 457.11 Orders to gain access to persons believed to be in need of protective services.

APS Regulations

- ▶ 18 NYCRR 457.12 Community guardianship.
- ▶ 18 NYCRR 457.13 Notice.
- ▶ 18 NYCRR 457.14 Informing referral source
- ▶ 18 NYCRR 457.15 Reports to law enforcement officials.
- ▶ 18 NYCRR 457.16 Confidentiality.

OCFS Policy Directives

- ▶ **Administrative Directives (ADM)** are external policy statements designed to advise local service districts and voluntary agencies of policy and procedure which must be followed and require specific action.
- ▶ **Informational Letters (INF)** are external policy statements that clarify or amplify existing procedures. They may provide general educational information, transmit a new brochure, distribute a revised list of contacts, or announce newly enacted Federal or State legislation.

These are shared with local districts and appropriate voluntary agencies.

OCFS Policy Directives

- ▶ 90-ADM-40 - Client Characteristics
- ▶ 96-ADM-18 – Revised Process Standards
- ▶ 98-INF-5 APS Mental Health Evaluation Referral Instrument
- ▶ 88-ADM-023 Serving Involuntary Clients
- ▶ 87-ADM-006 Orders to Gain Access to Persons Believed to be in Need of Protection

OCFS Policy Directives

- ▶ 12-OCFS ADM-05- clarifies the procedure under Social Services Law 473-c for Protective Services for Adults caseworkers who are refused access to a person believed to be in need of protective services
- ▶ 95-INF-20 Family Protection and DV Intervention Act
- ▶ 99-INF-005 APS Amendments to Penal Law Concerning Vulnerable Elderly Adults

OCFS Policy Directives

- ▶ 92-INF-054 APS Access to Hospital Records for the Purpose of Conducting APS Investigation on Behalf of Persons Referred by Hospitals
- ▶ 92-INF-055 APS Model Hospital Agreement
- ▶ 90-ADM-025 Long Term Home Health Care Program
- ▶ 95-INF-010 APS Model Protocol Between Police and APS

OCFS Policy Directives

- ▶ 99-INF-006 APS Confidential Information Sharing Agreement
- ▶ 92-INF-040 Article 81 Guardianship
- ▶ 07-OCFS-ADM-04- Protective Services for Adults (PSA): Memorandum of Understanding with Office of Mental Retardation and Developmental Disabilities (OMRDD)
- ▶ 21-OCFS-ADM-03 Changes in Annual Assessment Requirements for Community Guardianship Programs

OCFS Best Practices Guidelines

- ▶ Seeking Orders to Gain Access to Adults Believed to be in Need of Adult Protective Services: Best Practice Guidelines
- ▶ Identifying and Making Referrals for Appropriate Services: Best Practices Guidelines

Application of the “Law” to the Practice

Eligibility

- ▶ SSL §473(1)
- ▶ 18 NYCRR 457.1(c) Client characteristics.
- ▶ 18 NYCRR 457.3 Eligibility for PSA.

Application of the “Law” to the Practice

APS Services

- ▶ SSL §473
- ▶ 18 NYCRR 457.1(d). Services
- ▶ 18 NYCRR 457.7 Coordination and utilization of community resources

Application of the “Law” to the Practice

Duties and Responsibilities of APS

- ▶ SSL 473(1)
 - Investigation of Referrals- 18 NYCRR 457.1
 - Voluntary Clients
 - Involuntary Clients-18 NYCRR 457.6 Serving involuntary clients
 - Access Orders- SSL 473-c, 18 NYCRR 457.11, 12-OCFS-ADM-05, best practices guideline.

Application of the “Law” to the Practice

APS Records and Confidentiality

Records

- ▶ 18 NYCRR 457.2- PSA client case record

Confidentiality

- ▶ SSL 473-e
- ▶ 18 NYCRR 457.16 Confidentiality.

Application of the “Law” to the Practice

Financial Exploitation

- ▶ Means of exploitation
- ▶ Investigation of exploitation
- ▶ The FEIST
 - Gramm-Leach-Bliley Act
 - “15 day” letter for POA and special proceeding
 - Utilization of MDT’s

Application of the “Law” to the Practice

Alternatives to Art. 81 guardianship

- ▶ STIPSO
- ▶ Orders of protection
- ▶ Health Care proxy
- ▶ SCPA 17-a Guardianship
- ▶ Community Guardianship

Caseworker Liability

Statutory and regulatory immunity:

- ▶ SSL §473(3)
- ▶ 18 NYCRR 457.9(a).

Caseworker Liability

Maldovan v County of Erie, 188 AD3d 1597 (4th Dept., 2020), leave to appeal denied 191 AD3d 1404

The 4th Dept. reversed the Supreme Court decision that denied the defendant's motion for summary judgment.

- ▶ No "special duty" on behalf of the County.
- ▶ The County met its burden of establishing that it was entitled to governmental function immunity as the actions of the CPS and APS caseworkers "resulted from discretionary decision-making."
- ▶ A cause of action for "negligent investigation" is not recognized in New York.

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Questions?

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Thank you and hope to see you for Part 2-
APS Legal Practice- capacity issues and
ethics