

82 ADM-032

Chapter 991, Laws of 1981: Short
Term Involuntary Protective Services
Orders



NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001
 BARBARA B. BLUM
 Commissioner



(An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.)

ADMINISTRATIVE DIRECTIVE

TO: Commissioners of Social Services

TRANSMITTAL NO: 82 ADM-032
 (Adult Services)

SUBJECT: Chapter 991, Laws of 1981: Short Term
 Involuntary Protective Services Orders

DATE: June 30, 1982

SUGGESTED

DISTRIBUTION: County and Agency Attorneys
 Directors of Social Services
 Protective Services for Adults Staff

CONTACT PERSON: Any questions concerning this release should be directed to Christina Hay, Division of Adult Services by calling 800-342-3715, ext. 3-1713, or Sharon Lane ext. 3-8728, or Irv Abelman (212) 488-5097.

I. Purpose:

The purpose of this release is to advise the districts of a change in the procedures for the implementation of Chapter 991 of the laws of 1981 which are set forth in a previous Administrative Directive (81 ADM-57). Chapter 991 authorizes the districts to petition the court for short term involuntary protective services orders on behalf of endangered adults as defined in the law.

II. Background:

During the 1981 legislative session, the New York State Legislature passed legislation to enable the local districts to more effectively respond to the needs of involuntary clients who; are at imminent risk of death or serious physical harm, do not understand the consequences of their situation; and are not admissible to a psychiatric facility under the provisions of Article Nine of the Mental Hygiene Law. This legislation was subsequently signed into law

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Department Regs.	Soc. Serv. Law & Other Legal Ref.	Bulletin/Chapter Ref.	Misc. Ref.
81 ADM-57		457.8 457.14	473-a		

as Chapter 991 of the laws of 1981. On December 11, 1981, the Department released 81 ADM57 which sets forth the procedures for the districts to follow in the implementation of this law. Since 81 ADM-57 was released, a number of county and agency attorneys have expressed their concerns about the implications of the language on page six of this release, which requires caseworkers to record in the case file the reasons for an attorney's determination not to proceed with a petition pursuant to Chapter 991. The general concern expressed was that this requirement breaches client confidentiality and is tactically unwise. Based upon these objections, Section IV.2 on page six of the ADM has been revised to clarify that only when a final decision has been made by the district not to pursue a petition shall the reason for this determination be documented in writing in the case record.

III. Required Action:

The districts shall replace page six of 81 ADM-57 with the revised page six which is attached to this release and revise their procedures accordingly.

IV. Effective Date June 15, 1982.

Attachment


Corinne Plummer
Deputy Commissioner
Division of Adult Services

2. PRESENTATION OF MATERIAL TO COUNTY OR AGENCY ATTORNEY AND COMMISSIONER OR HIS DESIGNEE

If the county or agency attorney finds that the evidence of a case presented by the PSA staff is legally sufficient to present in court, he shall immediately prepare a petition in accordance with section 473-a.4 SSL. The written information gathered by the caseworker shall be used in the preparation of the petition. The districts are reminded that the only services which can be provided under a short term involuntary protective services order are those authorized by section 473 SSL. Therefore, petitions made to the courts shall not request any service not authorized by section 473 SSL. Once the petition is prepared, along with the necessary information and affidavits required by section 473-a.4(c) (viii) and (d) SSL, it shall be presented to the commissioner for his/her approval and signature. The commissioner must then decide whether or not to sign the petition. In those instances in which the district decides not to initiate a petition, the reasons for this determination shall be recorded in the case record. If the county or agency attorney determines that a case is not legally sufficient for presentation in court, he shall promptly advise the PSA staff of his decision and the reasons for it.

In those cases in which the county or agency attorney determines that a case is not legally sufficient but the PSA staff still believe that a petition for a short term involuntary protective services order is appropriate, the matter shall be immediately brought to the attention of the commissioner by the PSA supervisor. After reviewing both positions, the commissioner shall make a decision on whether to petition the court for a services order. If the commissioner deems it appropriate to petition the court, the attorney shall immediately prepare the petition, as discussed above, for the commissioner's signature. In those instances where the district decides not to make a petition, the reasons for this determination shall be recorded in the case record. A copy of the written remarks shall be sent to the commissioner and the attorney. If the commissioner chooses to delegate the responsibility for approving or disapproving petitions for short term involuntary protective services orders to a designee, he must delegate one person to perform this function on his behalf. For the purposes of this directive, the term commissioner shall mean the local commissioner or his designee.

3. SITUATIONS IN WHICH THE COMMISSIONER DECIDES IT IS NOT APPROPRIATE TO PETITION THE COURT FOR A SHORT TERM INVOLUNTARY PROTECTIVE SERVICES ORDER

In those instances in which the commissioner determines it is not appropriate to petition the court for a short term involuntary protective services order, despite the recommendation by the PSA staff, the caseworker shall continue to periodically monitor the individual's situation. The caseworker shall also inform the individual, as well as any known friends or relatives, of the availability of services if the person decides to accept them voluntarily. If through the periodic monitoring of the individual it is determined that his situation has further deteriorated, this new evidence should be brought to the attention of the appropriate supervisor and put in writing. At this point the supervisor must determine if this additional evidence is strong enough to warrant being brought to the attention of the county or agency attorney and the commissioner for a redetermination of the need for a short term involuntary protective services order. If the supervisor decides not to bring the new evidence to the attention of the county or agency attorney and the commissioner, the reason for this determination must be put down in writing and placed in the case file. If the evidence is considered strong enough to warrant a redetermination of the need for a short term involuntary protective services order, the supervisor shall proceed as discussed above under number two. As previously stated, if PSA casework and/or supervisory staff are unsure about the legal sufficiency of their case, they should promptly arrange to consult with the attorney.