

New York Code of Rules and Regulations
Title 18. Department of Social Services
Chapter II. Regulations of the Department of
Social Services
Subchapter C. Social Services
Article 5. Adult and Family Services
Part 457. Protective Services for Adults

TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER C. SOCIAL SERVICES
ARTICLE 5. ADULT AND FAMILY SERVICES
PART 457. PROTECTIVE SERVICES FOR ADULTS

Part 457 Notes

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

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§ 457.1 General

(a) Protective services for adults is a State-mandated service. The provisions of Parts 400 through 407 of this Title apply in general to this service. The following factors relate specifically to protective services for adults, hereinafter referred to as PSA.

(b) Definitions. When used in this Part unless otherwise expressly stated or unless the context or subject matter requires a different interpretation:

(1) Physical abuse means the nonaccidental use of force that results in bodily injury, pain or impairment, including but not limited to, being slapped, burned, cut, bruised or improperly physically restrained;

(2) Sexual abuse means nonconsensual sexual contact of any kind, including but not limited to, forcing sexual contact or forcing sex with a third party;

(3) Emotional abuse means willful infliction of mental or emotional anguish by threat, humiliation, intimidation or other abusive conduct, including but not limited to, frightening or isolating an adult.

(4) Active neglect means willful failure by the caregiver to fulfill the care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment, willful deprivation of food, water, heat, clean clothing and bedding, eyeglasses or dentures, or health related services.

(5) Passive neglect means nonwillful failure of a caregiver to fulfill care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment or denial of food or health related services because of inadequate caregiver knowledge, infirmity, or disputing the value of prescribed services.

(6) Self neglect means an adult's inability, due to physical and/or mental impairments to perform tasks essential to caring for oneself, including but not limited to, providing essential food, clothing, shelter and medical care, obtaining goods and services necessary to maintain physical health, mental health, emotional well-being and general safety; or managing financial affairs.

(7) Financial exploitation means improper use of an adult's funds, property or resources by another individual, including but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets.

(c) Client characteristics. Protective services for adults are provided to individuals 18 years of age or older who, because of mental or physical impairments:

(1) are unable 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

(2) are in need of protection from actual or threatened harm due to physical, sexual or emotional abuse, or active, passive or self neglect, or financial exploitation or by hazardous conditions caused by the action or inaction of either themselves or other individuals; and

(3) have no one available who is willing and able to assist them responsibly.

(d) Services. PSA services are limited as appropriate to:

(1) identifying such adults who need assistance or who have no one willing and able to assist them responsibly;

(2) providing prompt response and investigation upon request of adults at risk or other persons acting on their behalf. At the time of referral, the local district shall make a determination as to whether a life-threatening situation exists. If a situation is designated as life-threatening, the district shall commence an investigation as soon as possible but not later than 24 hours after receipt of the referral. For potential PSA cases not designated as life-threatening situations, the district shall commence an investigation within 72 hours of receipt of the referral and shall make a visit to the client within three working days of the referral. For the purposes of this Part, a referral is defined as any written or verbal information provided to a district in which a specific person is identified as apparently in need of PSA, or any verbal or written information provided to a district on behalf of an adult for whom the district determines that a PSA investigation and assessment is necessary;

(3) assessing the individual's situation and service needs;

(4) providing counseling to such adults, their families, other responsible persons or to fiduciaries such as representative payees, on handling the affairs of such adults;

(5) 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;

(6) assisting in the location of social services, medical care and other resources in the community, including arrangement for day care in a protective setting;

(7) arranging for guardianship, commitment or other protective placements as needed;

(8) providing advocacy and assistance in arranging for legal services to assure receipt of rights and entitlements due to adults at risk;

(9) functioning as a guardian, 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;

(10) 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 shall be limited to six months when provided without regard to financial criteria. When such services are available through other public or private community resources, these should be utilized. The provision of these services beyond six months may be authorized on a case-by-case basis under the following conditions:

(i) guardianship or other financial management proceedings have been started within the first 60 days of the provision of PSA services; and

(ii) the local district must accept the responsibility to function as a guardian, 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) a court that a guardian is required;

(b) an office of the Federal Social Security Administration or the Railroad Retirement System that a representative payee is required; or

(c) the social services district that a protective payee is required.

Under these conditions, the provision of homemaker and housekeeper/chore services without regard to financial criteria may be continued beyond six months until the guardianship or other financial management proceedings are completed, except in no case will such services be authorized to continue for a period of more than three months subject to one reauthorization not to exceed an additional three months; and

(11) other components of PSA included in the State's Consolidated Services Plan (CSP), as required by section 34-a of the Social Services Law and Part 407 of this Title.

Section statutory authority: Social Services Law, § 34-A

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

Renumbered 482.1 to be 457.1 on 4/26/78; amended 457.1 on 8/13/80; amended 457.1 on 8/25/81; amended 457.1 on 5/01/85; amended 457.1 on 12/23/86; amended 457.1 on 8/09/93; added 457.1(b) on 2/05/97; renumbered 457.1(b) to be (c) on 2/05/97; amended 457.1(c)(1) & (2) on 2/05/97; renumbered 457.1(c) to be (d) on 2/05/97.

§ 457.2 PSA client case record

The case record of a PSA client must include the following:

(a) Application. (1) The completion of the application form designated by the department is required in order for the PSA activity to be reimbursed from Federal and State financial participation.

(2) There will be those situations when the adult in need of protective services is unable or unwilling to sign the application or complete information that cannot be immediately obtained. In these situations, the application form shall be completed and, in accordance with department instructions, entries shall be made in the case record documenting the circumstances and reasons why the application form was not signed. (b) PSA assessment/services plan. (1) The case record of each PSA client shall include a PSA assessment/services plan consisting of the following information:

(i) source of referral;

(ii) reason for referral;

(iii) household composition;

(iv) residence and living arrangements;

(v) income and resources;

(vi) medical and mental limitations;

(vii) ability to manage resources;

(viii) identification of significant other persons such as family members and friends and their willingness and capability to assist the individual;

(ix) identification of other agencies involved with the individual;

- (x) assessment of problem(s) and needs and the names of agencies involved in the assessment;
- (xi) client specific objective(s) to be achieved;
- (xii) service(s) to be provided to obtain the objective(s) and name(s) of the agencies providing the services;
- (xiii) expected duration of the services;
- (xiv) frequency of contact with the client;
- (xv) concurrence and acceptance of services by the applicant or a notation that the client is involuntary;
- (xvi) in the case of a client who cannot or will not sign the application for services (DSS 2921), documentation as to why the worker is signing the application on behalf of the client;
- (xvii) frequency of review of the services plan;
- (xviii) progress evaluation at the time of review;
- (xix) changes made in the client's services plan as a result of the periodic reviews;
- (xx) signatures of worker and supervisor; and
- (xxi) such other information as the department shall require.

(2) The PSA assessment/services plan shall replace the individual service plan required in section 406.2(b) of this Title.

(3) The PSA assessment/services plan shall be prepared on a form prescribed by the department or on a local equivalent form approved by the department.

(4)(i) The PSA assessment/services plan must be completed within 60 days of the referral date. The date of completion will be determined by the date of the supervisor's signature on the form prescribed by the department or an approved local equivalent.

(ii) Notwithstanding the time frames for completing the PSA assessment/services plan specified in subparagraph (i) of this paragraph, the services needs of individuals who are being assessed for PSA must be addressed promptly and appropriately, in accordance with the provisions of section 457.1 (c) of this Part, regardless of the date the PSA assessment/services plan is completed.

(5) The PSA assessment/services plan must be reviewed and updated:

(i) within six calendar months of the date of referral and every six calendar months thereafter; or

(ii) whenever a PSA case is closed or transferred to another service provided by the social services district, except that a form need not be completed when a case is closed due to the client's death. The date of review will be determined by the date of the supervisor's signature on the form prescribed by the department or an approved local equivalent.

(c) Progress notes. Progress notes must be maintained as part of the PSA client record as prescribed by the department. Progress notes must be recorded in the PSA case record as soon as possible but no later than 30 days after date of the event which required the use of progress notes.

(d) Other information. The PSA client record shall contain all other information required in section 406.2 of this Title, with the exception of the individual service plan, and any other information which the department may from time to time require.

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

Renumbered 482.2 to be 457.2 on 4/26/78; amended 457.2 on 5/01/85; amended 457.2 on 9/21/90; amended 457.2 on 8/09/93; amended 457.2(b) on 5/31/96.

§ 457.3 Eligibility for PSA

(a) The controlling eligibility factor is the adult's need for such services in that he/she meets the criteria as established in the definition. Except as provided in paragraph (10) of subdivision (c) of section 457.1 of this Part, PSA are to be provided such adults without regard to financial eligibility if and as long as State reimbursement is made available.

(b) When other services are used as part of a plan of protective services, the eligibility criteria as established by the local districts component of the CSP then in effect will apply unless otherwise specified.

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

Renumbered 482.3 to be 457.3 on 4/26/78; amended 457.3(b) on 12/23/86.

§ 457.4 Staffing standards

(a) Designation. The local commissioner of social services shall designate, as an identifiable assignment, protective services for adult caseworker position(s), as indicated by the district's estimated needs.

(b) Qualifications. Such caseworkers shall:

(1) preferably have had experience in working with the elderly or have basic knowledge in the field of gerontology; and

(2) meet such qualifications as established under section 680.1 of this Title.

(c) Training. (1) All workers who provide PSA, including supervisors, are required to complete satisfactorily a basic training program in PSA. Staff must attend the first department-sponsored PSA institute designated for their region following the date of their employment in PSA. Basic PSA training provided directly by local districts in lieu of the department-sponsored institute must be approved by the department.

(2) All workers who provide PSA, including supervisors, must attend department-sponsored training on the legal aspects of PSA at the first session designated for their region following their completion of the basic PSA institute or approved local equivalent. Training on the legal aspects of PSA provided directly by social services districts must be approved in advance by the department.

(3) All PSA supervisors must attend department-sponsored PSA supervision training at the first session designated for their region following the date of their employment as a PSA supervisor. PSA supervision training provided directly by social services districts must be approved in advance by the department.

(4) If the department does not have sufficient resources to enable a social services district to comply with the requirements set forth in paragraph (1), (2) or (3) of this subdivision, the department must

make arrangements with the district to have its staff attend a subsequent offering of the required training for which there are adequate resources available to meet the district's needs.

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

Renumbered 482.4 to be 457.4 on 4/26/78; amended 457.4 on 12/23/86; added 457.4(c) on 10/10/90.

§ 457.5 Duties and responsibilities

(a) In the provision of this service, the agency shall be responsible for the services as listed in subdivision (c) of section 457.1 of this Part and the then in effect CSP.

(b) Contacts with PSA clients. (1) PSA staff must maintain contact with PSA clients as frequently as staff of the local social service district determine necessary to assure that the service needs of such clients are adequately met through the utilization of available community resources. The type and frequency of client contacts will depend on:

- (i) the specific circumstances of the individual's situation;
- (ii) the ability and willingness of family members, friends and neighbors to assist the individual; and
- (iii) the involvement of other agencies in the provision of services to PSA clients.

(2) At a minimum, PSA clients, who are living in the community and are in any of the situations specified in subparagraphs (i), (ii) and (iii) of this paragraph, must be visited in their homes at least once every calendar month:

- (i) when abuse, neglect or exploitation by another person is suspected or documented;
- (ii) when environmental conditions exist in the home which are a threat to the health and safety of the client; or
- (iii) when a client is home bound or when there is no other way to have a face to face contact with the client without making a home visit.

(3) For PSA clients in any of the situations specified in subparagraphs (2)(i), (ii) and (iii) of this subdivision, the monthly home visit may be delegated to the professional casework or social work staff of another public agency or voluntary agency if the following conditions are met:

- (i) the case is stabilized;
- (ii) the other agency agrees to submit written monthly status reports which become part of the client's case record;
- (iii) the district evaluates the status reports submitted by the other agency;
- (iv) the PSA caseworker visits the client within 72 hours of the receipt of the status report, if the report indicates that there has been a change in the client's circumstances; and
- (v) local districts adhere to their case management responsibilities as defined in section 403.4 of this Title.

(4) For all other PSA clients living in the community, PSA staff must maintain at least face to face contact every calendar month and make a home visit at least once every three calendar months.

(5) For PSA clients who are permanent residents of residential care facilities, PSA staff must maintain telephone contact with facility staff at least once every three months in order to monitor the condition of the client.

(6) PSA clients who are hospitalized need not be visited, but PSA staff must maintain monthly telephone contact with hospital discharge planning staff in order to monitor the client's condition and to plan for the discharge of the client to his or her home or other appropriate setting.

(7) PSA clients who are incarcerated need not be visited, but PSA staff must maintain monthly telephone contact with correction facility staff in order to monitor the client's condition and plan for his or her release to the community.

(c) In addition to those activities listed in subdivision (a) of this section, the PSA unit has the following areas of responsibility:

(1) Emergency assistance to adults. PSA staff shall be responsible in conformity to subdivision (c) of section 397.5 of this Title for a social study to determine the need for protective services in those EAA situations where there is need to replace lost or mismanaged cash for a person who by reason of advanced age, illness, infirmity, mental weakness, physical handicap, intemperance, addiction to drugs, or other cause, has a substantial impairment in his ability to manage. An application for emergency assistance shall not be deemed an application for services.

(2) Alternative social services payment procedures. Based on the adult's incapacity as established by social study, there may be a need to initiate forms of payment as otherwise provided, and include restricted money payments, vendor payments, and the designation of a protective payee. The designation of a protective payee shall preferably be made from the PSA staff in conformity to section 381.7 of this Title.

(3) Representative payee for social security benefits. When there are indications that social security benefits are being mishandled due to the recipient's incapacities, the PSA staff will be responsible for:

(i) developing a social study to determine the need for the designation of a representative payee;

(ii) initiating the application to the social security office in those situations where there is no one else available; and

(iii) securing a representative payee in appropriate situations. It shall be the responsibility of the local commissioner of social services or director of social services to serve as representative payee when there is no one else willing or able to do so, provided, however, that the responsibility for actual service delivery may be delegated to appropriate staff.

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

Renumbered 482.5 to be 457.5 on 4/26/78; amended 457.5 on 8/13/80; amended 457.5 on 5/01/85; amended 457.5 on 12/23/86; amended 457.5 on 9/21/90; amended 457.5 on 8/09/93; amended 457.5(b) on 5/31/96.

§ 457.6 Serving involuntary clients

(a) General. When the district believes that there is a serious threat to an adult's well being and that the adult is incapable of making decisions on his or her own behalf because of mental impairments, the social services official has a responsibility to pursue appropriate legal intervention in accordance with the provisions of sections 473 and 473-a of the Social Services Law, articles 9, 15, and 81 of the Mental Hygiene Law, article 8 of the Family Court Act and article 17-A of the Surrogate's Court

Procedure Act, even though such intervention may be against the wishes of or without the knowledge of the adult at risk. The districts must employ the least restrictive intervention necessary to effectively protect the adult. The immediacy and seriousness of the threat to the individual will determine whether crisis intervention procedures and/or other legal procedures are warranted as set forth in subdivisions (b) and (c) of this section.

(b) Crisis intervention. For an adult who exhibits such a degree of self-destructive behavior or who is living in such a hazardous situation that there is substantial risk of harm to himself, herself or others and such adult is incapable of making decisions on his or her own behalf because of mental impairments, the social services official has a responsibility to initiate appropriate action even though it may be without the adult's consent or knowledge. Such actions of intervention will usually include enlisting the services of other agencies and professionals. The district shall utilize the appropriate intervention or procedures as follows:

(1) enlist immediate help of a peace officer to take an adult into custody pursuant to section 9.41 of the Mental Hygiene Law or for other appropriate assistance;

(2) request the local director of community services to apply for admission of an adult to a hospital or to direct the removal of an adult to a hospital pursuant to sections 9.37 and 9.45 of the Mental Hygiene Law or to take other appropriate action;

(3) initiate application for admission to a mental hygiene facility on certification of two examining physicians pursuant to sections 9.27 and 15.27 of the Mental Hygiene Law;

(4) enlist help from public health officials and call an ambulance or other emergency medical care provider in acute situations;

(5) take the necessary action for the initiation by a social services official of a petition to obtain an order authorizing the provision of short-term involuntary protective services pursuant to section 457.10 of this Part; and/or

(6) take the necessary action to initiate proceedings for an order of protection against an abusive household or family member pursuant to sections 119, 822 and 842 of the Family Court Act.

(c) Other legal procedures. There are other procedures established in the Mental Hygiene Law and the Surrogate's Court Procedure Act to be utilized in non-crisis situations in order to provide long range planning or protection to certain PSA clients. These procedures require more time to implement than afforded in emergency or crisis situations. In appropriate situations the district must:

(1) initiate efforts to arrange for the appointment of a guardian in accordance with the provisions of article 81 of the Mental Hygiene Law;

(2) serve in the capacity of guardian in those situations in which a PSA client is in need of a guardian and no one else is willing and able to serve responsibly; or

(3) initiate efforts to arrange for the appointment of a guardian for the mentally retarded in accordance with article 17-A of the Surrogate's Court Procedure Act.

(d) Local social services districts must develop and implement procedures for the provision of services to involuntary clients. Such procedures must include provisions for:

(1) training PSA and legal staff in the appropriate utilization of the various interventions which may be employed on behalf of involuntary PSA clients, as described in this section and in paragraphs (2) and (3) of subdivision (c) of section 457.5 of this Part;

(2) continuing community education and networking activities in accordance with section 457.7 of this Part, including meetings with representative community agencies for the purpose of establishing specific agency roles and areas of responsibility in the provision of services to involuntary clients;

(3) obtaining mental health evaluations on behalf of PSA clients when involuntary interventions are being considered;

(4) assuring the availability of the agency's legal staff for timely consultation with PSA staff when requested and the timely implementation of legal interventions on behalf of involuntary clients in appropriate situations; and

(5) assuring that any significant disagreements between PSA and legal staff regarding the need for legal intervention on behalf of an involuntary PSA client are promptly referred to the local social services commissioner or his or her designee for resolution.

Section statutory authority: Family Court Act, § A8, § 119, § 822, § 842; Mental Hygiene Law, § TBA9, § TCA15, § TEA81, § 9.27, § 9.41, § 9.37, § 9.45, § 15.27; Surrogate's Court Procedure, § A17-A; Social Services Law, § 473, § 473-A

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

Renumbered 457.8 to be 457.6 on 12/23/86; amended 457.6 on 9/21/90; amended 457.6 on 8/09/93; amended 457.6(d) on 5/31/96.

§ 457.7 Coordination and utilization of community resources

(a) The provision of PSA shall not be viewed as a single agency responsibility but rather as a community-based service responsibility.

(b) As such, the local social services agency must make known and, to the extent possible, secure the active participation and cooperation of those community resources providing specific services for adults.

(c) Community resources to be involved will include personnel from medical, psychiatric, nursing and legal resources, law enforcement groups, public service agencies, advocacy groups, church councils and those other public and private service agencies of the particular community. These resources shall constitute a PSA delivery network.

(d) Meetings shall be held with representative community agencies for the purpose of establishing specific agency roles and areas of responsibility in the provision of PSA. The social services district shall initiate such efforts directed at establishing this community-based responsibility unless such action has been initiated by other agencies.

(e) In addition to the involvement of other community agencies in the provision of services to PSA clients, the other divisions/units of the local social services department, such as legal, accounting, medical assistance, income maintenance and services, shall be effectively integrated into the PSA service delivery network.

(f) Social services districts must educate the general public, service providers, advocacy groups and other appropriate agencies about the scope of PSA and how to obtain services. Public education and outreach activities must:

(1) be sufficient to ensure access to PSA;

(2) be conducted on an on-going basis; and

(3) use any informational materials provided by the department.

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

Renumbered 457.9 to be 457.7 on 12/23/86; amended 457.7 on 9/21/90; amended 457.7(f) on 8/25/93.

§ 457.8 Annual plan for the provision of PSA

(a) After consultation with appropriate public, private and voluntary agencies, including but not limited to health, mental health, aging, legal and law enforcement agencies, each local department of social services shall prepare and submit to the State commissioner an annual plan for the provision of PSA.

(b) Prior to submission to the State commissioner, each local social services department shall obtain the approval of such PSA plan by the chief executive officer, or the legislative body in those counties without a chief executive officer.

(c) The annual plan for the provision of PSA shall be an integral component of a district's consolidated services plan, as required by section 34-a of the Social Services Law and Part 407 of this Title. These plans shall be submitted by each local social services department to the State commissioner, in a manner and in a format prescribed by the department.

(d) Annual plans for the provision of PSA shall describe the local implementation of this program, including the organization, staffing, mode of operations and financing of PSA, as well as provisions made for the purchase of services, interagency relations, interagency agreements, service referral mechanisms, locus of responsibility for cases with multiagency services needs, and any other information the department shall determine pertinent.

(e) The department shall establish a schedule for the submission of annual plans for the provision of PSA by the local departments of social services. Within 30 days of receipt of plans, the State commissioner shall certify whether or not the plan submitted by a local department of social services fulfills the purposes and meets the requirements of section 473 of the Social Services Law and applicable department regulations. If the State commissioner certifies that an annual plan for the provision of PSA submitted by a local department of social services does not fulfill the purposes or does not meet the requirements of section 473 of the Social Services Law and applicable department regulations, the State commissioner shall inform the district in writing of such determination and the reasons therefor and may withhold State reimbursement for all or part of a local department's PSA activities.

(f) A social services district shall take immediate action in cooperation with the department to correct any deficiencies in such district's annual plan for the provision of PSA.

(g) Any social services district aggrieved by a decision of the State commissioner concerning the disapproval of the local department's annual plan for the provision of PSA or the withholding of State reimbursement for PSA activities, shall be entitled to a fair hearing in accordance with the applicable provisions of the Social Services Law and department regulations. In the event of an adverse fair hearing decision, a social services district shall be entitled to judicial review pursuant to section 22 of the Social Services Law. The withholding of reimbursement for expenditures incurred pursuant to disapproved portions of a district's PSA plan shall remain effective pending final resolution of such review.

Section statutory authority: Social Services Law, § 22, § 34-A, § 473

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

Renumbered 457.10 to be 457.8 on 12/23/86.

§ 457.9 Immunity from civil liability

(a) 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 in accordance with sections 473 and 473-a of the Social Services Law shall have immunity from any civil liability that might otherwise result by reason of providing these services, in accordance with section 473.3 of the Social Services Law, provided such official or his designee was acting in the discharge of his duties and within the scope of his employment, and that such liability did not result from the willful act or gross negligence of such official or his designee.

(b) Any person who in good faith believes that a person 18 years of age or older may be an endangered adult, as such term is defined at section 473-a of the Social Services Law, or in need of protective services, and who, based on such belief either:

(1) reports or refers such person 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; or

(2) testifies in any judicial or administrative proceeding arising from such report or referral, shall have immunity, in accordance with section 473-b of the Social Services Law, from any civil liability that might otherwise result by reason of the act of making such report or referral or of giving of such testimony.

Section statutory authority: Social Services Law, § 473, § 473-A, § 473-B

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

Renumbered 457.11 to be 457.9 on 12/23/86.

§ 457.10 Short-term involuntary protective services orders

(a) Definitions. When used in this section unless otherwise expressly stated or unless the context of subject matter requires a different interpretation:

(1) Endangered adult means a person, age 18 or over who is:

(i) in a situation or condition which poses an imminent risk of death or imminent risk of serious physical harm to him or her; and

(ii) lacks the capacity to comprehend the nature and consequences of remaining in this situation or condition. However, refusal by the adult to accept protective services shall not in itself be sufficient evidence of such lack of capacity. In addition, mental illness shall not in itself be sufficient evidence of such lack of capacity.

(2) Short-term involuntary protective services are those services authorized in section 473 of the Social Services Law and set forth in subdivision (c) of section 457.1 of this Part which are provided involuntarily pursuant to the procedures established by this section.

(3) Petitioner means a social services official, as defined in section 2 of the Social Services Law, initiating a proceeding pursuant to this section.

(4) Respondent means an allegedly endangered adult.

(5) Allegedly endangered adult means a person who is the subject of a petition by a social services official for a short-term involuntary protective services order.

(b) (1) Petition. A social services official may petition a supreme or county court of appropriate venue for an order authorizing the provision of short-term involuntary protective services pursuant to section 473-a of the Social Services Law.

(2) The petition shall state, to the extent the facts can be determined with reasonable diligence, considering the need to provide services expeditiously:

(i) the name, age and physical description of the allegedly endangered adult; and

(ii) the address or other location where the allegedly endangered adult can be found.

(3) The petition shall state facts showing:

(i) that the adult who is the subject of this petition is an endangered adult as defined in paragraph (a)(1) of this section;

(ii) the specific short-term involuntary protective services petitioned for, how such services would remedy the situation or condition which poses an imminent risk of death or imminent risk of serious physical harm to the allegedly endangered adult, and why such services are not overbroad as to scope or duration;

(iii) that the short-term involuntary protective services being applied for are necessitated by the situation or condition described in paragraph (a)(1) of this section;

(iv) that other voluntary protective services have been tried and have failed to remedy the situation, and that a future, voluntary, less restrictive alternative would not be appropriate or would not be available;

(v) if a change in the allegedly endangered adult's physical location is being applied for, that remedy of the dangerous situation or condition described in paragraph (a)(1) of this section is not appropriate in existing physical surroundings of the allegedly endangered adult;

(vi) any inconsistency known to petitioner between the proposed short-term involuntary protective services and the allegedly endangered adult's religious belief;

(vii) that the petitioner shall not knowingly apply for medical evaluations or medical treatment pursuant to section 473-a of the Social Services Law for a competent adult for the sole reason that such person relies upon or is being furnished treatment by spiritual means through prayer, in lieu of medical treatment, in accordance with the tenets and practices of a recognized church or religious denomination of which the adult is a member or bona fide adherent;

(viii) that it reasonably appears that the allegedly endangered adult does not understand the English language, that reasonable efforts have been made to communicate with the allegedly endangered adult in a language he or she understands;

(ix) that no prior application has been made for the relief requested in the petition or for any similar relief, or if prior application has been made, the determination thereof, and the new facts, if any, that were not previously shown which warrant a renewal of the application.

(4) The petition shall be verified. Any allegations which are not based upon the personal knowledge of the petitioner shall be supported by affidavits provided by a person or persons having such knowledge. Such affidavits shall be attached to the petition.

(c) Each district shall submit such reports on the implementation of section 473-a of the Social Services Law as may be required by the department. These reports shall be in a manner and on a format prescribed by the department.

(d) Nothing in this Part precludes the simultaneous commencement of a proceeding under this section and a proceeding under section 9.43 of the Mental Hygiene Law, or a proceeding under article 81 of

such law. Furthermore, a pending proceeding under article 81 of such law does not preclude commencement of a proceeding under this section.

Section statutory authority: Mental Hygiene Law, § 9.43; Social Services Law, § 473, § 473-A, § 2; Mental Hygiene Law, § TEA81

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

Renumbered 457.14 to be 457.10 on 12/23/86; amended 457.10(d) on 8/25/93.

§ 457.11 Orders to gain access to persons believed to be in need of protective services

(a) General. In accordance with the provisions of section 473-c of the Social Services Law, a social services official may apply to the Supreme Court or the county court for an order to gain access to a person to assess whether that person is in need of PSA when such an official, having reasonable cause to believe that the person may be in need of PSA, is refused access by that person or another individual. Any PSA provided pursuant to this section must be provided in accordance with the provisions of section 473 of the Social Services Law and of this Part.

(b) Response to referrals. Appropriate staff of a social services district must respond to PSA referrals in accordance with the provisions of section 457.1(c)(2) of this Part. If an employee of a social services district who is authorized to provide PSA is denied access to a person who is believed to be in need of PSA by another individual or by such person, the social services district must take the following action:

(1) enlist the aid of family members, friends, neighbors, or staff of other appropriate agencies, including law enforcement agencies, for the purposes of persuading the individual(s) responsible for denying access to a person who may be in need of PSA to permit the district to complete an assessment of the person's need for PSA; and

(2) if the efforts initiated in accordance with paragraph (1) of this subdivision are unsuccessful, the social services district must determine whether or not to apply to the Supreme Court or the County Court for an order to gain access to a person who may be in need of PSA, in accordance with the provisions of this section. In deciding whether or not to apply for such an order, the social services district must determine if the information provided by the referral source and other persons familiar with the situation and the observations of staff of the social services district warrant such an action.

(c) Situations in which a social services official decides not to apply for an order to gain access. When a social services official determines that it is not appropriate to apply for an order to gain access to a person who may be in need of PSA, the reasons for his or her decision must be documented in the case record along with the efforts made by the district to gain access to the person believed to be in need of PSA in accordance with paragraph (b)(1) of this section and all other relevant information related to the social services district's response to the referral. In addition, the district shall notify the client and known relatives, friends and interested agencies of the continued willingness of the district to complete an assessment and provide appropriate services if the person agrees to accept such services.

(d) Situations in which a social services official decides to apply for an order to gain access. In those situations in which a social services official decides to apply for an order to gain access to a person who may be in need of PSA, an application must be prepared which states, to the extent that the facts or circumstances can be verified or determined:

(1) the name and address of the person who may be in need of PSA and the premises at which such person may be found;

(2) the reason the social services official believes that such person may be in need of PSA, which may include information provided by other agencies or individuals who are familiar with that person;

(3) the person or persons who are responsible for preventing the social services official from gaining access to the person who may be in need of PSA;

(4) the efforts made by the employees of a social services district to gain access to the person who may be in need of PSA as set forth in paragraph (b)(1) of this section;

(5) the names of any individuals, such as physicians or nurses, or other health or mental health professionals qualified to participate in the assessment, who will accompany and assist the social services official in conducting the PSA assessment;

(6) the manner in which the proposed assessment is to be conducted;

(7) that the social services official seeks an order solely for the purpose of assessing the need of a person for PSA; and

(8) that no prior application has been made for the relief requested or for any similar relief, or if prior application has been made, the determination thereof, and the new facts, if any, that were not previously shown which warrant a renewal of the application.

(e) Affidavits. Any allegations which are not based upon personal knowledge must be supported by affidavits provided by a person or persons having such knowledge. Such affidavits must be attached to the application.

(f) Preference. Applications for orders to gain access to persons who may be in need of PSA will have preference over all other causes in all courts of appropriate jurisdiction, except those with a similar statutory preference.

(g) Standard for proof and procedure. The standard for proof and procedure for an authorization from a court for a social services district to conduct a PSA assessment is the same as for a search warrant under article 690 of the Criminal Procedure Law.

(h) When a court denies a social services official an order to gain access to a person believed to be in need of PSA, the district must:

(1) maintain a copy of the court's decision in the case record; and

(2) notify the potential client and any known relatives, friends and interested agencies of the district's willingness to complete an assessment and provide appropriate services upon the request of the potential client.

(i) When a court grants an order to gain access in accordance with the provisions of this section, the social services official or his or her designee, accompanied by a police officer, will enter the premises where the person who is believed to be in need of PSA can be found and conduct an assessment of the person's needs in accordance with the provisions of section 457.2 of this Part. A social services official must conduct an assessment, pursuant to the provisions of this section, in cooperation with those qualified individuals named in the application in accordance with paragraph (d)(5) of this section. A copy of the court order must be maintained in the case record.

(j) Neither the provisions of section 473-c of the Social Services Law nor the provisions of this section are to be construed to authorize a social services official to remove any person from the premises described in an application for an order to gain access to a person who may be in need of PSA, or to provide any involuntary protective services to any person other than to assess a person's need for PSA. Nothing in this section shall be construed to impair any existing right or remedy.

(k) In the event that a person who is assessed for PSA, pursuant to this section, is determined to be in

need of PSA and refuses to accept services, involuntary protective services must be provided in appropriate situations in accordance with the provisions of sections 473 and 473-a of the Social Services Law, and sections 457.6 and 457.10 of this Part.

(l) In order to ensure the effective implementation of this section, social services commissioners must facilitate cooperative action between the district's PSA staff and the county or agency attorneys who file petitions for orders to gain access to persons who may be in need of PSA.

(m) As part of their outreach and community education efforts for PSA, mandated pursuant to section 457.7 of this Part, social services districts must notify the courts, law enforcement agencies and those health and mental health professionals and agencies who may be needed to assist the districts in completing a PSA assessment, of the provisions of section 473-c of the Social Services Law and this section.

(n) Reports. Each social services district must submit such reports on the implementation of section 473-c of the Social Services Law and this section as may be required by the department. Such reports must be prepared in a manner and be in a format prescribed by the department.

(o) Social services districts must document their efforts to utilize section 473-c of the Social Services Law and this section, and must maintain case records specific to such utilization of this section, as prescribed by the department.

Section statutory authority: Criminal Procedure Law, § A690; Social Services Law, § 473, § 473-A, § 473-C

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

Renumbered 457.9 to be 457.11 on 12/23/86; amended 457.11 on 5/28/87.

§ 457.12 Community guardianship

(a) General. Pursuant to the provisions of section 473-c of the Social Services Law, a social services district may contract with a community guardian program for the purposes of acting as a guardian on behalf of persons who meet the requirements of subdivision (c) of this section and for whom the district has commenced a special proceeding for the appointment of a guardian pursuant to article 81 of the Mental Hygiene Law.

(b) Definitions. When used in this section, unless otherwise expressly stated or unless the subject matter requires a different interpretation:

(1) 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 guardianship services to adults who are eligible for such services, in accordance with the provisions of article 81 of the Mental Hygiene Law.

(2) Hospital means an inpatient medical facility as defined in subdivision one of section 2801 of the Public Health Law, or the inpatient services of a psychiatric center under the jurisdiction of the Office of Mental Health or any other psychiatric inpatient facility as defined in subdivision 10 of section 1.03 of the Mental Hygiene Law.

(3) Residential facility means any of the following:

(i) a skilled nursing facility or health-related facility operated pursuant to article 28 of the Public Health Law; or

(ii) an alcoholism or substance abuse treatment facility operated pursuant to article 19 or 23 of the

Mental Hygiene Law; or

(iii) a community residence, family care home, or other community care facility for the mentally disabled operated pursuant to article 31 of the Mental Hygiene Law; or

(iv) an adult care facility operated pursuant to article 7 of the Social Services Law.

(c) Eligibility requirements. A social services official may bring a petition to appoint a community guardian as guardian for a person only if the person is:

(1) eligible for and in receipt of PSA, as defined in section 457.1(b) of this Part at the time of the petition; and

(2) without a capable friend or relative or responsible agency willing and able to serve as guardian; and

(3) living outside of a hospital or residential facility, or living in a hospital or residential facility and appointment of a community guardian is part of a discharge plan to return such person to the community.

(d) Contract requirements. A contract between a local social services official and a community guardian program must comply with the requirements of Part 405 of this Title pertaining to the purchase of services by social services districts. In addition, each contract must provide that:

(1) the community guardian program will make diligent efforts to maintain each person for whom the community guardian program is appointed as guardian in the community;

(2) the community guardian program will petition the court to relinquish its duties as guardian if a person for whom it is appointed as guardian is no longer in need of a guardian, or a capable friend or relative becomes available to serve as guardian, or the person enters a hospital or residential facility with the expectation of a long-term stay which will exceed six months and there is no anticipation of a return to the community, or the person remains in a hospital for more than six months with no expectation of a return to the community;

(3) whenever a community guardian program intends to petition the court to relinquish its responsibilities as guardian, the community guardian program will notify the social services district in writing, for its review and approval, of the reasons for the proposed relinquishment of responsibility and the community guardian program's proposed plan to meet the adult's continuing services needs. Upon receiving such approval from the social services district, the community guardian program must present such proposed plan to the court along with its petition to relinquish its responsibilities as guardian;

(4) the community guardian program will act on behalf of each person for whom it is appointed as guardian to obtain such medical, social, mental health, legal and other services and all entitlements and public benefits that are available and to which the person is entitled or qualifies and which are required for the person's safety and well-being;

(5) all remuneration awarded to the community guardian program by the court from the estate of a person for whom the community guardian program is appointed as guardian will be the lesser of the cost incurred by the community guardian program in serving such person or the fee that would otherwise be awarded by the court. Such remuneration must be paid over to the social services district;

(6) the community guardian program will obtain annual assessments from two qualified psychiatrists or one qualified psychiatrist and one qualified psychologist who are independent of the community guardian program for each person for whom it serves as guardian to determine whether continuation of such service is necessary;

(7) the community guardian program will promptly inform the appointing court and the social services

district of the result of the assessments required by paragraph (6) of this subdivision;

(8) the files and records of the community guardian program will be open to inspection by the local social services officials and the department;

(9) a case record must be established for each recipient of services from a community guardian program. At a minimum, the case record must contain:

(i) copies of the PSA assessment/services plan and updates prepared by the district in accordance with the provisions of section 457.2 of this Part;

(ii) semiannual assessments which must contain a description of the person's current mental and physical condition, housing conditions, availability of family members and friends and their willingness and capacity to assist the individual, the involvement of other agencies in the delivery of services to the client and the continuing services needs of the client and the plan for addressing these needs;

(iii) copies of the annual assessments required by paragraph (6) of this subdivision;

(iv) a separate financial management folder containing an individual financial management plan, a record of all financial transactions made on behalf of the adult by the community guardian program, copies of receipts for all expenditures made by the program on behalf of an individual, and copies of all other documents pertaining to the adult's financial situation as required by the department;

(v) itemized statements of costs incurred in the provision of services for which the community guardian program received court-authorized reimbursement directly from the individual's estate; and

(vi) other information as required by the department;

(10) a community guardian program must advise the persons served by such program of their right to review their case record in accordance with the provisions of section 357.2(c) of this Title; and

(11) in the event a conflict exists or develops between the stated wishes of a client, or the known customs, values, preferences, or beliefs of a client, and the values, standards, mission, or principles of a community guardian program, or an employee of such program, and if, under such circumstances, the community guardian program or the employee intends to substitute its own judgment in contravention of the client's stated wishes or known customs, values, preferences or beliefs, such program will immediately notify the local social services official and the appointing court of the conflict. Under such circumstances, the local social services official must investigate the circumstances of the conflict and must either take action to resolve the conflict and notify the court of the action taken to resolve the conflict; seek the advice of the court for resolution of the conflict; or petition for a substitute guardian.

(e) Department review and approval of contracts. Social services districts choosing to establish a community guardian program must submit a copy of the proposed contract between the district and a community guardian program to the department for its review and approval prior to the execution of the contract. The proposed contract must contain the following information:

(1) the name of the social services district;

(2) the name of the community guardian agency with whom the district plans to contract;

(3) documentation of the agency's status as a not-for-profit corporation or a local governmental organization;

(4) a description of the particular population or area to be served if not all PSA recipients served by the district who require guardianship are to be served by the community guardian agency, and a justification for utilizing a community guardian program in such a limited application;

(5) the projected number of persons for whom the community guardian agency will be appointed

guardian;

(6) the projected budget of the program;

(7) a description of the relationship between the community guardian program and the district's PSA program, including a description of each agency's service delivery responsibility for persons receiving community guardianship services; and

(8) any other information required to be included in a purchase of services agreement pursuant to Part 405 of this Title.

(f) Contract monitoring responsibilities of the social services district. (1) A social services district must conduct semiannual reviews of each case record maintained by a community guardian program to assure that the needs of the persons served by the program are adequately met and that continued services by the community guardian program are necessary.

(2) Each social services district must assure that no director, officer, or employee of a community guardian program will have a substantial interest in any corporation, organization or entity which contracts with such program to provide services to any person for whom the community guardian program is guardian. For the purpose of this paragraph, a person is determined to have a substantial interest in a corporation, organization or entity if such person receives financial remuneration from such corporation, organization or entity. A social services district may impose a more restrictive conflict of interest standard subject to the prior approval of the department.

(3) Each social services district must assure that persons hired by the community guardian program to provide services to a person for whom the community guardian program has been named guardian will be able to provide evidence of successful paid or volunteer experience in providing direct services to frail elderly or mentally disabled persons. Such experience may have been obtained in one or more of the following settings: a mental health facility or agency, a protective services agency, other human services agency, a home care services agency, a hospital or other health care agency. Documentation of such employee's experience must be maintained by the district and must be available for review by the department upon request. For the purposes of this paragraph, evidence of successful paid or volunteer experience means a demonstrated capability by the person that he or she is able to effectively serve the frail elderly or the mentally disabled population.

(g) Service delivery responsibilities of the district. (1) A social services district must continue to provide PSA for three months following the appointment of a community guardian program as a guardian for a PSA client to assure that the client's situation is stabilized and that the services needs of the client will continue to be met. In those situations in which the client's situation is not stabilized after three months, the district must continue to provide PSA until the client's situation is stabilized.

(2) A local social services official will not be relieved of any duty to provide services to eligible persons because of the operation of a community guardian program in the locality or by cessation of such program in the locality. Eligibility determinations for services available from social services officials must be based on an individual assessment of need which must not be determined solely on the basis of the presence of the services of a community guardian program.

(h) Reimbursement to community guardian programs. Expenditures made by a social services district, pursuant to an approved contract for community guardianship services in accordance with the provisions of this section, will be subject to reimbursement by the State, in the amount of 50 percent of such expenditures, after first deducting therefrom any Federal funds properly received or to be received and any amounts received pursuant to paragraph (d)(5) of this section.

(i) Reporting requirements. Each social services district must submit reports on the implementation of section 473-c of the Social Services Law as may be required by the department. Such reports must be in a manner and in a format prescribed by the department.

Section statutory authority: Mental Hygiene Law, § TDA19, § TEA32, § TEA31, § TEA81, § 1.03; Public Health Law, § A28, § 2801; Social Services Law, § A7, § 473-C

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

Added 457.12 on 12/23/87; amended 457.12 on 8/25/93; amended 457.12 (a) on 8/25/93; amended 457.12(b)(1) on 8/25/93; amended 457.12 (c) on 8/25/93; amended 457.12(d)(1)-(6) on 8/25/93; amended 457.12(e)(4)&(5) on 8/25/93; amended 457.12(f)(2)&(3) on 8/25/93; amended 457.12(g)(1) on 8/25/93.

§ 457.13 Notice

A person who is the subject of a referral or an application for PSA must receive written notice of the district's determination of eligibility or ineligibility for PSA in accordance with section 404.1 (f) of this Title in the following circumstances:

- (a) when the district makes a determination of eligibility or ineligibility for PSA after an application for PSA has been made by an adult, the adult's authorized representative, or by someone acting responsibly for such adult, in accordance with section 404.1 (c) of this Title; or
- (b) when the district makes a determination of eligibility or ineligibility for PSA following acceptance of a referral as defined in this Part and completion of a PSA investigation and assessment in accordance with the terms of this Part.

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

Added 457.13 on 8/25/93.

§ 457.14 Informing referral sources

(a) When referrals are made to a social services district from community resources which are part of a PSA service delivery network in accordance with section 457.7 (c) of this Part, the following requirements must be met:

- (1) 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 section 457.2 (b) of this Part.
- (2) When information provided by a referral source is not accepted as a PSA referral, the referral source must be informed orally or in writing of the district's decision within 15 calendar days of the decision.

(b) When referrals are made to a social services district from sources other than community resources which are part of a PSA delivery network, the following requirements must be met:

- (1) When information provided by a referral source is accepted as a PSA referral, the referral source must be informed orally or in writing within 15 calendar days of the completion of the PSA assessment required by section 457.2 (b) of this Part that the district will or will not provide services to the client. The information provided to the referral source must not specify the nature of the services that will or will not be provided to the client.
- (2) When information provided by a referral source is not accepted as a PSA referral, the referral

source must be informed orally or in writing within 15 calendar days of the decision that the district will or will not provide services to the client. The information provided to the referral source must not specify the nature of the services that will or will not be provided to the client.

(c) The oral or written information provided to referral sources must include the name and telephone number of a supervisor to whom any further questions regarding the referral can be directed.

(d) Documentation of information provided to referral sources. (1) Documentation of oral information provided to referral sources must be contained in progress notes as prescribed by the department.

(2) Copies of written information provided to referral sources must be maintained in the case record.

(e) Any other disclosure of information about an applicant for PSA or a recipient of PSA must comply with the provisions of Part 357 of this Title.

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

Added 457.14 on 8/25/93.

§ 457.15 Reports to law enforcement officials

(a) Whenever a social services official, or his or her designee authorized or required to determine the need for, or to provide or arrange for the provision of PSA, in accordance with the provisions of this Part, has a reason to believe that a crime (a misdemeanor or a felony), as defined in the Penal Law, has been committed against a person for whom the need for such services is being determined or to whom such services are being provided or arranged, the social services official or his or her designee must report this information to the appropriate police or sheriff's department. This information also must be reported to the district attorney's office when such office has requested this information.

(b) In determining whether there is a reason to believe that a crime, as defined in the Penal Law, has been committed against a person whose need for PSA is being determined, or a person for whom PSA is being provided or arranged, a social services official or his/her designee must review and evaluate, as necessary, the following:

(1) information obtained through observing and interviewing a person whose need for PSA is being determined, or a person for whom PSA is being provided or arranged;

(2) information obtained from other persons, agencies, offices or organizations who are involved in determining a person's need for PSA or providing or arranging services for a person who is receiving PSA;

(3) information obtained from the person or persons who are suspected of committing a crime against a person whose need for PSA is being determined or a person for whom PSA is being provided or arranged; and

(4) information obtained from other persons who have knowledge about the person whose need for PSA is being determined, or a person for whom PSA is being provided or arranged.

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

Added 457.15 on 2/05/97.

§ 457.16 Confidentiality

(a) Definitions. When used in this section, unless otherwise expressly stated or unless the context requires a different interpretation:

(1) Subject of a report means a person who is the subject of a referral or an application for PSA or who is receiving or has received PSA from a social services district.

(2) Authorized representative of a subject of a report means:

(i) a person named in writing by a subject to be a subject's representative for purposes of requesting and receiving records under this Part; provided, however, that the subject has contract capacity at the time of the writing or had executed a durable power of attorney at a time when the subject had such capacity, naming the authorized representative as attorney-in-fact, and such document has not been revoked in accordance with applicable law;

(ii) a person appointed by a court, or otherwise authorized in accordance with law to represent or act in the interests of the subject; or

(iii) legal counsel for the subject.

(b) Information in the possession of the department or a social services district including, but not limited to, reports made pursuant to this Part, the names of referral sources, written reports or photographs, required forms, progress notes and other information in the case record concerning the subject of a report, is confidential. Accordingly, the department or a social services district must not release reports or other information in their possession which pertain to a person who is the subject of a report without the approval of such subject or his or her authorized representative, except as provided for in subdivision (c) of this section.

(c) The following persons, officers and agencies may receive information from the department or a social services district concerning the subject of a report:

(1) any person who is the subject of a report or such person's authorized representative;

(2) a provider of services to a current or former PSA client where a social services official, or his/her designee, has determined that such information is necessary to determine the need for, or to provide or arrange for the delivery of PSA. For the purposes of this section a PSA client means the subject of a PSA report;

(3) a court, upon a finding that the information in the record is necessary for the use by a party in a criminal or civil action or in the determination of an issue before the court;

(4) a grand jury, upon a finding that the information in the record is necessary for the determination of charges before the grand jury;

(5) a district attorney, assistant district attorney or an investigator employed in the office of the district attorney, a member of the Division of the State Police, a police officer employed by a city, county, town or village police department or by a county sheriff when such official requests such information stating that:

(i) the information is necessary to conduct a criminal investigation or criminal prosecution of a person;

(ii) 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

(iii) 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;

(6) a person named court appointed evaluator or guardian pursuant to article 81 of the Mental Hygiene Law, or a person named as a guardian for the mentally retarded pursuant to article 17-A of the Surrogate's Court Procedure Act; or

(7) any person entitled to such record in accordance with applicable law.

(d) Prior to the release of a record or other information maintained pursuant to this Part to persons, officers and agencies specified in subdivision (c) of this section, the department or a social services district must be satisfied that the confidential character of the information will be maintained in accordance with applicable law and that such information will be used solely for the purposes for which it was made available. Furthermore, any release of confidential HIV information, as defined in section 2780 of the Public Health Law, must comply with the requirements of article 27-f of such law and Parts 357 and 403 of this Title.

(e) The commissioner or a local social services official may withhold in whole, or in part, the release of any information in their possession which they are otherwise authorized to release in accordance with subdivision (c) of this section, if such official determines that:

(1) the release of such information would identify a person who made a referral or submitted an application on behalf of a person for PSA, or who cooperated in a subsequent investigation and assessment conducted by a social services district to determine a person's need for PSA; and

(2) the official reasonably determines that the release of such information would be detrimental to the safety or interests of such individual.

(f) When a record made under this Part is subpoenaed or sought pursuant to notice to permit discovery, a social services official may move to withdraw, quash, fix conditions or modify the subpoena, or to move for a protective order, as may be appropriate, in accordance with the applicable provisions of the Criminal Procedure Law or the Civil Practice Law and Rules to:

(1) delete the identity of any persons who made a referral or submitted an application for PSA on behalf of an individual, or who cooperated in a subsequent investigation and assessment of the individual's need for such services, or the agency, institution, program or other entity when persons are employed, or with which such persons are associated;

(2) withhold records, the disclosure of which is likely to be detrimental to the safety or interests of such persons; or

(3) otherwise object to the release of all or a portion of the record on the basis that the requested release of records is for a purpose not authorized under the law.

(g) For the purpose of this section, a record means any information in the possession of the department or a social services district regarding the subject of a report as defined in subdivision (a) of this section.

Section statutory authority: Mental Hygiene Law, § TEA81; Surrogate's Court Procedure, § A17-A; Public Health Law, § 2780, § A27-F

Statutory authority: Social Services Law, §§ 20, 34, 309, 473, 473-a, 473-b, 473-c; Mental Hygiene Law, art. 81

Added 457.16 on 2/05/97.