
ADMINISTRATIVE DIRECTIVE

TRANSMITTAL: 90 ADM-40

DIVISION: Adult Services

TO: Commissioners of
 Social Services

DATE: October 25, 1990

SUBJECT: Protective Services for Adults: Client Characteristics

 SUGGESTED

DISTRIBUTION: | Directors of Services
 | Adult Services Staff
 | Medical Assistance Staff
 | Income Maintenance Staff
 | Agency Attorneys
 | Staff Development Coordinators

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ATTACHMENTS: | Appendix A: State Health Department Grievance
 | Resolution Mechanisms
 | (available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
83 ADM-15		Sec.403.3(a)	Article 9B	Bulletin	Sec.575.4(b)
85 ADM-5		Sec.505.14	Sec.460-c.7	194	NYCRR Title
88 ADM-23		Part 457	Article 9		14
89 ADM-22		Part 489	MHL		Sec.405.9(f)
		Sec.485.5(j)	Article 28		NYCRR Title
		Secs. 486.3	PHL		10
		& 4			

I. PURPOSE

The purpose of this release is to provide additional clarification of the client characteristics for Protective Services for Adults (PSA) as set forth in Section 457.1(b) of the Department's regulations.

II. BACKGROUND

The client characteristics for Protective Services for Adults (PSA) set forth in Section 473 of the Social Services Law (SSL) have not changed since 1975 when the law was first enacted. These standards, which are the basis for determining PSA eligibility, are explained in more detail in Bulletin 194. Despite this, there continues to be varying interpretations of the client characteristics among the districts. This is especially true of the characteristic concerning the availability of other persons or agencies to provide assistance to an impaired adult who is otherwise eligible for PSA.

To clarify the client characteristics for PSA, Section 457.1(b) of the Department's regulations were revised effective December 23, 1986. This release further clarifies the PSA client characteristics and the criteria for PSA eligibility.

III. PROGRAM IMPLICATIONS

The following discussion of the PSA client characteristics will clarify the eligibility criteria for this service. This is expected to result in improved eligibility determinations by the districts and the achievement of greater statewide conformity in the delivery of this increasingly important service. Although this directive will affect PSA eligibility decisions in some districts, it will not require any district to change its organizational structure for the provision of PSA. Also, while we anticipate that this directive will result in the opening of additional PSA cases in some districts, we do not foresee a major fiscal impact since many of these cases would have been opened or maintained under other adult services categories. Therefore, this directive should assure that dependent adults served by the districts receive an appropriate level of service.

Section 457.1(b) of the Department's regulations defines PSA eligibility in terms of the following Client Characteristics:

Protective Services for Adults are provided to individuals 18 years of age and older who, because of mental or physical impairments:

are unable to meet their essential needs for food, shelter, clothing or medical care, secure entitlements due them or protect themselves from physical or mental injury, neglect, maltreatment or financial exploitation;

are in need of protection from actual or threatened harm, neglect or hazardous conditions caused by the action or inaction of either themselves or other individuals; and

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

This means that any person 18 years or older who meets all of these client characteristics is eligible for PSA. The following discussion of the client characteristics will assist in enabling districts to achieve consistency in making appropriate PSA eligibility determinations.

A. PSA CLIENT CHARACTERISTIC #1:

because of mental or physical impairment are unable to meet their essential needs for food, shelter, clothing or medical care, secure entitlements due them or protect themselves from physical or mental injury, neglect, maltreatment or financial exploitation.

The adult must have a mental impairment and/or a physical illness or disability which renders him/her unable to obtain services necessary for his/her own care and protection. The disabling condition may either be temporary, intermittent or permanent. Conditions contributing to a client's disability may include, but are not limited to: mental illness; mental retardation; developmental disorders; Alzheimer's Disease and related disorders primarily associated with the elderly; acute physical illness; physical handicaps; and alcoholism and other forms of substance abuse.

There must be a causal relationship between the adult's impairment or disability and his/her failure to obtain necessary assistance. For example, an impaired adult who is refusing all services would be inappropriate for PSA if a determination is made by a qualified mental health professional that the adult is making a reasoned decision to refuse services, fully appreciates any potentially harmful consequences of this chosen course of action and the adult's reasons for refusing services have a sound basis in reality. Conversely, if an adult is refusing or interfering with the delivery of essential services, is not able to recognize the potentially harmful consequences of his/her action or inaction, is unable to offer reasons for his/her chosen course of action, or if the reasons given are inconsistent with the reality of the situation, PSA must be provided on an involuntary basis as set forth in 88 ADM-23.

If an involuntary client cannot be convinced to accept services on a voluntary basis, then the district must pursue an appropriate legal intervention as set forth in Section 457.6 of the Department's regulations or provide financial management services, such as representative or protective payee, as required by Sections 457.1(c)(9) and 457.5(c)(2) and (3) of the Department's regulations. Section 403.3(a) of the Department's regulations requires that adults be free to accept or reject services, except when involuntary legal actions or other involuntary protective interventions are pursued as part of a PSA services plan. Therefore, anytime a district pursues a legal intervention on behalf of a client as set forth in Section 457.6, the case must be opened as PSA. Financial management services not requiring court authorization, such as representative or protective payee, may be provided on a voluntary basis under other adult services categories, including Preventive and Residential Placement Services for Adults. However, financial management services provided on an involuntary basis must be provided under PSA.

B. PSA CLIENT CHARACTERISTIC #2

are in need of protection from actual or threatened harm, neglect or hazardous conditions caused by the action or inaction of either themselves or other individuals.

Evidence of one or more of the following risk factors must be present in order to satisfy this characteristic:

- a. Failure of an impaired adult to receive adequate food, clothing, shelter or medical care, or to obtain those entitlements for which he/she is eligible;
- b. Incidents of physical, verbal, mental or sexual abuse against an impaired adult by another person;
- c. Incidents involving exploitation, theft or otherwise inappropriate use of an impaired adult's funds, property, possessions or services by another person or persons;
- d. Incidents of suicidal or other life threatening or self-endangering behaviors;
- e. Presence of a threat to the physical safety or health of an impaired adult as a result of dangerous or unsanitary conditions in the adult's home or physical environment;
- f. Inability of an impaired adult to manage his/her personal finances in a manner that assures that his/her essential needs are met, or;
- g. Failure of an impaired adult to obtain assistance with essential daily living activities which they are unable to perform themselves.

The above condition(s) may either be a result of the adult's own actions or inactions or the actions or inactions of other persons.

C. PSA CLIENT CHARACTERISTIC #3:

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

This client characteristic is most subject to varying interpretations. There are wide differences in the commitment and capacity of family members and other involved individuals to meet the difficult demands of caring for dependent adults. This issue is further complicated by the fact that most relatives are not legally responsible for the care of their impaired adult family members. Furthermore, while other agencies have responsibilities for meeting the needs of dependent adults, the responsibilities of these agencies often have been unclear. These ambiguities have compounded the problem of determining an individual's eligibility for PSA. In order to clarify the precise intent of this client characteristic, the responsibilities of relatives and other service delivery systems are discussed in detail below.

1. Relatives and Friends

Districts are encouraged to maximize the involvement of family members and friends in the adult's plan of care. It must, however, be understood that if these individuals are either unwilling or incapable of acting in the best interest of the client in a reliable and responsible manner, then they cannot be considered as an available service resource. This is true even in the case of spouses who are financially responsible for the care of their husband or wife, but who may not be willing or capable of providing the necessary care and services. Therefore, in situations in which relatives or friends are involved in a client's care, the ability and intentions of each person involved with the client must be carefully assessed and documented in the case record.

In cases in which other individuals are available to assist, the district's decision to open or maintain the case as PSA must be based on the caseworker's assessment as to whether it can be reasonably assumed that the involvement of others will assure that the impaired adult's essential needs, including financial management, will be met in a responsible manner for the foreseeable future. If the assessment indicates that it cannot be reasonably assumed that family members and friends are willing and capable of meeting a client's essential needs and protecting the client from harm, a PSA case must be opened or maintained. As indicated above, financial management services which are provided to involuntary clients must be provided as part of a PSA services plan.

2. Hospitals

a. Patients Who Are Being Discharged To The Community.

State Health Department regulations (Title 10 NYCRR, Section 405.9(f)) require hospitals to develop discharge plans for all patients in need of post hospital care. Hospital discharge planning staff are required to assist the patient in obtaining any services that will be needed by the patient upon discharge. The discharge planning process must begin as soon as is practical following a patient's admission to a hospital. As stated in these regulations, the following conditions must be present before a patient may be discharged:

- . the patient must be determined by a physician to be medically ready for discharge;
- . the hospital must ensure that the patient has a discharge plan which meets the patient's post hospital needs;
- . the hospital must ensure that all necessary post hospital services are in place or reasonably available to the patient; and
- . the patient will be discharged to a safe environment.

PSA may be an essential component of a plan of care to maintain a dependent adult in the community upon discharge from a hospital. Accordingly, PSA staff should actively participate in the hospital discharge planning process at the earliest possible time for patients who will require PSA services upon discharge to the community. A PSA investigation shall be commenced upon receipt of a referral involving a hospitalized adult if both of the following conditions are met:

- o the hospital has provided information which leads the district to conclude that the patient will return to the community upon discharge and not be placed in a residential care facility; and
- o there is evidence to indicate that the patient may be eligible for PSA upon returning to the community.

There may be little time between a hospital admission and clearance of a patient for discharge. For this reason, it is important for PSA staff to promptly respond to hospitals' referrals. To assure the appropriateness of these referrals, districts have a right to receive all pertinent information from the hospital regarding the patient's medical, psychiatric and social condition with each PSA referral. If this information is not provided by the hospital, the referral does not have to be accepted by the district unless information has been provided by other sources to support the referral. Once the necessary information is provided by the hospital to support a PSA referral, it must be responded to in accordance with Section 457.1(c)(2) of the Department's regulations and 85 ADM-5. If the client remains hospitalized, the initial visit to the client must be conducted in the hospital. If the subsequent PSA assessment determines that a hospitalized adult will be eligible for PSA upon the patient's discharge to the community, a PSA case must be opened.

The PSA assessment of a hospitalized adult should be conducted in close cooperation with hospital discharge planning staff. The PSA assessment should place special emphasis on the client's physical environment in the community and the degree to which the client's support systems will be able to meet the client's needs upon discharge. During the assessment period, PSA staff should initiate contacts with family members, friends and other agencies known to the adult to determine what contribution that they are willing and able to make to the client's care. It may be useful for PSA staff to conduct an on-site assessment of the client's living situation if there are questions about its suitability and safety or if there are indications of abusive or neglectful caregivers in the household. If no one else is present in the client's home, a home assessment may only be conducted with the client's permission and in the presence of a family member or other person who the client has given authority to enter the premises.

Nothing above pertaining to PSA assessments of adults in hospitals shall diminish the hospitals' primary responsibility for discharge planning set forth in Section 405.9(f) of State Health Department Regulations. This means that hospitals are ultimately responsible for accessing all necessary post hospital services, such as personal care and other home health

services, prior to the patient's discharge. A hospital may not discharge a patient until all necessary services are in place. Discharge to PSA, in the absence of other necessary services, does not constitute an acceptable discharge plan. PSA does not assume primary case management responsibility until the patient is discharged from the hospital and has returned to the community.

In accordance with the aforementioned regulation, hospitals also are required to develop discharge plans for emergency room patients who require post hospital services. Therefore, districts must be prepared to respond to referrals made by hospital staff on behalf of persons who are about to be discharged from emergency rooms and appear to be in need of PSA. As stated above, districts have a right to receive all pertinent information on the person's medical, psychiatric and social condition with each PSA referral. Once the necessary information is available to support a PSA referral, it must be responded to in accordance with Section 457.1(c)(2) of the Department's regulations and 85 ADM-5.

b. PSA Clients Who Are Hospitalized.

If a client who is currently in receipt of PSA in the community is hospitalized and a decision is made to place the client in a certified residential care facility, including a psychiatric facility or a developmental center, the case must be maintained as PSA until the client's condition is stabilized and the placement plan is in place. If the district decides to close the case and is acting as a representative payee, the district must notify the appropriate local Social Security Office, or other appointing authority, that the client will enter a residential facility and the district will no longer serve as the client's payee. If the district was appointed as the client's conservator or committee, a PSA case must be maintained until the court relieves the district of this responsibility. If there is a plan for a hospitalized PSA client to return to the community, the case must be maintained as PSA throughout the period of hospitalization if the client does not otherwise become ineligible for PSA. In these situations, PSA must be part of the plan to discharge the patient to the community.

c. Hospitalized PSA Clients Requiring an Involuntary Legal Intervention.

As indicated in subsections a and b above, PSA must be involved in the development of community discharge plans for certain hospitalized adults. If a legal intervention is required on behalf of a hospitalized adult who is eligible for PSA as set forth above in subsections a and b and no other source of legal assistance is available, the district must pursue an appropriate legal intervention as set forth in Section 457.6 of the Department's regulations. However, if a hospitalized PSA client who is incapable of giving informed consent requires emergency or certain non-emergency medical treatment, it should be provided by the hospital under the auspices of Sections 2504 and 2805-d of the Public Health Law. These statutes give hospitals specific authority to provide emergency and certain non-emergency medical treatment on behalf of patients unable to give informed consent.

Districts should also be aware that hospitals have the authority to initiate other legal interventions on behalf of patients, including petitioning a court for a conservator or committee. Therefore, if a hospital pursues legal intervention which the district believes is in the best interest of a PSA client, the district is expected to cooperate and provide whatever assistance is necessary.

d. Patient Decision Making.

It is important to note that hospital patients have a right to self-determination in choosing a discharge plan. This means that a patient who is insisting on returning to a dangerous home environment upon discharge is free to do so unless it is determined that the patient lacks the capacity to make and understand decisions related to his or her care. Some seriously ill patients may simply leave the hospital against medical advice.

These situations can create complex and difficult problems for hospitals and PSA programs which require immediate and decisive action. Therefore, if a patient is choosing a course of action which will place him/her at risk of harm and there is any doubt about the patient's mental capacity, the district should strongly encourage the hospital to obtain a psychiatric evaluation prior to the individual's discharge. The psychiatric examination should focus specifically on the patient's present ability to make care related decisions, namely:

- o is the patient able to make and express choices about his/her decisions?
- o is the patient able to provide reasons for these choices?
- o do the patient's reasons for choosing this course of action have a basis in fact and reality? and
- o is the patient able to understand and appreciate the potentially harmful consequences of his/her chosen course of action?

If a determination is made that a patient is not presently capable of making care related decisions and the patient will be at risk of harm upon discharge, the hospital must act to prevent or to delay the discharge in accordance with applicable law and regulation. For those patients who are determined to have decision-making capacity, the hospital has no choice but to allow the patient to return to the community.

e. Payment To Hospitals for the Provision of Emergency Room and Board for PSA Clients Once Their Medical Needs Have Been Met.

Situations may occur in which hospitalized PSA clients are medically cleared for discharge because their medical needs have been met, but the client would be at risk of serious harm if discharged to the community at that time. The potential risk to the client may be the result of unsafe conditions in the client's home or due to the presence of abusive persons in the household. In these circumstances, and after all medical reimbursement

for hospital care has been exhausted, districts may reimburse hospitals for the cost of emergency room and board for a PSA client in accordance with Section 457.1(c)(5) of the Department's regulations until a safe discharge can be arranged. Under the emergency room and board provision, districts may pay for room and board in hospitals for a maximum 30 days and only as an "integral and subordinate" part of a PSA plan. Districts are encouraged to negotiate rates with hospitals for the cost of room and board which do not exceed the alternate care rate for persons who are awaiting placement in a nursing home. During the period that the hospital is being paid under the emergency room and board provisions, the district must take the necessary actions, as part of a PSA plan, to assure a safe and habitable home environment for the client.

Districts may also use the PSA emergency room and board provisions to pay for hospital admissions under the following conditions:

- o the individual can no longer be maintained in the community through the provision of other supportive services, and other payment sources such as Medicaid or Medicare are not available;
- o the individual is determined to be eligible for PSA in accordance with Section 473 of the Social Services Law, Section 457.1(b) of the Department's regulations and the provisions of this directive;
- o the care provided by the hospital must be an integral but subordinate part of a PSA services plan;
- o no other appropriate temporary or permanent placement option exists at the time of admission;
- o the payment rate for these admissions cannot exceed the Medicaid alternate care rate; and
- o payment for these hospital stays cannot exceed 30 days.

f. Health Department Grievance Resolution Mechanisms.

The State Health Department administers two programs to which hospital patients and their representatives can turn if they believe the patient is being prematurely or otherwise inappropriately discharged. The Discharge Review Program allows patients and their representatives to appeal and have an independent third party review their planned discharge. The State Health Department also operates a statewide hospital complaint investigation program. As indicated in Section IV.E of this directive, local district PSA staff are required to utilize these programs if, in their judgment, a PSA client who is incapable of making decisions about his/her care, as discussed above in subsection d, is being discharged inappropriately or prematurely, or if needed services are not in place in the community. These programs are discussed in greater detail in Appendix A of this document.

3. Community Support Services (CSS) and Intensive Case Management (ICM) Recipients

Section 575.4(b) of the Office of Mental Health's regulations defines Community Support Services (CSS) programs as follows:

"those clinical, social, rehabilitative, related administrative and other mental health and support services which are provided within the community and which enhance community living skills while preventing the unnecessary hospitalization of the seriously and chronically mentally ill individual who is determined to be eligible for such services...."

CSS providers are required to provide case management and an array of other appropriate services to their clients. The Office of Mental Health's Intensive Case Management (ICM) program is a Medicaid funded service which is responsible for providing enhanced services to certain mentally ill adults with a history of frequent hospitalizations in order to maintain these individuals in the community and out of psychiatric institutions as long as possible. As a general rule, CSS and ICM recipients are not eligible for PSA because another agency, namely the CSS or ICM provider, is responsible for assuring the provision of case management and other appropriate services which are necessary to meet the recipients' basic daily needs.

Because of the responsibilities of these programs, districts are not required to provide financial management services to a CSS or ICM recipient unless:

- o the district is providing financial management services to the client, which include acting as his/her representative payee, as part of a PSA or other adult services plan at the time the client is determined to be eligible for CSS or ICM, in which case the district must continue to provide these services; or
- o the district determines that a CSS or ICM recipient has other basic needs which these providers cannot address, such as the need for legal intervention, and the recipient is otherwise eligible for PSA.

Districts also may provide financial management services to other CSS and ICM recipients under other Title XX adult services categories, including Preventive and Residential Placement Services for Adults. It is important to note that these services can be provided only to eligible adults who accept them on a voluntary basis.

With the exception of arranging for involuntary admissions to psychiatric facilities pursuant to Article 9 of the Mental Hygiene Law, CSS and ICM programs are not required to pursue legal interventions on behalf of their recipients, such as petitioning the court to obtain a conservator or a committee. Consequently, if a CSS or ICM program is unable to locate anyone else to pursue an appropriate legal intervention on behalf of one of their clients, it is the responsibility of the district to assess the situation

and, if determined necessary, pursue an appropriate legal intervention in accordance with section 457.6 of the Department's regulations. It is expected that CSS and ICM staff will cooperate with, and provide pertinent information to district staff to enable them to assess the situation and to pursue appropriate legal interventions when necessary on behalf of CSS and ICM clients. Once a district determines that it is appropriate to pursue a legal intervention on behalf of a CSS or ICM client, a PSA case must be opened and services provided in accordance with Part 457 of the Department's regulations. However, if a CSS or ICM recipient requires an involuntary admission to a psychiatric facility, the CSS or ICM provider should take the appropriate steps to obtain an involuntary admission in accordance with the provisions of Article 9 of the Mental Hygiene Law.

4. Persons Served by Other Community Agencies

The legal responsibility of other community agencies for the care and protection for individual clients is limited. As with family members, the district's decision to provide PSA to a person served by another agency must be based on a determination as to whether or not the involvement of the other agency(ies) assures that all of the essential needs of the adult, including financial management, are met and that the client is protected from harm. If the answer to this question is no, then PSA must be provided.

In many situations, community agencies will not serve involuntary clients. Although some community based agencies may be authorized to apply for, and to provide various types of guardianship services, such as conservator or committee, and to provide financial management services, generally they are not required to do so. If a client who is being served by a community agency is refusing services, the community agency, with the assistance of the district if necessary, should make all possible efforts to convince the client to accept services on a voluntary basis. If the client continues to refuse to accept services and requires an involuntary intervention, the district must be prepared to pursue an appropriate intervention in accordance with Section 457.6 of the Department's regulations or apply to act as a representative or protective payee as set forth in Sections 457.1(c)(9) and 457.5(c)(2) and (3) of the regulations.

5. Recipients of Home Care Services

Home care recipients with decreased mental capacity who are without family or other supports are especially vulnerable to neglect, exploitation and abuse. Because of the vulnerability of these clients, Section 505.14(a)(4)(ii) of the Department's regulations requires districts to assume responsibility for the supervision and direction of Personal Care Services recipients who are determined to be "incapable of self direction" and who have no one else to assume responsibility for their care. Self direction is defined as the capacity for "making choices about his/her activities of daily living, understanding the impact of these choices and assuming responsibility for the results of the choice".

For non-self directing clients, as defined above, PSA must assume primary responsibility for assuring that their needs are met. This standard must also be used for adult recipients of: Title XX homemaker services and housekeeper/ chore services, Certified Home Health Agency (CHHA) services and Long Term Home Health Care (LTHHC) programs. For clients in need of PSA who are receiving home care through the State Office for the Aging's Expanded in Home Services for the Elderly Program (EISEP), services should be provided in accordance with 86 INF-32.

PSA clients can become stabilized once they are in receipt of Home Care Services as part of a PSA plan. In certain circumstances, PSA services may no longer be needed and primary case management responsibility can be assumed by the Home Care Services program. Under the following conditions, districts may transfer cases and primary case management responsibility from PSA to the appropriate Home Care Program.

(a.) A self-directing PSA client agrees to accept the provision of necessary home care services in accordance with a care plan and is in receipt of sufficient home care services to address any risk of serious harm which is associated with the client's need for such services.

(b.) A non self-directing PSA client is in receipt of home care on a voluntary basis, has a responsible family member or other person who has actively assumed responsibility for direction of the client's plan of care and the client is in receipt of sufficient home care services to address any risk of serious harm which is associated with the client's need for such services.

(c.) A non self-directing PSA client has another person or agency not under contract to the district to provide PSA who has been appointed as the client's conservator, committee or guardian and the client is in receipt of sufficient home care services to address any risk of serious harm which is associated with the client's need for such services.

In the absence of the above conditions, PSA must maintain primary case management responsibility for joint PSA-Home Care Services cases.

6. Persons Residing in Long Term Residential Care Facilities Certified by State Agencies

Adult residents of long term residential care facilities certified by State agencies are generally not eligible for PSA. Long term residential care facilities are responsible for meeting the essential needs of their residents and for providing a safe environment in accordance with applicable laws and regulations.

However, there are situations in which certain persons residing in long term care facilities are eligible for PSA. The specific situations in which persons residing in long term residential care facilities are eligible for PSA are discussed below.

a. Residents of Facilities Certified by the Department of Health (Skilled Nursing Facilities and Health Related Facilities) and Residential Care Programs Certified by the Office of Mental Health (OMH) and the Office of Mental Retardation and Developmental Disabilities (OMRDD).

If a client who is currently in receipt of PSA in the community is placed by PSA into one of the above mentioned facilities, the case must be maintained as PSA until the client's situation has been stabilized. If, in such a case, the district is acting as a conservator, committee, or guardian, the district must continue to act in this capacity until the court relieves the district of this responsibility. Once the district is relieved of this responsibility, the PSA case may be closed. If the district decides to close the case and is acting as representative payee, the district must notify the local Social Security Office, or other appointing authority, that the district will no longer act in this capacity and the PSA case may be closed.

Occasionally, residents of these facilities will be discharged to the community or will return to the community against medical advice and be in need of PSA. Where a district receives a PSA referral, as defined in Section 457.1(c)(2) of the Department's regulations, from one of the aforementioned facilities concerning a client who is about to be discharged to the community, a PSA assessment must be completed in accordance with Section 457.2(b) of these regulations. If it is determined that the client will be eligible for PSA upon discharge, a PSA case must be opened. A facility may not discharge a patient until all necessary services are in place. Discharge to PSA, in the absence of other necessary services, does not constitute an acceptable discharge plan. PSA does not assume primary case management responsibility until the patient is discharged from the facility and has returned to the community.

There may be other situations in which a person in a facility certified by another state agency is in need of services other than protective services from a district. In these situations, services shall be provided under Residential Placement Services for Adults as set forth in 89ADM-22.

b. Persons Residing in Adult Care Facilities Certified by the Department, with the exception of Family-type Homes for Adults and Shelters (Adult Homes, Residences for Adults and Enriched Housing Programs).

Local districts have the same responsibilities to provide PSA to persons who are residing in adult homes, residences for adults and enriched housing programs as they do for persons in facilities certified by other state agencies as described above in Subsection 6a. Another situation in which a resident of one of the aforementioned Adult Care Facilities could be in need of PSA involves the closing of a facility. Although Section 485.5(j) of the Department's regulations requires operators of Adult Care Facilities to submit a plan for the closure of their facility to the appropriate regional office of the Division of Adult Services and to assist the residents in arranging for appropriate placements, there are situations in which the involvement of the district is necessary and appropriate. In these situations it may be necessary for the local district, in conjunction with staff from the appropriate regional office of DAS, to assist in assessing the needs of residents and arranging for appropriate placements. In most of these situations services would be provided by the districts under Residential Placement Services for Adults in accordance with 89 ADM-22.

However, in some situations a resident of a facility which is about to close may refuse services and have a diminished capacity to make decisions about his/her care. In these situations, if there is no one else willing and able to assist the resident in a responsible manner, PSA must be provided, including the use of appropriate legal interventions as set forth in Section 457.6 of the Department's regulations.

There may be other situations in which a person residing in one of the aforementioned adult care facilities may be in need of services from a district. These services may be provided under Residential Placement services for Adults as set forth in 89 ADM-22. However, if a district is providing financial management services to residents in these facilities, these services must be provided under PSA if the client does not voluntarily accept these services.

c. Persons Residing in Family-type Homes for Adults.

In accordance with the provisions of Section 460-c.7 SSL and Part 489 of the Department's regulations, local districts, under the supervision of the Department, are responsible for the inspection and supervision of Family-type Homes for Adults. Generally, the service needs of Family-type Home for Adults residents can be met under Residential Placement Services for Adults as set forth in 89ADM-22. However, there may be situations involving Family-type Home residents which are beyond the scope and ability of the operator to address. In these situations it may be necessary to provide PSA to a Family-type Home resident.

Situations may occur in which a resident of a Family-type Home for Adults is at risk of serious harm or his/her property is endangered and there is no one available to assist the resident in a responsible manner. Specific examples may include residents who require medical or psychiatric treatment or a higher level of care, or residents who are victims of abuse or exploitation by family members or others outside of the home. In these situations, if a resident refuses to accept services, including a placement in a more appropriate level of care, and exhibits a diminished capacity to make decisions regarding his/her own care, a PSA assessment must be completed. If the resident continues to refuse services or placement and is determined to be incapable of making decisions on his/her own behalf, PSA must pursue an appropriate legal intervention in accordance with Section 457.6 of the Department's regulations even if the operator, family members or friends object to this course of action.

There may be other situations in which a Family-type Home resident requires financial management services which do not require a legal intervention, such as representative and protective payee. Although a Family-type home operator may provide financial management services to a resident, the district must assume this responsibility if the operator is unwilling or unable to provide these services and if there are no other responsible persons willing to act in this capacity. In those situations in which a district must provide financial management services on behalf of a Family-type Home resident, these services must be provided under PSA if the client refuses to accept services. If the client accepts these services voluntarily, they should be provided under Residential Placement Services for Adults. Finally, when a Family-type Home is closing, it may be necessary for a district to provide PSA to those individuals for whom a legal intervention is required to secure an appropriate placement.

d. Uncertified Adult Care Facilities.

Sections 486.3 and 486.4 of the Department's regulations set forth provisions concerning the Department's inspection and enforcement responsibilities over uncertified adult care facilities. Section 486.3 gives the Department the authority to inspect any facility which reasonably appears to be operating as an adult care facility. This means that any facility which provides personal care and/or supervision to its residents or any facility whose residents require personal care and/or supervision is subject to inspection by the Department.. Any information pertaining to uncertified adult care facilities must be reported to the appropriate Regional Office of the Division of Adult Services.

Regional office staff of the Division of Adult Services are responsible for the investigation of uncertified facilities caring for five or more residents and for the commencement of appropriate enforcement action. In accordance with the provisions of 89 ADM-22, local districts, in close cooperation with the appropriate regional office of the Division of Adult Services, are responsible for investigating uncertified adult care facilities serving four or fewer residents. In uncertified facilities serving four or fewer residents, districts are responsible for assessing the services needs of all residents and for relocating residents, when necessary. As discussed in 89 ADM-22, in certain situations in which the health, welfare or safety of a resident of an uncertified adult care facility serving four or fewer adults is threatened, or an impaired resident in one of these facilities refuses an appropriate placement, a PSA assessment must be completed by the district. If the assessment indicates that the person is incapable of making decisions regarding his/her care, a PSA case must be opened and appropriate services provided, including the pursuit of necessary legal interventions as specified in Section 457.6 of the Department's regulations. In these situations, the district must pursue the necessary legal intervention to provide or arrange for the provision of services to protect the individual, including arranging for a placement in an appropriate facility, even if the operator, family members or friends oppose this course of action.

The only exception to this policy involves uncertified skilled nursing facilities (SNFs) serving three or fewer individuals or uncertified health related facilities (HRFs) serving six or fewer individuals. Because the State Department of Health does not require SNFs or HRFs of these sizes to be certified, they are operating legally as long as they are not caring for persons who require another level of care, such as adult home or family-type care. Therefore, in situations involving persons in need of SNF or HRF care who are; residing in these facilities, refusing services and unable to make decisions on their own behalf, PSA should not pursue a legal intervention to arrange for an appropriate placement unless there are specific conditions which endanger the health, welfare or safety of the residents. In situations involving uncertified facilities of this size which are serving a mixed population, the appropriate legal intervention must be pursued by PSA on behalf of those residents who refuse placement, are unable to make decisions and do not require SNF or HRF care regardless of whether or not the operator, family members or friends support this course of action. A legal intervention to arrange for an appropriate placement for a resident of a mixed facility who requires SNF or HRF care should only be pursued if conditions exist which threaten his/her health, welfare and safety.

Local district staff may also be called upon to assist regional office staff in the assessment of the services' needs of persons living in uncertified adult care facilities serving five or more adults. Regional office staff may also require assistance from the districts in relocating individual residents if it is determined that the needs of the residents are not being met. If a resident refuses to accept services and it is determined that the person is incapable of making decisions concerning his/her own care, a PSA case must be opened and an appropriate legal intervention must be pursued in accordance with Section 457.6 of the Department's regulations. As stated above, the district must pursue the appropriate legal intervention to provide necessary services, including placement in a certified facility, even if this course of action is opposed by the operator, family members or friends. Services to residents of uncertified facilities who do not meet the PSA criteria should be provided under Residential Placement Services for Adults as set forth in 89 ADM-22.

e. Shelters

Adult shelters and family shelters which are certified or approved by the Department are required to monitor individual residents, to identify the need for medical or psychiatric treatment and other services, including arranging for medical and psychiatric evaluations, and to provide other appropriate services. In the event that a shelter resident requires medical or psychiatric treatment, placement in a facility providing a higher level of care, or other services, shelter staff are required to provide or arrange for necessary services, including a transfer to an appropriate medical, psychiatric or residential care facility.

Situations occur in which residents who are placing themselves or other residents in danger must be involuntarily transferred or discharged from a shelter. If a shelter resident who is being involuntarily discharged or transferred appears to be mentally ill and at risk of serious harm, shelter staff should initially contact mental health officials or the police to attempt to have the shelter resident transported and hospitalized in accordance with the provisions of Article 9 of the Mental Hygiene Law. If a judgmentally impaired adult resident who is facing involuntary discharge or transfer from a shelter requires a higher level of care, or is otherwise at risk of serious harm, and all other efforts to resolve the situation have been unsuccessful, and if no other person or agency is willing and able to assume responsibility for the protection of the resident, a PSA referral would be appropriate and a PSA assessment must be conducted. If a PSA assessment determines that a resident facing involuntary termination or discharge from a shelter is eligible for PSA, a PSA case must be opened by the district and appropriate legal intervention must be initiated in accordance with Section 457.6 of the Department's regulations.

To summarize, in situations where there are relatives, friends or other agencies involved in a case, the district's decision to open or maintain the case as PSA should be based on whether the services provided by the other parties assure that all essential needs are met and there is no risk of harm to the adult. If the answer to this question is no, the case must be opened or maintained as PSA.

IV. REQUIRED ACTION

A. Local district PSA intake staff shall be advised of the PSA eligibility criteria which are set forth in this directive. For referrals received on or after January 1, 1991, the aforementioned criteria must be used in screening PSA referrals and in determining PSA eligibility.

B. For cases opened prior to January 1, 1991, at the next scheduled recertification, all PSA, Preventive Services for Adults, Residential Placement Services for Adults, Homemaker, Housekeeper/Chore and other adult services cases must be reviewed against the PSA eligibility criteria set forth in this directive. Cases which meet the PSA criteria discussed above must be opened or maintained as PSA. Cases which do not meet the PSA criteria shall be served under another appropriate Title XX service category or closed, if appropriate. This review must be completed by June 30, 1991.

C. Each district shall notify all public and private hospitals which serve the district, or organizations representing the hospitals, of the PSA eligibility criteria for patients in hospitals as set forth in Section III.C.2. above. This notification should be addressed to hospital administrators, discharge planning coordinators and/or directors of social work.

D. Districts shall initiate efforts to establish written agreements with local hospitals or organizations representing the hospitals. At a minimum these agreements must delineate the responsibilities of local district PSA units and hospitals for patients meeting the PSA eligibility criteria upon discharge as set forth in Section III. C.2. above. These agreements shall contain a conflict resolution process. Districts must make documented efforts to have written agreements in place with all local hospitals and/or organizations representing the hospitals no later than June 30, 1991.

E. Local district PSA staff shall submit formal complaints to the Hospital Discharge Review or Complaint Investigation Programs discussed in Section III.C.2.f of this directive and in Appendix A in the situations described below.

1. A formal complaint must be registered with the Hospital Discharge Review Program on behalf of a hospitalized PSA client who is incapable of making decisions about his/her care if, in the judgement of PSA staff:

- o the patient is not medically ready to leave the hospital and the hospital is refusing to postpone a discharge; or

- o the hospital has not established an acceptable discharge plan to meet the patient's post hospital needs and the hospital refuses to correct this problem; or

- o needed post hospital services have not been secured or will not be reasonably available to the patient upon the patient's discharge to the community and the hospital refuses to correct the problem.

2. A formal complaint must be registered with the Hospital Complaint Investigation Program on behalf of a hospitalized PSA client who is incapable of making decisions about his/her care if, in the judgement of PSA:

- o the patient or PSA was not given the right to appeal a discharge; or
- o the patient was prematurely discharged from the hospital.

F. Each district shall establish a written linkage procedure between its PSA and Personal Care Services programs. This procedure must contain a process for assuring that appropriate Personal Care Services cases are carried as PSA in accordance with the criteria set forth in Section III. C.5. For districts with separate units handling PSA and Personal Care cases, the procedure must contain a process for determining ongoing case management responsibility for cases receiving Personal Care Services which is consistent with the criteria set forth in Section III. C.5. Districts must have a PSA Personal Care Services linkage procedure in place by June 30, 1991. Districts should also initiate efforts to establish written linkage procedures between its PSA program and other Home Care Services providers as part of its continuing efforts to enhance interagency cooperation pursuant to Section 473.2(a) of the Social Services Law and Section 457.7 of the Department's regulations.

G. Action must be taken to assure that other units of the local district, including Income Maintenance, Medical Assistance and Legal are advised about the PSA eligibility criteria as described in this directive. If necessary, appropriate revisions shall be made in the intra-agency referral procedures of the district.

H. As part of their mandated public education and outreach efforts as set forth in Section 457.7 of the Department's regulations, local district staff must advise other agencies about the PSA eligibility criteria discussed above, including agencies representing the following service areas: aging, health, mental health, legal and law enforcement.

V. SYSTEMS IMPLICATIONS

None

VI. EFFECTIVE DATE

January 1, 1991

Judith Berek
Deputy Commissioner
Division of Adult Services

APPENDIX A: State Health Department Grievance Resolution Mechanisms

The New York State Health Department administers two programs to which hospital patients and their representatives can turn if they believe the patient is being prematurely or otherwise inappropriately discharged. These programs are discussed below.

I. Discharge Review Program

Effective January 1, 1988, Article 28 of Public Health Law was amended to allow hospitalized patients to appeal and have an independent third party review their planned discharge. (Components of this program are not applicable to Medicare patients who are covered under a Federal review system.) The Discharge Review legislation requires hospitals to provide patients with an "Admission Notice" that explains the patients' rights and a "Discharge Notice" which must be given to the patient 24 hours before the patient's anticipated discharge from the hospital. During this 24 hour period, the patient may request a review of the discharge for one of the following reasons:

1. the patient believes that he/she is not medically ready to leave the hospital;
2. the patient believes that the hospital has not established an acceptable discharge plan for his/her post-hospital needs; or
3. the patient believes that needed post-hospital services are not secured or reasonably available.

If the patient decides to appeal a discharge, an independent review agent approved by the State Health Department will review the patient's medical records, speak with the patient's physician and discuss the case with the patient or the patient's representative. During the review period, the patient can remain in the hospital. If the review agent agrees with the patient, continued hospitalization must be provided to the patient.

For Medicaid Patients, an appeal can be made to or further information can be obtained from the State's Medicaid independent review agent at (718) 896-7320.

Although Medicare patients are not covered by the State's Discharge Review Program, they may appeal to the Medicare Peer Review Organization (PRO) for New York State at (516) 437-8134.

Independent discharge review programs are also available for patients who are covered by Blue Cross, commercial insurance or other payment mechanisms. Information on the specific program designated for each hospital can be obtained from the hospital discharge planning coordinator.

Additional information can be obtained on the discharge review program from the State Health Department at (518) 473-7758.

II. Hospital Complaint Investigation Program

The State Health Department also operates a hospital complaint investigation program through its Area Offices. Patient complaints are investigated and, where necessary, hospitals are required to take corrective action. If patients believe that they were not given their right to appeal a discharge or were discharged prematurely, they or their representative can call the Health Department directly to register a complaint.

Below is a list of phone numbers of the State Health Department's Area Offices and the name of the Hospital Program Director in each office.

Albany Area Office

Mary Ann Tosh
Hospital Program Director
(518) 457-4853

Buffalo Area Office

Robert Braun
Hospital Program Director
(716) 847-4357

Rochester Area Office

Sherry Emrich
Hospital Program Director
(716) 423-8048

Syracuse Area Office

Jessica DeMarzo
Hospital Program Director
(315) 475-7514

New Rochelle Area Office

Susan Berry
Hospital Program Director
(914) 632-3547

New York City Area Office

Carlos Perez
Deputy Area Administrator
(212) 502-0833