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TRANSMITTAL: 92 INF-26

DIVISION: Adult Services

TO: Commissioners of
 Social Services

DATE: April 7, 1992

SUBJECT: Protective Services for Adults: Confidentiality/
 Information Sharing With Regard to Protective
 Services for Adults (PSA) Clients

SUGGESTED

DISTRIBUTION: Agency and County Attorneys
 Directors of Social Services
 Adult Services Staff
 Staff Development Coordinators

CONTACT PERSON: Adult Services Program Representative
 at 1-800-342-3715:
 Irvin Abelman, ext. 432-2980 or (212) 804-1247
 Thomas Burton, ext. 432-2987
 Kathleen Crowe, ext. 432-2996
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ATTACHMENTS: None

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
88 ADM-23	84 INF-2	Part 357	20, 34, 136		
84 INF-2		Part 403	& 473 SSL		
83 ADM-24		Part 457	Article 27-F of Public Health Law		

In 1984, the Department issued 84 INF-2, which was intended to clarify for the social services districts the conditions for release of confidential information regarding a Protective Services for Adults (PSA) client to other service providers. Recent regulatory changes with regard to confidentiality as it relates to AIDS, HIV infection and HIV related illness require additional clarification of the Department's policy.

One of the concepts that the Department has endorsed is that PSA is a community problem requiring cooperation among a number of agencies. This concept is supported by Section 473.2(a) of the Social Services Law (SSL) which states that "the effective delivery of protective services for adults requires a network of professional consultants and services providers" and requires local social services districts to work "with other public, private and voluntary agencies including but not limited to health, mental health, aging, legal and law enforcement agencies, for the purpose of assuring maximum local understanding, coordination and cooperative action in the provision of appropriate services" to PSA clients. The SSL therefore anticipates the sharing of information necessary to appropriately serve the client.

However, in a number of social services districts, service delivery to PSA clients has been hindered by a hesitancy or a perceived legal prohibition to sharing information among agencies providing services. In addition, some PSA clients are involuntary clients who either refuse to sign a release of information or are so mentally impaired that the release they do sign has questionable validity.

DISCLOSURE OF NON-MEDICAL INFORMATION

84 INF-2 stated that, based upon the Department's review of Sections 136 and 473 of the SSL and Part 357 of the Department's regulations, non-medical information may be shared with another individual or agency, without the consent of the client, so long as:

- a. the PSA caseworker, supervisor or other district staff person has been properly designated by the local commissioner to disclose such confidential information, and
- b. the individual or agency to whom confidential client information is to be released may properly be considered entitled to such information. An agency may be considered entitled to such information if the agency is providing or being requested to provide services to a PSA client.
- c. In addition, the district must be satisfied that the following safeguards will be maintained:
 1. the confidential character of the information will be maintained;
 2. the information will be used for the purposes for which it was made available, such purposes to be reasonably related to the purposes of the public welfare program and the function of the inquiring agency; and

3. the information will not be used for commercial or political purposes.

Non-medical information should be released only where such information is reasonably necessary to provide protective or other social services to the client.

Although consent is not required for the release of non-medical information to an agency providing or requested to provide services, every effort to obtain consent should be made.

DISCLOSURE OF MEDICAL INFORMATION

In accordance with Part 357 of the Department's regulations, a social services district may, under certain conditions, disclose medical information in its possession concerning PSA clients to appropriate persons or agencies providing services to PSA clients. Such information may be disclosed where such disclosure is reasonably necessary to provide protective services to the client. Part 357 does not require that the local social services district obtain the consent of the client or the client's authorized representative prior to such necessary disclosure. However, it is Department policy that such information should not be disclosed without first requesting the client to authorize the release of this information. An appropriate release should be signed by the client or the client's authorized representative if the client lacks the capacity to consent. The district should document its efforts to obtain a release. However, if a PSA client refuses to authorize the release of medical information, the social services district may release the information to representatives of other agencies involved in the delivery of services to the client, if the district is reasonably satisfied that such medical information is needed to assure the delivery and coordination of necessary services and if the safeguards for non-medical information outlined above are observed, in accordance with Part 357 of the Department's regulations.

DISCLOSURE OF CONFIDENTIAL HIV/AIDS INFORMATION

The enactment of Article 27-F of the Public Health Law and the subsequent revisions to Parts 357 and 403 of the Department's regulations now permit confidential HIV/AIDS information to be disclosed by a provider of health or social services to an authorized employee or agent of such provider or government agency when reasonably necessary for the supervision, monitoring, administration or provision of such services. The term "confidential HIV/AIDS information" means any information, in the possession of a person who provides one or more health or social services or who obtains the information pursuant to a release of confidential HIV related information, concerning whether an individual has been the subject of an HIV related test, or has HIV infection, HIV related illness or AIDS, or information which identifies or reasonably could identify an individual as having one or more of such conditions, including information pertaining to such individual's contacts. The term "authorized employee or agent" includes only those persons who would, in the ordinary course of business, have access to records relating to the care of, treatment of, or provision of a health or social service to the client.

Confidential HIV/AIDS information should not be released without the consent of the client or the client's authorized representative if the client lacks the capacity to consent. The term "capacity to consent" means an individual's ability, determined without regard to the individual's age, to understand and appreciate the nature and consequences of a proposed health care service, treatment, or procedure, or of a proposed disclosure of confidential HIV related information, as the case may be, and to make an informed decision concerning the service, treatment, procedure or disclosure. However, the provisions of Article 27-F and Parts 357 and 403 of the Department's regulations permit the sharing of confidential HIV/AIDS information, even without the client's consent, when such sharing is reasonably necessary for the supervision, monitoring, administration or provision of health or social services. Article 27-F clearly states that nothing in the statute limits a person's or agency's responsibility or authority to report, investigate or redisclose PSA information or to provide or monitor the provision of PSA.

Although confidential HIV/AIDS information may be shared without the client's consent, the local social services district should be extremely sensitive to the issues of stigma, isolation and discrimination faced by persons with HIV/AIDS in deciding to release HIV/AIDS information against a PSA client's wishes. Information should be released only after a careful assessment by PSA staff of whether such medical information is actually needed by the other agency in order to provide appropriate services. The Department also recommends that all staff designated to disclose confidential HIV/AIDS information attend Department-sponsored HIV/AIDS training. In addition, efforts to obtain a signed consent should be documented as outlined above in the DISCLOSURE OF MEDICAL INFORMATION section.

With regard to the release of HIV/AIDS information, including reports on whether a client has had an HIV related test or has been diagnosed as having AIDS, HIV infection or an HIV related illness, a release of information should be dated, should specify to whom disclosure is authorized and the time period for which the release is effective. A general authorization for the release of medical or other information cannot be used to disclose HIV/AIDS information unless such dual purpose is specifically indicated in the authorization. The disclosure of HIV/AIDS information should also be accompanied by a written statement as follows:

"This information has been disclosed to you from confidential records which are protected by State law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure."

An oral disclosure should be accompanied or followed by such a written notice within ten (10) days.

To summarize, confidential HIV/AIDS information should be released only to the extent permitted by law and regulations and only where the provider of health or social services actually needs such information to provide such services. When there are no valid services-related reasons to provide the information and in the absence of the very rare circumstances under which transmission of the HIV infection is possible, confidential HIV/AIDS information should not be released.

GENERAL INFORMATION

Social services districts should continue to review their policies and procedures to ensure that confidential information is provided to PSA service providers in accordance with the safeguards set forth in law and regulation. The Department's Adult Services Program Representatives are available to provide assistance whenever there are questions concerning whether information sharing is reasonably necessary to provide health or social services.

Social services districts are strongly urged to make every effort to obtain the written authorization of the PSA client prior to releasing confidential information to agencies providing services. The PSA client's right to privacy should be protected to the maximum extent possible while at the same time the district endeavors to protect the client from harm. However, in those instances where the PSA client will not consent to the release of information, information may still be released if the safeguards noted above are observed.

Districts should also review their procedures to assure that other agencies receiving confidential information about a PSA client do not share this information with other agencies or providers. If other agencies or providers require this information in order to serve a PSA client, they should obtain it directly from the designated staff of the local social services district.

William E. Gould
Acting Deputy Commissioner
Division of Adult Services