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TRANSMITTAL: 93 INF-37

TO: Commissioners of  
 Social Services

DIVISION: Services and  
 Community  
 Development

DATE: September 9, 1993

SUBJECT: Protective Services for Adults (PSA): Model Agreement  
 with Office of Mental Retardation and Developmental  
 Disabilities (OMRDD)

SUGGESTED  
 DISTRIBUTION: Directors of Services  
 Adult Services Staff  
 Agency Attorneys  
 Staff Development Coordinators

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ATTACHMENTS: Model PSA/OMRDD Agreement (Available on-line)

#### FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		457	Article 9-B		

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The purpose of this release is to inform local social services districts of a model agreement which has been developed by the Department and the Office of Mental Retardation and Developmental Disabilities (OMRDD) concerning the linkage between Protective Services for Adults (PSA) and Developmental Disabilities Services Offices (DDSO).

As indicated in 92 LCM 180, this agreement was developed in response to a report issued by the Commission on Quality Care for the Mentally Disabled entitled "A Review of Familial Abuse Allegations of Adults with Developmental Disabilities", which recommended that this Department and OMRDD clarify the responsibilities of PSA and other agencies serving mentally retarded and developmentally disabled adults for conducting investigations into allegations of familial abuse. The attached agreement was developed with input received from needs assessment surveys completed by staff of the local social services districts and the DDSOs. Also, it reflects comments received from local districts and DDSOs based on their review of a draft version of this agreement.

The agreement covers the following topics:

- \* the eligibility criteria for PSA and OMRDD services;
- \* the referral process between each agency;
- \* service delivery;
- \* procedures for investigating abuse, neglect or exploitation;
- \* referrals to law enforcement;
- \* dealing with high risk cases;
- \* information sharing; and,
- \* conflict resolution.

Copies of the model agreement are also being sent to the DDSOs by OMRDD. Section 473 of Social Services Law requires that local social services districts plan with other public, private and voluntary agencies for the purpose of assuring maximum local understanding, coordination and cooperative action in the provision of appropriate services to PSA clients. Therefore, we recommend that PSA staff contact appropriate staff at the DDSO which covers their area to discuss the model agreement and to work toward a signed agreement between their agencies. The model agreement should also be useful in initiating discussions with other local MR/DD service providers.

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Frank Puig  
Deputy Commissioner  
Services and Community Development

## MODEL PSA/OMRDD DDSO AGREEMENT

### I. PURPOSE:

This agreement is between \_\_\_\_\_ Developmental Disabilities Services Office (DDSO) and the \_\_\_\_\_ County Department of Social Services Protective Services for Adults Program (PSA). The agreement sets forth the joint responsibilities of PSA and the DDSO for developmentally disabled individuals. The DDSO provides services to developmentally disabled individuals as defined in Section 1.03(22) of the Mental Hygiene Law (MHL). PSA provides protective services to impaired individuals over 18 years of age as defined in Article 9-B of the Social Services Law (SSL).

Both entities recognize that each has a unique role in service provision to developmentally disabled adults. Both entities also recognize that the needs and interests of the developmentally disabled will be better served with a clear delineation of the roles and responsibilities of each entity with regard to such persons who are subjected to abuse, neglect or exploitation. The DDSO and PSA enter into this agreement in a spirit of interagency collaboration to facilitate the coordination of appropriate and necessary services to developmentally disabled persons.

### II. PSA ELIGIBILITY CRITERIA:

All individuals 18 years of age or older who meet all of the following three criteria are eligible for intervention:

- 1) are incapable of meeting their own basic needs or protecting themselves from harm due to mental and/or physical incapacity; and
- 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; and
- 3) have no one else available who is willing and able to assist them responsibly.

(A more detailed description of PSA criteria is contained in the New York State Department of Social Services (NYSDSS) Administrative Directive 90 ADM-40, PSA:Client Characteristics.)

Services available under PSA include counseling, locating social services, medical care and other resources in the community, advocacy, homemaker, housekeeper/chore services, money management, assistance in finding alternative living arrangements, and pursuing appropriate actions on behalf of developmentally disabled persons who require involuntary intervention. This may include pursuing court orders to obtain access to the person in accordance with SSL 473-c; to provide short-term involuntary protective services in accordance with SSL 473-a; to request the appointment of a guardian (Article 81 MHL); to obtain an Order of Protection (Article 8, Family Court Act); and coordinating with mental health professionals to request admission for persons requiring treatment in a psychiatric facility or developmental center (Articles 9 and 15 MHL).

### III. OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES (OMRDD) CRITERIA

OMRDD provides services to persons with diagnoses of developmental disabilities. Developmental disability is defined in Article 1, Section 1. 03(22) of the Mental Hygiene Law as a disability of a person which:

1. is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment or autism;
2. is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons;
3. is attributable to dyslexia resulting from a disability described in subparagraph (1) or (2) of this paragraph;
4. originates before such person attains age twenty-two;
5. has continued or can be expected to continue indefinitely; and
6. constitutes a substantial handicap to such person's ability to function normally in society.

Services provided by OMRDD directly or with OMRDD acting as a certifier, contractor or expeditor include housing, day treatment, day training, various clinical and therapeutic services, case management and transportation.

### IV. REFERRAL PROCESS

#### A. DDSO to PSA

The DDSO will refer developmentally disabled individuals who may need protective services to PSA by telephoning the PSA unit responsible for Intake. The DDSO will clearly state the reasons for the referral and outline the risks to the client in his/her situation. The phone referral will be followed up by the DDSO providing to PSA written material such as the individual's developmental and psychosocial history, results of psychological testing, medical assessment and a level of adaptive functioning.

Upon receipt of a PSA referral from the DDSO, the PSA Intake Worker will determine whether to accept or reject the case for a PSA assessment or request additional information as needed. If additional information is needed which is pertinent to the client's potential eligibility for PSA, the PSA intake worker will request information from appropriate sources to enable a decision to be made as to whether the case will be accepted for a PSA assessment. In any case, a decision will be made whether to accept the case for assessment within 24 hours after the referral is received. If, on the basis of information supplied by the DDSO and any additional information obtained by the intake worker, it appears that the client may be eligible for PSA, the case must be accepted for assessment.

A case will be rejected for assessment only if PSA eligibility can be conclusively ruled out. If any doubt remains about a person's PSA eligibility, the case will be accepted for assessment.

Upon acceptance of a referral for PSA assessment, the assigned PSA caseworker will visit the referred individual within three working days of the referral (or 24 hours if the situation is life threatening) in accordance with Section 457.1 (c)(2) of New York State Department of Social Services (NYSDSS) regulations. The DDSO will cooperate with PSA and will accompany PSA on a joint visit if requested by PSA.

#### B. ASSESSMENT PROCESS

During the 30 day period between the acceptance of a referral and the determination of PSA eligibility, PSA will assess the person's needs and provide or arrange for services, as indicated in Section 457.1 (c) of NYSDSS regulations to meet the client's needs which have been identified in the assessment/investigation process.

As soon as reasonably possible, but no later than 30 calendar days after the referral date, a determination will be made whether the case will be opened for PSA beyond the assessment period. Cases which do not meet the PSA client characteristics will not be opened for ongoing PSA services (i.e. cases in which the identified risk factors have been resolved during the thirty day assessment process or cases in which there is no indication of abuse, neglect or exploitation, or the adult has a responsible person(s) or entity(ies) willing and able to meet their needs). For those cases which will be opened for PSA beyond the 30 day assessment period, the DDSO and PSA will work collaboratively on a written case plan which outlines service goals, services to be rendered, the role of each agency and a schedule of treatment conferences including frequency, site and participants. The written case plan will be made part of the case record of each agency.

#### C. PSA to DDSO

PSA will refer developmentally disabled persons who may need services to the appropriate DDSO. However, a referral by PSA to a DDSO does not negate PSA's responsibilities on behalf of persons who are eligible for PSA as specified in this agreement and in Section 457.1(b) of NYSDSS regulations. For those cases which require PSA involvement beyond the 30 day assessment period, within two weeks of receipt of a referral from PSA, the DDSO and PSA will participate in a joint case management visit by both agencies with the client. The visit will be arranged and coordinated by PSA in cooperation with the DDSO. Within 7 working days of the joint visit, the DDSO will advise PSA whether or not the client referred is appropriate for services available to developmentally disabled persons, whether or not the DDSO can provide or arrange for services to the individual, and the nature of such services to be provided.

For developmentally disabled persons who are not eligible for PSA services, the DDSO will assume responsibility for providing or arranging for the provision of necessary services to these individuals. Upon receipt of a referral from PSA, the DDSO will assess the nature and extent of the person's disabilities, their need for services, and will arrange services as appropriate and available.

In cases of dually diagnosed individuals (developmental disability and mental illness) in which there is uncertainty about which service system has primary responsibility, direction will be taken from the Cooperative Agreement between the Office of Mental Retardation and Developmental Disabilities and the Office of Mental Health dated February 15, 1988. Essentially, responsibility is determined by IQ: 70 or over, the responsibility is OMH's; under 50, OMRDD; between 50 and 69, contingent upon primary disability. Clarification and responsibilities are in the Cooperative Agreement.

Within 30 days of acceptance of a case by the DDSO in which PSA will be involved beyond the 30 day assessment period, both agencies will jointly develop a written case plan which will outline service goals, services to be rendered, the specific service provider, the anticipated date services will begin, and the roles of each agency, including which agency will act as

primary case manager. The primary case manager will be determined on a case by case basis, dependent on the needs of the person. To the extent possible, the joint case plan shall be consistent with the PSA service plan which must be completed within 30 days of the PSA referral date in accordance with Section 457.2(b)(4) of N.Y.S. DSS regulations. The written plan will be made part of the individual's record at each agency.

#### D. SERVICE DELIVERY

In mutually served cases, each agency will take responsibility for those activities assigned to them in the written case plan.

When a need is identified for placement specifically within the OMRDD system, particularly emergency placement of a person with developmental disabilities, the DDSO will be responsible for seeking a placement within their system.

Each agency will notify the other of significant changes in the shared client's condition or situation (e.g., changes in medical status, living situation, loss of benefits) as soon as practicable after a change is identified.

Any activity or decision by either agency which would have the effect of discontinuing services or otherwise significantly changing the service plan must be communicated in writing to the other agency at least 30 days prior to the changes or as soon as practicable if 30 days' notification is not possible. Verbal communication may appropriately preface the written communication.

Each agency may at any point call a case conference involving both agencies and other service providers if it is felt that a conference is needed to review significant changes in the client's situation or to devise an appropriate service plan.

## V. PROCEDURES FOR INVESTIGATING ABUSE, NEGLECT OR EXPLOITATION

### A. PERSONS LIVING IN THE COMMUNITY

The investigation of the alleged abuse, neglect or exploitation of impaired adults living in the community is the responsibility of PSA. The information contained above in REFERRAL PROCESS (DDSO TO PSA) will apply in these cases.

### B. PERSONS IN DDSO OPERATED RESIDENTIAL FACILITIES

The investigation of the alleged abuse, neglect or exploitation of residents within the DDSO facilities (including Developmental Centers, Intermediate Care Facilities, Independent Residential Alternatives, Community Residences or Family Care Homes) is the responsibility of the DDSO. Requirements concerning the review and reporting of incidents and alleged abuse are stated in 14 NYCRR (New York Mental Hygiene Codes, Rules and Regulations) Part 624.

A DDSO may make a referral to PSA to conduct an investigation of alleged abuse, neglect or exploitation which occurs while the individual is in the community outside of the residential placement (e.g., during visits to family members.) PSA will have responsibility for conducting the investigation if the individual is at risk at the time of the referral.(e.g., the person is at home on leave and abuse is allegedly occurring). If the individual has returned to the facility at the time the information concerning the alleged abuse, neglect or exploitation is obtained, and therefore is not at risk since he or she is back in a protected setting, the DDSO will have responsibility for conducting the investigation. In those situations in which the individual returns to the facility after PSA has started its investigation, PSA shall complete the investigation and forward its findings and other pertinent information to the DDSO.

### C. PERSONS IN DDSO OPERATED DAY PROGRAMS

The investigation of alleged abuse, neglect or exploitation of clients by staff members is the responsibility of the day program. If it appears that a client may be abused, neglected or exploited by family members or other persons in the community, a referral must be made to PSA. As indicated previously, PSA may request a joint visit with the DDSO staff.

### D. REFERRAL TO LAW ENFORCEMENT

In cases of alleged abuse, neglect or exploitation in which it is suspected that a crime has been committed, both parties recognize that law enforcement must be involved and will cooperate in this process. Part 624.6(d) of OMRDD regulations requires that in the case of any reportable incident or allegation of client abuse where a crime may have been committed, it is the responsibility of the program administrator or designee of an OMRDD operated or certified program to notify law enforcement officials. For abuse occurring in the community in which it is suspected that a crime has been committed, a referral must be made to law enforcement. Such referral may be made by either the individual, PSA or the DDSO staff, preferably through consultation of all three parties.

#### E. HIGH RISK CASES

The following protocol will be followed by the DDSO and PSA in cases identified by either agency to be a high risk situation ( imminent risk to the person's health, safety or stability of living arrangement).

##### Cases Being Mutually Served by PSA/DDSO

In mutually served cases, the agency which first identifies the high risk situation will immediately notify the other agency, when possible. Notification will take place through telephone contact by supervisors in the respective agencies. The purpose of the contact will be to arrive at an immediate plan to address the crisis situation using the resources available to both agencies. If joint consultation is not possible, the agency which identified the high risk situation must take action to resolve the crisis and notify the other agency after the fact.

The primary focus in high risk cases is the resolution of the crisis. When determined feasible, PSA and the DDSO will make every effort to arrange a joint home visit as soon as possible to assess the crisis situation (within 24 hours if the situation is life threatening) but no later than 3 working days following the identification of the situation.

If determined necessary, either agency may call an immediate case conference to devise a plan to address the crisis situation. The plan will come from the meeting and will specify services to be provided and the role of each agency.

##### New Cases

In new cases, the supervisor of the agency which identifies the high risk situation will notify, when possible, the supervisor of the other agency by telephone if it is felt that the assistance of the other agency is necessary and appropriate to address the situation. The referring agency will clearly explain the high risk factors in the client's situation and the need for priority attention. When determined feasible, PSA and the DDSO will make every effort to arrange a joint home visit as soon as possible to assess and resolve the crisis situation (within 24 hours if the situation is life threatening) but no later than 3 working days following the identification of the situation.

#### VI. INFORMATION SHARING

Both agencies agree to share that information concerning the referred or mutually served person which is necessary to develop and implement service plans, to the extent permitted by applicable laws and regulations including Part 357 of NYSDSS regulations and Section 33.13 of MHL . Additional information regarding confidentiality issues is contained in a NYSDSS transmittal 92 INF-26 entitled PSA: Confidentiality/Information Sharing. Information may be disclosed where such disclosure is reasonably necessary to assess an individual or provide protective services to an individual.

Both agencies agree to orient their staffs concerning the implementation of this agreement. Both agencies agree to participate in training of each other's staff regarding the mission and operation of each program.



VII. CONFLICT RESOLUTION:

The DDSO and PSA each retain responsibility for making eligibility decisions regarding their own programs and/or services and determining the type, duration and scope of services they will provide to eligible persons. However, in order to promote coordination and collaboration, each entity shall seek to resolve any conflicts in accordance with the process described below.

In cases of disagreement between the DDSO and PSA staff about a person's eligibility for services or the appropriateness of a services plan, every effort shall be made to resolve the conflict at the practitioner level. If resolution cannot be achieved at that level, supervisory staff in each agency will confer to reach an acceptable resolution. If a dispute cannot be achieved at the supervisory level, the dispute will be referred to the administrative level at each agency for resolution. Both parties agree to make every effort to resolve disputes through the internal conflict resolution process discussed above. If a dispute cannot be resolved by the two parties, each party reserves the right to pursue an equitable resolution of the matter, including requesting guidance from NYSDSS or OMRDD administrative staff.

VIII. TERMS OF AGREEMENT:

PSA and the DDSO will review the terms of this agreement at least annually. Changes in the agreement may be made at any time by mutual consent of PSA and the DDSO.

Nothing in this agreement shall substitute, or represent a change in, either agency's legally mandated responsibilities. Either party may terminate this agreement by giving 30 days written notice to the other party.

\_\_\_\_\_  
COMMISSIONER  
\_\_\_\_\_ County Department of Social Services

\_\_\_\_\_  
Date

\_\_\_\_\_  
DIRECTOR of \_\_\_\_\_ DDSO

\_\_\_\_\_  
Date