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TRANSMITTAL: 95 INF-38

TO: Commissioners of
 Social Services

DIVISION: Office of
 Housing and
 Adult Services

DATE: October 25, 1995

SUBJECT: Protective Services for Adults (PSA): Chapter 395
 of the Laws of 1995: Adult Abuse Amendments

SUGGESTED

DISTRIBUTION: Director of Services
 Protective Services for Adults Staff
 Agency Attorneys
 Staff Development Coordinators

CONTACT PERSON: Any questions concerning this release should be
 directed to your district's Adult Services Program
 Representative as follows:

Irv Abelman - (212)-383-1755, or USERID OAM020
 Thomas Burton - (518)-432-2987, or USERID AX2510
 Kathleen Crowe - (518)-432-2985, or USERID ROF017
 Michael Monahan - (518)-432-2667, or USERID AY3860
 Janet Morrissey - (518)-432-2864, or USERID OPM100

ATTACHMENTS: Chapter 395, Laws of 1995 (Not available on Line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
92 INF-26		357	Art. 9-B SSL		
95 INF-10		457	Art. 81 MHL Art. 27-F PHL Art. 17-A S.C.P.A.		

The purpose of this release is to inform local social services districts about the provisions of Chapter 395 of the Laws of 1995. This law, which becomes effective on November 1, 1995, contains several provisions to improve the ability of the State and local governments to identify, prevent and intervene in situations involving the abuse, exploitation and neglect of impaired adults. This release, which is intended to provide basic information on this new law to local district staff, is the first step in the Department's implementation process. Other implementation activities will include the development of regulations and a detailed Administrative Directive and the provision of technical assistance to local district staff. Presented below is a description of the provisions of Chapter 395 and their implications for local social services districts.

Section 1 of Chapter 395 repeals Sections 544 and 545 of the Executive Law, which pertained to the responsibilities of the State Office for the Aging's (SOFA) Ombudsman Program for the investigation and resolution of complaints made by, or on behalf of, residents of long term care facilities. These provisions are replaced by a new Section 544 of the Executive Law that contains more specific requirements for the Ombudsman Program which should increase the effectiveness of this program. This provision should not have an impact on local social services districts.

Section 1 of Chapter 395 also adds a new Section 544-b to the Executive Law which authorizes SOFA, in conjunction with the State Department of Social Services, to establish, within the amounts appropriated, an Elderly Education and Outreach Program. The purpose of this program is to provide education and outreach to the general public, including elderly persons and their families and caregivers, in order to identify and prevent the abuse, neglect and exploitation of the elderly. This provision of Chapter 395 also authorizes SOFA to award grants to area agencies on aging to establish local elderly abuse, education and outreach programs. Although no funds were appropriated during the 1995-96 state fiscal year for the implementation of this provision, if funds are made available in subsequent fiscal years, local social services districts could experience an increase in the number of PSA referrals they receive. However, every effort will be made to coordinate the elderly abuse education and outreach initiatives authorized by this law with the broader Protective Services for Adults (PSA) public education and outreach initiatives conducted by the local districts.

Section 2 of Chapter 395 amends Section 473.1 of the Social Services Law (SSL) by including in the statutory definition of the PSA eligibility criteria the specific types of situations which fall within the scope of PSA. These situations include physical abuse, sexual abuse, emotional abuse, active, passive and self neglect and financial exploitation. These terms are defined in Section 4 of Chapter 395, which is discussed below. By

clarifying the types of situations which fall within the scope of PSA, it is possible that there will be a greater public awareness of PSA which could result in a small increase in the number of referrals received by the districts.

In addition, Section 2 of Chapter 395 amended Section 473.1(c) SSL by deleting references to conservatorship and committeehip, which were repealed (except for existing conservators and committees) with the enactment of Article 81 of the Mental Hygiene Law. As you know, Article 81 sets forth the process for the appointment of guardians for mentally incapacitated adults. Section 2 of Chapter 395 also amended Section 473.1(f) SSL by deleting a reference to the Consolidated Services Plan and replacing it with a more appropriate reference to Department regulations as the authority for those protective services for adults which are not specifically delineated in statute. These are both technical amendments which will not have an impact on the local districts.

Section 3 of Chapter 395 adds a new Section 473.5 to the SSL which requires that whenever a social services official (commissioner) or his/her authorized designee (PSA worker) has reason to believe that a criminal offense has been committed against a person who is receiving PSA or who is being assessed for PSA, he/she must report this information to the appropriate police or sheriff's department. The law also requires a social services official or his/her designee to report this information to the district attorney's office at the request of such office. This provision of law is consistent with the policy set forth in the model PSA/Police Protocol developed by the Department and the Division of Criminal Justice Services. This protocol, which was issued to the 58 local districts as 95 INF-10, and to the more than 600 police agencies in New York State, sets forth the responsibilities of PSA and the police regarding the investigation of situations involving allegations of abuse, neglect and/or exploitation of an impaired adult.

According to the Model PSA/Police Protocol and the new provision of law, referrals to the appropriate police agency must be made any time a PSA worker has reason to believe that a crime has been committed against an individual who is receiving PSA or whose need for PSA is being determined. A crime is defined in the penal law as a misdemeanor or a felony. A list of crimes that may be present in situations involving the abuse, neglect and exploitation of impaired adults is contained in 95 INF-10. In determining whether or not there is a reason to believe that a crime has been committed against a PSA client or someone whose need for PSA is being assessed, local staff should rely on their observations of the client and the client's condition, conversations with the client and information obtained from collateral sources. Please consult 95 INF-10 for the indicators of abuse and interview guidelines which should be helpful in determining when referrals should be made to the appropriate police agency and to the district attorney's office when requested. Local district staff also should consult with local law enforcement officials regarding the implementation of this provision of law.

Since the effective implementation of this mandatory reporting provision will require extensive cooperation between PSA, police agencies, sheriff's departments and district attorneys, the Department will work closely with the Division of Criminal Justice Services, the Department of Law and other statewide law enforcement organizations to assure that all agencies are implementing this law in a consistent manner.

Based on the experience of other states, and some local social services districts in New York State where there is a strong linkage between PSA and law enforcement, this provision should increase the likelihood that persons who abuse, neglect or exploit impaired adults are prosecuted in accordance with the provisions of the Penal Law. Furthermore, in abuse cases which do not result in prosecution, the involvement of police in the investigation of these cases often provides important assistance for the caseworker which results in a more effective service outcome.

Section 4 of Chapter 395 adds a new Section 473.6 to the SSL which defines the terms physical abuse, sexual abuse, emotional abuse, active neglect, passive neglect, self-neglect and financial exploitation. Presented below are the definitions of these terms.

"Physical abuse" means the non-accidental 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.

"Sexual abuse" means non-consensual sexual contact of any kind, including but not limited to, forcing sexual contact or forcing sex with a third party.

"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.

"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.

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

"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.

"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.

As indicated above, these definitions, which virtually are the same as the ones contained in the Model PSA/Police Protocol, clarify the scope and type of situations that fall under the jurisdiction of PSA and could increase public awareness about the scope of PSA. While this could result in increased PSA referrals to local districts, we expect any increases to be minimal.

Section 5 of Chapter 395 adds a new Section 473-e to the SSL which establishes specific confidentiality/information sharing requirements for the PSA Program. With the exception of those persons, officers or agencies specified below in paragraphs 1 through 6, this section prohibits the State Department of Social Services or a social services district from releasing reports or other information which pertains to a person who is the subject of a PSA referral or application, or who is a current or former PSA recipient. The specific information which cannot be released includes, but is not limited to, the names of referral sources, written reports or photographs taken concerning the subject of a PSA referral or application for PSA, or a person who is receiving or has received PSA. Other information which cannot be shared includes, required forms, progress notes and other information in a case record.

Notwithstanding these prohibitions, listed below are the persons, officers or agencies to whom information may be shared regarding a person who is the subject of a PSA referral or application for PSA, or who is receiving or has received PSA.

1. Any person who is the subject of a PSA referral, as defined Section 457.1 (c)(2) of the Department's regulations, or an application for PSA or who has received PSA or is currently receiving PSA from a local social services district. The person's authorized representative which is defined in the law as:

(a) a person named in writing by the subject of a PSA referral or application, or a person who has or is receiving PSA, for the purposes of requesting or receiving PSA records; or

(b) a person appointed by a court or otherwise authorized in accordance with the law to represent or act on behalf of the person

who is the subject of a PSA referral or application or has received or is receiving PSA. Examples of persons appointed by the court or authorized by law are a guardian or a power of attorney; or

(c) legal counsel for the person.

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 referral as defined in Section 457.1(c)(2) of the Department's regulations, the subject of a PSA application and persons who are or were receiving PSA.
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 issues before the court.
4. A grand jury, upon a finding that the information or 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:
 - (a) the information is necessary to conduct a criminal investigation or criminal prosecution of a person;
 - (b) 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
 - (c) 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.
7. Any person entitled to such record in accordance with applicable law.

The new law also requires that before releasing PSA records to the aforementioned persons, officers and agencies, the Commissioner of the State Department Social Services or a local commissioner must be satisfied that

the confidential nature of the information will be maintained, and that the record will be used only for the purposes for which it was made available. Also, 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 the Public Health Law. For more specific information on these requirements, local district staff should consult 92 INF-26 "Protective Services for Adults (PSA): Confidentiality/Information Sharing With Regard to PSA Clients".

The new law also allows the Commissioner of the State Department of Social Services or a local commissioner to withhold in whole, or in part, the release of any information in their possession which he or she is otherwise authorized to release, as described above in paragraphs 1 through 7, if such official determines that:

- (a) the release of such information would identify a person who made a PSA 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
- (b) the official reasonably determines that the release of such information would be detrimental to the safety or interests of such individual.

The final provision related to confidentiality permits a local social services official, in response to a subpoena or a notice to permit discovery regarding a PSA record, to move to withdraw, quash, fix conditions or modify the subpoena, or to move for a protective order, in accordance with the criminal procedures law or the civil practice law and rules to:

- (a) delete the identity of any persons who made a PSA 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 PSA, or the agency, institution, program or other entity when persons are employed, or with which such persons are associated;
- (b) withhold records, the disclosure of which is likely to be detrimental to the safety or interests of such persons; or
- (c) otherwise object to the release of all or a portion of the record on the basis that the reported release of records is for a purpose not authorized under the law.

For the most part, the confidentiality requirements for PSA records set forth in the new Section 473-e SSL reflect current Department policy set forth in 92 INF-26, which is based on the general confidentiality provisions in the SSL and Part 357 of the Department's regulations. However, the new

law strengthens these existing confidentiality protections and should result in a more consistent application of these requirements throughout the State.

The most significant provision of the new confidentiality requirements is the one which permits the Department and the local districts to protect the confidentiality of referral sources and other persons who cooperate in the investigation and assessment of a persons need for PSA. Prior to the enactment of this law, districts could not guarantee the confidentiality of referral sources or others involved in a PSA investigation. This was particularly problematic in abuse cases where the referral source, or other persons contacted in the course of the investigation, knew and sometimes feared, the alleged perpetrator. Upon being informed that their confidentiality could not be protected, referral sources and collateral contacts often would refuse to make a referral or to provide essential information to local district staff. In these situations conducting a PSA investigation and assessment was extremely difficult, if not impossible. Now that the confidentiality of referral sources and collateral sources in a PSA investigation and assessment can be protected, even when such information is supoenaed or otherwise sought as part of a legal proceeding, this problem should be remedied.

As indicated above, this INF is a preliminary release which will be followed by regulations and a detailed Administrative Directive. If there are any specific policy or implementation questions that are not satisfactorily explained in this INF, please contact your adult services representative so your concerns can be addressed in subsequent releases.

Stuart Feuerstein
Associate Commissioner
Office of Housing and Adult Services