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ENTITLEMENTS AND ADVOCACY TRAINING

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**LEGAL ASPECTS
OF
ADULT PROTECTIVE SERVICES**

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LEGAL ASPECTS OF ADULT PROTECTIVE SERVICES

I. GENERAL

A. The Basic Concept of Protective Services	Protective Services, broadly defined, are services that are provided when an individual develops a need for structured assistance in financial management or management of his/her personal affairs. The Department of Social Services uses a more detailed and specific definition of adult protective services. See Section F, on page 27.
B. The Range of Protective Services	Protective Services may be arranged with (voluntary) or without (involuntary) the person's consent. Protective services range from services which are arranged privately to those which can only be obtained through an agency or by going to court. Many protective services run indefinitely, but some may be limited to a specified time period.
C. The Concept of Incapacity	<u>Incapacity</u> means an inability to function successfully in a given area. It is important to keep in mind that a person lacking capacity in one area can retain capacity and rights in other areas. Unless a person has been adjudged incapacitated, it is best to avoid use of the term - no matter what behavior or extreme kinds of problems a client may exhibit. Even a person who has been hospitalized involuntarily for psychiatric reasons is not incapacitated unless a judge has reached that conclusion.
D. Least Restrictive Alternative	Those who help to provide protective services are encouraged both generally and in the law to look for the least restrictive alternative, keeping in mind that taking away the person's decision-making powers can have negative psychological consequences. It is always desirable to find the device that can perform the necessary service with the least possible intrusion on the client's decision-making

	rights.
E. Who is the Client?	When protective services are being considered, it is important to keep in mind the question: Who is the client? The person's right to make decisions for him/herself should not be taken away simply for the convenience or comfort of others.

F. Involuntary Services Through Laws	Involuntary protective services may be provided in spite of the person's basic right to self-determination when the person is at risk and not able to understand the harm and its consequences.
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G. Providing Service: Striking a Balance	Since in every case where protective services are provided a client gives up or loses self-determination to some degree, it is important to weigh the extent of intervention involved. The professional must balance his/her desire to help against the client's right to be left alone. As each legal protective device is presented below, its advantages and disadvantages will be discussed. This discussion is meant to provide background for the weighing process which must be performed on a case-by-case basis.
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II. SPECIFIC LEGAL TECHNIQUES

A. Power Of Attorney

1. Legal Authority	New York General Obligations Law, Section 5-1501 and following sections.
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2. How Does It Work?	A person who creates a power of attorney (known as the <u>principal</u>) authorizes someone else to act in his/her place. The person who receives the authority is known as the <u>agent</u> or attorney-in-fact. A power of attorney might, for example, authorize
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	<p>someone to:</p> <p>accou</p> <p>benef</p>
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<p>3. Who May Create a Power of Attorney?</p>	<p>A power of attorney may be created by any adult who has the capacity to understand the nature of what he/she is doing and its significance. Anyone who has been declared legally incapacitated cannot create a power of attorney.</p>
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<p>4. How Is It Created?</p>	<p>A power of attorney is created when the principal</p>
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	writes and signs a statement which makes clear what the agent is authorized to do. A standardized form (Statutory Short Form Power of Attorney) can be used and must be accepted by banks and other financial institutions.
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5. When Does It Begin?

a. Generally	A power of attorney becomes effective as soon as the principal signs it unless it is a "springing" power.
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b. "Springing" Power of Attorney	A "springing" power of attorney states that the power shall take effect only upon the happening of a future event specified in the power. A "springing" power must name a person or persons who will sign a written statement when the specified event has occurred. The "springing" power becomes effective upon the signing of the written statement by the "springer" or "springers" named in the power.
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6. When Does It End?

a. Generally	<p>A power of attorney can be revoked whenever the principal wishes. It is advisable to use a written and signed statement and notify all appropriate parties that the power of attorney is no longer in effect. If the new short form is used, any third party who honors the power of attorney is held harmless unless he/she received actual, written notice of the revocation.</p> <p>A power of attorney also ends when the principal loses capacity unless it is a durable power of attorney.</p> <p>A power of attorney ends upon the death of the principal.</p>
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b. Durable Power of Attorney	A durable power of attorney remains effective after the principal loses capacity. The document creating the power of attorney must explicitly say that the power of attorney shall not be affected by the subsequent disability or incompetence of the
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	<p>principal. A durable power of attorney can be very helpful in allowing a trusted person to continue financial management for an elderly person who no longer has the capacity to manage his/her own affairs and an effective way for a person to plan for his/her future incapacity.</p> <p>If a guardian is appointed for the principal, the agent can continue to act, but becomes responsible to the guardian instead of the person who created the power of attorney.</p>
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7. Potential Advantages	<p>Can be created quickly.</p> <p>Can be created cheaply.</p> <p>Can be created without going to court.</p>
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8. Potential Disadvantages	<p>If drafted by an attorney may cost money.</p> <p>No monitoring except by principal and, therefore, susceptible to abuse or poor performance of attorney-in-fact.</p> <p>Ends with incapacity (unless a durable power of attorney) -- exactly when most help may be needed.</p>
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B. Representative Payee

1. Legal Authority	<p>Social Security: 20 C.F.R. (Code of Federal Regulations) §404. 2001 - 2075. Supplemental Security Income (SSI) 20 C.F.R. §416.601 -665</p> <p>Black Lung: 20 C.F.R. §410.581</p> <p>Railroad Retirement Benefits: 20 C.F.R §266</p> <p>Veterans Administration (for appointment of a fiduciary): 38 C.F.R. §3.353</p>
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<p>2. To Whom Applicable</p>	<p>A representative payee may be appointed for a recipient of Social Security or Supplemental Security Income (SSI) benefits when the agency finds that "the interest of the beneficiary will be served by representative payment rather than direct payment," if the agency determines the beneficiary is not able to manage or direct the management of his/her own benefit payments. A representative payee must be appointed for legally incompetent beneficiaries and recipients of Supplemental Security Income (SSI) or Social Security Disability (SSD) checks when drug addiction or alcoholism interferes with the ability to manage benefits.</p>
<p>3. Role of Representative Payee</p>	<p>After the appointment of a representative payee, the benefit is mailed to the payee instead of the beneficiary. The representative payee then has the responsibility to spend the funds for the beneficiary's food, shelter, clothing, medical care and personal comfort items. The representative payee should keep careful records, since he/she will be asked to make an accounting to the agency. The payee is also required to report certain changes which affect the beneficiary's right to receive payment or the amount of the payment.</p> <p>If the Social Security Administration (SSA) or a court determine that the payee misused the funds the benefit payments to the payee must be terminated.</p> <p>NOTE: If SSA negligently fails to investigate or monitor a representative payee, SSA will be required to repay the beneficiary for the misused benefits and to seek restitution from the payee.</p>
<p>4. How to Arrange Representative Payment</p>	
<p>a. Showing Incapability Regarding Financial Management</p>	<p>In deciding whether there is a need for representative payment the agency will consider the following information:</p>

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<p>b. Selection of Representative Payee</p>	<p>The agency will select a representative payee from among interested persons, agencies or institutions, giving special consideration to whether the proposed representative is in a position to look after the beneficiary's needs.</p> <p>The Social Security Administration must obtain documented proof of the payee's identity, conduct a personal interview with the payee applicant if practicable and verify the Social Security number of the payee applicant. SSA must also determine whether the applicant was ever convicted of a social security felony or dismissed as a payee for misuse of funds and if so the applicant will not be certified unless SSA determines it would be in the beneficiary's best interest. Creditors who provide goods and services to a recipient cannot be the payee unless they are:</p>
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Generally in making the choice, the agency gives consideration to a proposed representative payee's demonstration of interest and the existence of a familial, custodial, legal or social relationship between the beneficiary and the proposed representative. The agency uses a "flexible" list of preferences, as follows:

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	<p style="text-align: right;">quali volun</p> <p>If a payee is required due to drug addiction or alcoholism of the beneficiary preference for selection as payee will be given to "qualified organizations" unless SSA determines that selection of a family member would be appropriate.</p> <p>Application forms for persons or agencies interested in being appointed representative payee entitled "Request To Be Selected As Payee" can be obtained from Social Security District Offices.</p> <p>NOTE: If SSA cannot find a suitable payee beneficiaries are to receive direct payment. If SSA determines that direct payment would cause beneficiaries substantial harm, SSA may withhold payments for up to 30 days. The suspension of benefits pending the appointment of a payee may be appealed.</p>
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c. Beneficiary's Right To Object

<p>i. Notice</p>	<p>A beneficiary or his/her conservator or committee is entitled to advance written notice of the appointment of a representative payee and to identification of the person designated to act as payee.</p>
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<p>ii. Review And Appeal</p>	<p>The written notice must inform the beneficiary of his/her right to:</p>
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	<p>deter</p> <p>desig the pa</p> <p>evid based</p> <p>The notice will also advise the beneficiary that if no protest is received within 10 days of the receipt of the notice, payment will be made to the payee as stated in the notice.</p>
<p>5. When Does the Appoint-ment of Representative Payee End?</p>	<p>The appointment of a representative payee can be ended when Social Security is provided with sufficient evidence that the beneficiary has regained the ability to manage or direct the management of his/her benefit. Payment to a representative payee will be stopped upon the death of the beneficiary.</p> <p>A representative payee will be replaced upon his/her request or death as well as when Social Security determines that his/her performance of duties requires replacement.</p>
<p>6. Potential Advantage</p>	<p>Beneficiary receives assistance in financial management and, thereby avoids jeopardizing his/her living situation or impoverishment caused by own mismanagement.</p>

7. Potential Disadvantages	<p>Effective financial management may be difficult if beneficiary has control of other income not subject to representative payment.</p> <p>Although a beneficiary has a right to object to or appeal the appointment of a representative payee, exercising these rights may be difficult for many.</p> <p>When the representative payee has a personal interest in the money (for example, when the payee may inherit under the beneficiary's will), the resulting conflict of interest may cause the representative payee (even unconsciously) to spend less in the beneficiary's interest.</p>
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C. Guardianship	All states have guardianship laws to protect citizens who are unable to make personal and/or property decisions for themselves. Through a legal proceeding the court appoints a guardian to assist individuals, found to be incapacitated, with personal needs and/or property management.
1. Legal Authority	New York Mental Hygiene Law, Article 81

2. Historical Perspective	<p>Historically, since 1927, Article 78 of the Mental Hygiene Law provided for a special proceeding to declare a person incompetent and to appoint a committee. Article 77, the conservatorship statute, was added in 1972 in response to the idea that there were many instances where a person needing some assistance with property or finances did not require the total intrusion of a committee and the stigma of incompetency. However, this statutory scheme lacked flexibility. Conservatorship was often insufficient and committee, excessive and too restrictive.</p> <p>With a growing reluctance to appoint committees, courts were gradually extending the powers of conservators from decisions over property to decisions over the person including such issues as nursing home placement. The result being a</p>
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	<p>blurring in distinction between the two statutes.</p> <p>In 1991 the New York Court of Appeals decided <i>Matter of Grinker (Rose)</i> holding that conservators do not have the power to commit their conservatees to nursing homes or make other decisions affecting the person of the conservatee.</p> <p>This decision set the stage for Article 81 which was passed in 1992 effective April 1, 1993. Article 81 repeals both Articles 77 and 78 and replaces them with one adult guardianship statute. The intent of this legislative reform is to have a statute that is flexible enough to meet individual needs in the least restrictive manner and that guarantees consistent due process safeguards for alleged incapacitated individuals.</p>
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<p>3. Legal Standard</p>	<p>The court may appoint a guardian for a person if the court determines that the appointment is necessary to provide for the personal needs or to manage the property and financial affairs of the person, or both, and that the person agrees to the appointment or is incapacitated.</p>
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<p>a. Incapacity</p>	<p>A determination of incapacity requires clear and convincing evidence that a person is likely to suffer harm because:</p> <p style="text-align: right;">provi mana</p>
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b. Required Assessments	<p>The court must give primary consideration to the person's functional level which includes an assessment of the person's:</p> <p>activi</p> <p>appre of an daily</p> <p>and v activi</p>
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4. How a Guardianship is Created

<p>a. Commencing The Proceeding</p>	<p>The proceeding for a Guardianship may be commenced by the filing of the petition with the court by:</p>
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<p>b. Petition</p>	<p>The petition must include six categories of information:</p> <p>funct</p> <p>guard</p>
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	<p>resou</p> <p>their perso</p> <p>guard</p> <p>inter</p> <p>In addition, any short term relief sought such as an injunction or temporary guardian, must be in the petition.</p>
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<p>c. Court Evaluator</p>	<p>Once a petition is filed the court will appoint a court evaluator from a list of approved professionals including, but not limited to, attorneys, physicians, psychologists, accountants, social workers and nurses. The evaluator is to act as an independent investigator assisting the court in its determination of the person's capacity, availability and reliability</p>
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	<p>of alternative resources, determining the need for legal counsel and assigning proper powers to the guardian.</p> <p>The evaluator will write a report and make recommendations to the court based on the best interests of the alleged incapacitated person.</p>
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<p>d. Legal Counsel</p>	<p>All alleged incapacitated persons have the right to an attorney to represent their wishes. In the following circumstances, the court <u>must</u> appoint an attorney:</p> <p style="text-align: right;">coun</p> <p style="text-align: right;">conte</p> <p style="text-align: right;">nursi treatr</p>
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e. Notice

<p>i. Content</p>	<p>Notice of the guardianship proceeding must contain the following information:</p> <ul style="list-style-type: none"> • the petition; <p>of the</p>
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<p>ii. Service</p>	<p>The notice and petition must be served on:</p> <p>incap paren whom reside</p> <p>perso and n relati who :</p> <p>made</p>
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<p>f. Short Term Solutions</p>	<p>If an emergency exists, Article 81 provides two short term solutions:</p> <ul style="list-style-type: none"> • the court may appoint a temporary guardian at any time prior to the appointment of a guardian upon a showing of danger in the reasonably foreseeable future. • The court may also issue an injunction to stop a person from transferring or disposing of the property or acting in a manner which threatens to endanger the alleged incapacitated person.
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g. Hearing

<p>i. Presence</p>	<p>A hearing must be held at which the alleged incapacitated person must attend. If the person is unable to come to the courthouse the hearing must be held where the person resides, unless:</p> <p style="text-align: right;">prese</p>
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ii. Burden of Proof	A determination of incapacity under this statute must be based on clear and convincing evidence. The petitioner has the burden of proof.
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iii. Timing	<p>A proceeding under this article is entitled to preference over all other matters in the court unless the court, for good cause shown, orders otherwise. The following time limitations are written into the statute:</p> <ul style="list-style-type: none"> • the hearing must be held no more than 28 days from the filing of the Order to Show Cause and Petition. • the decision is to be rendered within 45 days of the date of the signing of the Order to Show Cause, unless the court extends the time for good cause. • the commission is to be issued to the Guardian within 15 days of the decision.
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h. Alternatives to Guardianship

i. Dismissal	If the alleged incapacitated person is found not to be incapacitated the Court will dismiss the petition.
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ii. Protective Arrangements or Single Transactions	This section reinforces the idea of using the least restrictive alternative by allowing the court to create remedies which assure security, service or care to meet foreseeable needs of the incapacitated person without appointing a guardian.
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Among the types of protective arrangements and transactions which the court may authorize or ratify are:

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	<p style="text-align: right;">health provi servic</p> <p>At the hearing the court will explore these alternatives and make a decision based on the evidence presented including whether the continuing protection of a guardian is needed.</p> <p>The court may appoint a Special Guardian to serve as the incapacitated person's agent in concluding the transaction and receiving the services.</p>
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5. Appointment of a Guardian

<p>a. Who May Be Appointed</p>	<p>The alleged incapacitated person may nominate a guardian in the petition or other written document. The following may be appointed as a guardian if found by the court to be suitable to exercise the powers necessary to assist the incapacitated person:</p> <ul style="list-style-type: none"> • any individual over 18; • a not-for-profit corporation organized to act in • a social services official; <p style="text-align: right;">autho conce</p>
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	<p style="text-align: right;">guard of Ar when social</p> <p>The following persons are not eligible unless the court finds that no other person or corporation is available or willing to act as guardian or to provide needed services for the incapacitated person:</p> <p style="text-align: right;">inter</p> <p style="text-align: right;">relati of a p educa incap indire</p>
<p>b. The Order</p>	<p>If the court determines that the appointment of a guardian is necessary, the court must tailor the order by limiting the powers of the guardian to those which are necessary to assist the incapacitated person. The order must also identify all persons entitled to notice of all further proceedings.</p>

<p>6. Duties of the Guardian</p>	<p>The duties of the guardian generally are:</p>
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7. Powers of the Guardian	The powers of the guardian must be limited to those which are necessary to assist the incapacitated
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	person.
a. Power over Property	<p>The guardian may be authorized to exercise those powers necessary and sufficient to manage the property and financial affairs of the incapacitated person; to provide for the maintenance and support of the incapacitated person, and those persons dependent upon the incapacitated person.</p> <p>The guardian may, transfer part of the incapacitated person's assets to or for the benefit of another person on the grounds that the incapacitated person would have made the transfer if he/she had capacity to act.</p>

b. Power Over Personal Needs	<p>With respect to personal care, the guardian may be granted those powers necessary to provide for the personal needs, including food, clothing, shelter, health care or safety, of the incapacitated person, and the power to establish the place of abode of the incapacitated person within or without the state. The guardian must make medical or dental treatment decisions in accordance with the incapacitated person's wishes or if not known, in accordance with the person's best interests.</p> <p>The guardian may not consent to voluntary formal or informal admission to a mental hygiene facility under Articles 9 or 15 or to an alcoholism facility under Article 21 of the Mental Hygiene Law or revoke Powers of Attorney, Do Not Resuscitate Orders, Health Care Proxies or Living Wills which express the wishes of the incapacitated person with respect to health care.</p>
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8. Necessary Documentation

a. Initial Report	<p>The Guardian shall file an initial report with the court no later than ninety days after the issuance of the commission. This report shall include:</p> <ul style="list-style-type: none"> • if the Guardian has power over property:
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<p>b. Annual Report</p>	<p>The Guardian shall file an annual report in the month of May and shall include the following information:</p> <p>telep incap</p>

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c. Final Report	When the guardian dies, is removed, suspended, discharged or allowed to resign the guardian must submit a final report to the court. This report is to include the same information as is required in any annual report.
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9. Change in Guardianship

a. Discharge or Modification	An application for discharge or modification of powers may be made by the guardian, the incapacitated person or any person entitled to bring a guardianship proceeding.
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b. Removal	<p>A guardian may be removed when the guardian fails to comply with a court order, is guilty of misconduct or for any other just cause.</p> <p>A motion to the court for removal of a guardian can be made by the incapacitated person, the court examiner (person assigned by the court to examine initial and annual reports) and any person entitled to <u>bring a guardianship proceeding</u>.</p>
c. Resignation or Suspension	The court appointing a guardian may allow the guardian to resign or may suspend the powers of the guardian.

10. Fiduciary Appointments

a. General	<p>A guardian is a fiduciary and as such must act with trust, loyalty, and fidelity, making well reasoned decisions that protect personal and pecuniary interests of their ward. Fiduciary appointees such as receivers, guardians and guardians ad litem assist the court and its litigants in many situations. Guardians are entrusted to manage the affairs of vulnerable adults and therefore, like all fiduciaries, should be chosen with utmost care. Fiduciary appointments and behavior has often been the subject of controversy and close scrutiny. Heightened attention was directed to this area in 2000 and resulted in findings of abuse in the <u>appointment process and violations of the fiduciary</u></p>
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	rules by appointees.
b. New Rules	<p>In response to these findings new rules governing fiduciary appointments were written that involve changes affecting not only the guardians but also the attorneys and court evaluators involved in each Article 81 Case. These Rules encompass such things as qualifications for appointment, caps on the number of appointments and amount of compensation that fiduciaries may receive.</p> <p>In late 2002 the existing Part 36 of the Rules of the Chief Judge (22NYCRR) were repealed and a new Part 36 of those Rules entitled "Appointments By The Court" were adopted. These rules are effective June 1, 2003.</p> <p>See the NYS Courts website at www.court.state.ny.us for a copy of the new Rules.</p>
11. Potential Advantages	<p>A single individual or agency can be given powers needed to manage the finances and/or personal decisions for a person who lacks capacity.</p> <p>With the concept of tailoring the guardian's powers, the incapacitated person retains all the powers and rights that the guardian is not granted.</p> <p>If a guardian is not needed the court may oversee protective arrangements and single transactions.</p> <p>Once a petition is filed a temporary guardian can be appointed to meet the emergency needs of the alleged incapacitated person pending the hearing.</p> <p>A reporting requirement which may prevent some abuses.</p>
12. Potential Disadvantages	<p>The process for having a guardian appointed can be costly.</p> <p>Loss of autonomy in areas over which guardian obtains powers.</p>

	<p>Potential for mismanagement or abuse by the guardian.</p> <p>Potential conflict of interest when guardian who may inherit from the incapacitated person spends less generously.</p> <p>Persons with no assets and no family or close friends may have no one to serve as guardian. (See E below on Community Guardian Program).</p>
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D.Guardians of Mentally Retarded and Developmentally Disabled Persons

1. Legal Authority	Surrogate's Court Procedure Act, Article 17-A.
2. To Whom Applicable	<p>Mentally retarded persons, of any age.</p> <p>Certain developmentally disabled individuals.</p>
3. Historical Perspective	<p>Under the former guardianship law a guardian was often appointed during the childhood of a mentally retarded person but terminated when the mentally retarded person reached adulthood at which point a separate committee proceeding had to be instituted.</p> <p>In 1969, Article 17-A was adopted, combining the two-step procedure into one. In 1990, Article 17-A was replaced by a new Article 17-A which allows other developmentally disabled persons to receive the services of a court appointed guardian.</p>
4. Statutory Provisions	
a. Medical Evidence	<p>The court must be satisfied that the mentally retarded or developmentally disabled person is incapable of managing himself and/or his affairs by reason of mental retardation or developmental disability and that such condition is permanent in nature. The court must also make a specific determination as to whether the person has the capacity to make health care decisions for him or</p>

herself.

Certification of two physicians or one physician and one psychologist is required.

The developmentally disabled must prove their disability is:

- attributable to one of the following
 - cerebral palsy
 - epilepsy
 - neurological impairment

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	age o For traumatic head injury there is no age of onset limit.
b. Consent of Parents	Consent of both parents or the survivor is required. If one or more parents withholds consent, the Court must hold a hearing, or may dispense with the consent of the parent or need for hearing upon proof that the parent has abandoned the mentally retarded or developmentally disabled person.
c. Best Interest Standard	The Court must determine that the appointment of the guardian is in the retarded or developmentally disabled person's best interest.
5. Powers, Duties and Qualifications of Guardian	The guardian may be appointed over the person or property or both of the mentally retarded or developmentally disabled, person.
a. Limited Guardianship	If the mentally retarded or developmentally disabled person for whom the guardianship application is being made is over the age of 18 and is wholly or substantially self-supporting by reason of employment, a limited guardian of the property may be appointed, who shall manage only property <u>other</u> than the mentally retarded or developmentally disabled person's wage or earnings.

b. Standby Guardianship	Upon application, a standby guardian of the person or property or both of the mentally retarded or developmentally disabled person may be appointed by the court, who can automatically assume guardianship upon death of the parents or guardian, subject only to court confirmation within 60 days.
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c. Corporate Guardianship	A non-profit corporation interested solely in the retarded or developmentally disabled may be named as guardian when no relative or other person is available or willing to do so, or if the retarded or developmentally disabled person does not need a high degree of additional supervision because he or she resides in a state school or is able to work in the community.
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6. Medical Decision Making

a. Legal Authority	2002 N.Y. Laws chapter 500, The Health Care Decision Act for Persons with Mental Retardation.
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b. Generally	This Act, effective March 2003, clarifies that guardians of persons with mental retardation (note persons with developmental disabilities are not covered by this act) have the authority to make health care decisions, including decisions regarding life-sustaining treatment under certain circumstances. At the same time it includes many provisions to ensure the rights of persons with mental retardation are adequately protected.
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c. Key Provisions

i) Expanded Legal Standard	The Act amends Section 1750 of the Surrogate's Court Procedure Act to expand the legal standard, which requires the certification that a mentally retarded person is capable of taking care of him/herself, to include a specific determination as to whether the person has the capacity to make
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	<p>health care decisions for him/herself. It also provides that the absense of such a determination in the case of guardians appointed prior to the act shall not preclude their making such decisions.</p>
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<p>ii)Decision Making Process</p>	<p>All decisions must be based on a best interests standard which requires:</p> <p>perso</p> <p>impro health</p> <p>perso</p> <p>effort</p>
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	<p>hydra</p> <p>medi</p> <p>To facilitate this requirement, the guardian is entitled to all medical records necessary to make informed decisions.</p>
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<p>iii)Life-sustaining Decisions</p>	<p>In order for a decision to withhold or withdraw life-sustaining treatment the mentally retarded person's incapacity to make such decisions must be re-certified. The attending physician must also certify:</p> <p>termi condi which indef</p> <p>sustai extra medi</p>
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	<p style="text-align: right;">notw retard</p> <p>If the decision is to withdraw or withhold artificially provided nutrition or hydration, it must be proven that either there is no reasonable hope of maintaining life, or that it poses an extraordinary burden.</p>
iv)Objection to Health Care decisions	Interested parties may object to a health care decision and may commence a judicial proceeding to settle such disputes.
v)Provider Compliance	Providers of health care services must comply with a guardian's decisions, unless it is contrary to the provider's religious beliefs or moral convictions. If this situation arises, the mentally retarded person shall be promptly transferred, however, the provider must comply with the guardian's decision prior to transfer if the failure to do so is likely to result in the death of the person.
vi)Immunity	Guardians and providers are granted immunity for any decision made reasonably and in good faith.
7. Duration of Guardianship	Guardianship under Article 17-A does not automatically terminate at the age of majority or upon marriage, but requires a court review instead.
a.Right To Petition For Discharge of Guardian or Limited Guardianship	A person 18 or over for whom a guardian has previously been appointed, or a person acting on his behalf, may petition the court to terminate the guardianship, to have the guardian discharged and a successor appointed, or to have the guardian of his property designated as limited guardian.
8.Due Process Rights of Mentally Retarded or Developmentally Disabled Person	If the mentally retarded or developmentally disabled person is over 18 years old, the court shall, upon petition for review or original petition for appointment of a guardian, conduct a hearing.

The mentally retarded or developmentally disabled person over 18 for whom a guardian has been appointed may request the court modify the existing Order to protect the person's financial situation and/or personal interests. The court must modify the Guardianship Order if it determines:

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The court may dispense with the presence of the mentally retarded or developmentally disabled person upon certification of the physician that the person is medically incapable of being present to the extent that attendance is likely to result in physical harm or where the court finds it would not be in the best interest of the mentally retarded or developmentally disabled person.

<p>9. Potential Advantages of Guardianship</p>	<p>Varying degrees of mental retardation or developmental disability are taken into account and powers of the guardian may be more or less extensive depending on needs and abilities of the mentally retarded or developmentally disabled person.</p> <p>Upon reaching the age of majority (18), a mentally retarded or developmentally disabled person is afforded the opportunity to terminate or limit the power of a guardian.</p> <p>Under the guidance of the Health Care Decisions Act, guardians can now make a complete range of health care decisions ensuring full health care rights to the mentally retarded.</p>
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<p>10. Potential Disadvantages</p>	<p>Potential for mismanagement or abuse by guardian.</p>
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E. Community Guardian Program

<p>1. Legal Authority</p>	<p>New York Social Services Law Section 473-c</p>
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<p>2. Availability</p>	<p>In counties where contracts made between Department of Social Services and non-profit organization or government agency. In New York City, program has been put into effect; no other district has chosen this option to date.</p>
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<p>3. Purpose</p>	<p>Enables persons to remain in community through appointment of legal guardian.</p>
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<p>4. To Whom Applicable</p>	<p>The local Social Services official may begin a petition to appoint a guardian (see C. above) for a person who is:</p> <ul style="list-style-type: none"> • eligible for and receiving protective services for adults (see F, below) • living outside a hospital or residential facility or able to return to the community if a conservator or committee is appointed
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	<ul style="list-style-type: none"> • not receiving certain mental health services • without a capable friend, relative or agency willing to serve as conservator
5. Duties of Community Guardian Program	<p>Upon being appointed guardian the Community Guardian Program must:</p> <ul style="list-style-type: none"> • make best efforts to maintain the person in the community • obtain medical, social, mental health, legal and other services that are available and required for person's safety and well-being • advocate for all entitlements, public benefits and services for which person qualifies and requires • obtain an annual assessment from two qualified psychiatrists to determine if services are still required
6. How Community Guardianship Ends	<p>The Community Guardian program must petition the court for discharge if:</p> <ul style="list-style-type: none"> • person regains capacity • person enters a hospital or residential facility on a permanent basis • a friend or relative becomes available to act as a guardian
7. Potential Advantages	Available to those with few assets.
8. Potential Disadvantages	<p>Not available in all parts of the state.</p> <p>Ends with hospital or institutionalization.</p> <p>Only available to those receiving services from PSA.</p>

F. Department of Social Services Protective Services for Adults (PSA)

1. Legal Authority	New York Social Services Law, Sections 473, 473-a, 473-b, 473-c; 18 N.Y.C.R.R. (New York Code of Rules and Regulations Part 457).
2. The Agency	The Department of Social Services is required by law to provide free assistance in obtaining protective services for persons showing certain kinds of needs, as discussed below.

3. Persons To Be Assisted

a. Generally	<p>Protective Services for Adults is required by law to provide services, without regard to the recipient's income, to adults who:</p> <p style="text-align: right;">their daily</p> <p style="text-align: right;">them; situat</p> <p style="text-align: right;">availa assist</p>
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	<p>Protective Services may be necessitated by the action or inaction of another person or because of the adult's own action due to lack of awareness, incapacity or poor health which results in :</p> <p style="text-align: right;">injury</p> <p style="text-align: right;">maltr</p> <p style="text-align: right;">adequ</p> <p style="text-align: right;">entitl</p>
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b. Involuntary Assistance	When the district believes that a serious threat to an adult's well-being exists and that due to mental
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	<p>impairment he or she is incapable of making decisions on his or her own behalf, the social services official should pursue appropriate legal intervention, even if it is contrary to the adult's wishes or without his or her knowledge.</p>
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4. Steps Toward Services

<p>a. Referral</p>	<p>The law requires Protective Services for Adults to conduct an investigation whenever it receives oral or written information concerning a person who:</p> <p style="text-align: right;">need</p> <p style="text-align: right;">is in r accep work</p>
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<p>b. Referral Response</p>	<p>If an adult appears to be eligible for PSA, or if PSA eligibility cannot be ruled out based in the information received, a PSA investigation/ assessment and home visit must be conducted.</p>
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<p>i. Investigation And Visit</p>	<p>PSA is required to observe the following time limits subsequent to a referral.</p>
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	<ul style="list-style-type: none"> • investigate within 72 hours <p style="text-align: right;">work</p>
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<p>ii. Life-Threatening Situations</p>	<p>When a referral concerns a situation which is life-threatening, PSA is required to begin investigation:</p> <p style="text-align: right;">but</p> <p style="text-align: right;">hours</p> <p>Regulations require PSA to act within these time limits when it is not clear whether a situation is life-threatening or not.</p>
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<p>iii. Referral Rejection</p>	<p>If PSA eligibility can be ruled out based upon the information received the referral may be rejected. If a referral is rejected and other services are needed the referring source must be given a referral to other appropriate service providers.</p>
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<p>c. PSA Application</p>	<p>If an adult who is the subject of a PSA referral, the adult's authorized representative or someone acting responsibly for the adult, disagrees with a determination to reject a referral at intake, anyone of these persons may submit a formal written application for PSA.</p>
<p>i. Initial Home Visit</p>	<p>A home visit must be made by PSA within 3 working days of the referral unless PSA eligibility can be conclusively ruled out based on all the information contained in the application.</p>
<p>ii. Services</p>	<p>An Assessment/Services Plan must be made by PSA within 60 days of referral. The plan may provide for implementation of:</p> <p style="text-align: right;">(using</p>

	<p data-bbox="1409 380 1482 443">hazar becor</p> <p data-bbox="760 489 1398 558">New York State regulations list the following specific services which may be provided by PSA:</p> <p data-bbox="1409 863 1482 890">perso</p> <p data-bbox="1409 1192 1482 1220">his/he</p> <p data-bbox="1409 1528 1482 1591">respo repre</p>
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d. Eligibility Determinations	A decision must be made within 60 days of the referral regarding the person's eligibility for PSA.
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i. Denial Of Services	If, after several caseworker visits, PSA determines the person referred is not in need of protective services, such services may be denied. As with other Title 20 services, the client, or the person's authorized representative, may request a fair hearing, if he or she wishes to contest this determination.
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ii. Authorized Representative	<p>Any of the following persons are to be considered a client's authorized representative:</p> <ul style="list-style-type: none"> • anyone having legal authority to act for the client (guardian, conservator, committee, power of attorney) • the client's attorney • anyone who presents a notarized statement that the client has authorized them to apply for PSA on the adult's behalf
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e. Client Notification	Written notice of the person's eligibility or ineligibility for PSA must be given to the individual written 15 calendar days of the eligibility decision.
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i. Notice Contents	The written notice of PSA eligibility or ineligibility
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	<p>must contain the following information:</p> <ul style="list-style-type: none"> • a note of eligibility must indicate the type of service to be provided, the period for which the service is being authorized, the name and number of the assigned PSA caseworker, a statement regarding the continuing responsibility of the person to report any changes affecting his/her continuing eligibility for PSA and the person's right to accept or reject services. • a notice of ineligibility for PSA shall provide specific reasons why PSA is being denied or terminated. • a notice of PSA eligibility or ineligibility must inform the person of their right to a fair hearing.
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f. Informing Referral Sources

<p>i. Referral accepted</p>	<p>When information provided is accepted as a PSA referral the referral source must be informed orally or in writing of the person's eligibility or ineligibility for PSA within 15 calendar days of the completion of the PSA assessment.</p>
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<p>ii. Referral Not Accepted</p>	<p>When information provided is not accepted as a PSA referral, the referral source must be informed orally or in writing within 15 calendar days of the decision.</p> <p><u>NOTE:</u> If the referral source is not part of the PSA Service Delivery network the notice information provided to them must not specify the nature of services that will or will not be provided to the client.</p>
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<p>g. Continued Involvement</p>	<p>PSA is required to continue follow-up as necessitated by the circumstances of each case and at specified intervals in order to assure that the Service/Assessment Plan is being carried out and that the services in the plan remain appropriate and adequate.</p>
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5. Immunity

<p>a. Those Reporting Possible Adult Protective Services Cases</p>	<p>The Social Services Law gives immunity from civil liability to anyone who in good faith reports the existence of a situation which he/she believes involves a person in need of protective or other services and to anyone who gives testimony in a related civil or judicial proceeding.</p>
<p>b. Those Assessing Need For Protective Services or Providing Services</p>	<p>Any social services official or his designee authorized or required to determine the need for or to provide or arrange for the provision of protective services under the Social Services law is immune from civil liability if:</p> <p style="text-align: right;">scope</p> <p style="text-align: right;">result</p>
<p>6. Adult Abuse Law</p>	<p>Adult abuse legislation was passed in 1995 and became effective in November of 1995. The law contains provision to improve the ability of state and local government to identify, prevent and intervene in situations involving the abuse, exploitation and neglect of impaired adults. In</p>

	particular mandatory reporting definitions of abuse and confidentiality provisions are included.
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a. Legal Authority	New York Social Services Law sections 20(3)(d), 473 and 473-e; 18 NYCRR Part 457. (<i>see</i> NYS DSS Information Letter 95-INF-38)
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b. Key Provisions

1. Clarifies PSA Eligibility Criteria	Includes in the statutory definition of the PSA eligibility criteria the specific types of situations which fall within the scope of PSA, including physical abuse, sexual abuse, emotional abuse, active, passive & self neglect and financial exploitation.
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2. Mandatory Reporting	<p>A new Section 473.5 is added to the Social Services Law requiring whenever a Social Service official or designee (PSA Worker) has reason to believe that a criminal offense has been committed against a person who is receiving PSA or being assessed for PSA, they must report this information to the police or sheriff's department. A report must also be made to the district attorney if such information is requested by that office.</p> <p>NOTE: See the model PSA/Police Protocol, 95-INF-10 which discusses responsibilities of both agencies in abuse cases. This information letter also sets forth a list of crimes, indicators of abuse and interview guidelines.</p>
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3. Definitions of Abuse	A new Section 473.6 is added to the Social Services Law defining the different types of abuse:
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<p>2.Exceptions</p>	<p>Information listed above may be shared under certain circumstances with the following persons or agencies:</p> <p>referr</p> <p>receiv</p> <p>perso</p> <p>to PS</p> <p>has d</p> <p>to det</p> <p>Servi</p>
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	<p>other</p> <p>guard Hygi Artic Act;</p> <p>such law.</p> <p>The new law also allows the Social Services</p>
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	<p>Commissioner to withhold information from the persons/agencies listed above if:</p> <p>inform made behal coope condu</p> <p>deter inform or int</p>
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<p>3.Procedural Protections</p>	<p>Allows social service officials, in response to subpoenas and discovery motions regarding PSA records, to respond in accordance with criminal and civil procedures to:</p> <p>a pers appli coope of the agenc</p>
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<p>G. Access Order</p>	<p>Social Services Law Section 473-c provides a means for the Department of Social Services to gain access to a person who may be in need of protective services but has refused to let PSA workers in to do an evaluation.</p>
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<p>1. Procedures To Gain Access</p>	<p>The local social services official must apply to the Supreme Court or County Court for an order. The application for the court order must contain:</p> <p>addre prote</p>
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<p>2. Issuance Of Order</p>	<p>The court may authorize access if it is satisfied that there is reasonable cause to believe:</p> <p>prote prem</p> <p>prote</p>
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3. Limitations	This section does not authorize the removal of the person from the premises or the provision of involuntary protective services.
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H.Short-Term Involuntary Protective Services Order (STIPSO)	New York Social Services Law, Section 473-a
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1. To Whom Applicable	<p>A short-term involuntary protective services order (STIPSO) may be issued by the Supreme Court or County Court specifying, protective services to be provided to an "endangered adult" and by whom they are to be provided.</p> <p>An "endangered adult" is a person, age eighteen or over, who is:</p>
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<p>3. Order To Show Cause</p>	<p>The allegedly endangered adult must be served with petition and an order to show cause stating:</p>
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<p>4. The Hearing</p>	<p>The court hearing must be scheduled within 48 hours of the time the petition is filed by DSS. The allegedly endangered adult may respond to the petition either orally or in writing. He/she has the right to attend the hearing. If his/her retained (not appointed) counsel does not appear, the court must appoint a <u>guardian ad litem</u>.</p>
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<p>5. The Order</p>	<p>If the petition is granted the court order must specify:</p> <p>be pr</p> <p>A STIPSO may not:</p>
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<p>6. Potential Advantage</p>	<p>Quick relief.</p> <p>Brief intervention periods for involuntary service (up to 6 days).</p> <p>Free legal counsel or <u>guardian ad litem</u>.</p>
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	<p>Least restrictive alternative required.</p> <p>Monitoring through report to court required within one week.</p> <p>Sensitive to individual rights.</p>
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7. Potential Disadvantage	Temporary loss of autonomy.
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I. Civil Commitment

1. Legal Authority	New York Mental Hygiene Law, Article 9.
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2. To Whom Applicable	Persons who are mentally ill and need hospitalization can be admitted to a psychiatric facility voluntarily or involuntarily.
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3. How Commitment Works

a. Voluntary

i. Admission	A person may sign him/herself into an inpatient psychiatric hospital after having been examined and found to be:
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	<p style="text-align: right;">treatm</p> <p>The person must be informed of, and be able to understand.</p> <p style="text-align: right;">hospi</p> <p style="text-align: right;">maki</p> <p style="text-align: right;">gover invol</p> <p>The hospital may deny voluntary admission and seek an involuntary admission.</p>
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<p>ii. Duration</p>	<p>A voluntary admission is for an indefinite length of time. When a voluntary patient requests discharge, he/she may be released or he/she may be retained involuntarily for further treatment.</p>
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b. Involuntary: Non-emergency

<p>i. Admission</p>	<p>Admission to a psychiatric facility may be made involuntarily, based on the certifications of two physicians ("2 p.c.") stating that the person is:</p> <p>other</p> <p>treatr</p> <p>that h</p> <p>The doctors' certifications must be based on examinations of the person made within the proceeding 10 days.</p> <p>The application for involuntary admission may be</p>
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	<p style="text-align: right;">hospi</p> <ul style="list-style-type: none"> • a psychiatrist who is supervising the person's treatment or treating him/her in a facility licensed or operated by the Office of Mental Health.
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ii. Duration	<p>The initial period of an involuntary admission is for up to 60 days, but the hospital may apply repeatedly for routine court orders to extend involuntary hospitalization.</p>
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c. Involuntary: Emergency

i. Admission	<p>Designated hospitals may make emergency psychiatric admissions when a staff physician has examined a person and found that he or she has a mental illness:</p> <p style="text-align: right;">obser</p> <p style="text-align: right;">result other</p>
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	<p>Likelihood of serious harm can be shown by "threats of or attempts at suicide or serious bodily harm (demonstrating dangerousness)."</p> <p>Dangerousness directed towards others must be actual homicidal or violent behavior, not merely threats.</p>
ii. Duration	<p>An emergency admission is for 15 days, if the need is confirmed within 48 hours of admission by a staff psychiatrist. After 15 days, the patient must be discharged, or admitted as a voluntary or involuntary non-emergency patient.</p>
4. Assisted Outpatient Treatment	New York Mental Hygiene Law Section 9.60.
a. Generally	<p>This law enhances the supervision and coordination of care of persons with mental illness in community-based settings by providing assisted outpatient treatment, improved coordination of care and improved dissemination of information between and among mental health providers and general hospital emergency rooms. Assisted Outpatient Treatment means categories of outpatient services which have been court ordered. Such treatments include case management or Assertive Community Treatment Team services to provide care coordination and may also include the following categories or services: medication; individual or group therapy; day programming activities; educational or vocational training; alcohol or substance abuse treatment; supervision of living arrangements.</p>
b. Criteria for Assisted Outpatient Treatment	<p>To obtain an Assisted Outpatient Treatment Order, the court must find all of the following:</p> <ul style="list-style-type: none"> • patient is 18 or older; • patient is suffering from a mental illness; • patient is unlikely to survive safely in the community without supervision;

	<ul style="list-style-type: none"> • patient has a history of noncompliance with treatment that has caused either two hospitalizations in the past 36 months OR one or more acts of violence in the last 48 months; • patient is unlikely to voluntarily participate in the recommended treatment pursuant to the treatment plan; • in light of the patient's treatment history and current behavior, the patient is in need of assistive outpatient treatment to prevent a relapse or deterioration likely to result in serious harm to the patient or others; • it is likely the patient will benefit from treatment; and • any directions included in a Health Care Proxy executed by the patient shall be considered by the court in determining the written treatment plan.
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<p>c. Treatment Order</p>	<p>Those subject to court-ordered treatment are entitled to have counsel represent them and to have a court hearing. The individual may testify at the hearing, present evidence, and cross-examine witnesses.</p> <p>If the court finds by clear and convincing evidence that the petition meets the above criteria, and there is no appropriate and feasible less restrictive alternative, the court is authorized to order the subject to receive assisted outpatient treatment for an initial period of up to six months. Upon application, the court can extend the treatment order for one year.</p>
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<p>5. Patients' Rights</p>	<p>A civilly committed psychiatric patient retains all of his/her basic civil rights such as the right to telephone access and the right to refuse treatment. A patient has a right to a court hearing, upon request, to decide whether he/she requires continued involuntary treatment.</p>
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	Every patient is entitled to free legal services through the Mental Hygiene Legal Service, which is a state agency.
6. Potential Advantage	Necessary care and treatment.
7. Potential Disadvantages	<p>Loss of autonomy when involuntary.</p> <p>Long-term hospitalization.</p> <p>Voluntary hospitalization not understood as possibly leading to involuntary hospitalization.</p> <p>Involuntary hospitalization may be made more for the convenience of others than for needs of the patient.</p>

J. Devices Related To Health Care

1. Health Care Agents and Proxies	<p>New York State Public Health Law Article 29-c, Sections 2980-2994</p> <p>A competent adult may appoint an agent to make health care treatment decisions in the event he/she loses decision making capacity.</p> <p>The health care proxy is a document, signed by the adult in the presence of two adult witnesses, which delegates authority from the patient to an agent. The agent's authority goes into effect when a determination is made by the attending physician that the patient lacks capacity to make health care decisions. Local Social Service Commissioners may accept designation as a health care agent.</p> <p>NOTE: If the patients's wishes regarding the administration of nutrition and hydration are not known, the agent does not have the authority to make decisions regarding these treatments.</p>
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2. "Living Will"	A "living will" is a document which states what medical treatment a person is willing to receive or chooses to refuse when he/she no longer has the capacity to state those wishes. New York does not have a law, unlike some states, which recognizes the validity of a living will. There are, however, cases in which New York courts have accepted living wills as evidence of an incapacitated patient's wishes.
3. Potential Advantages	<p>Wishes of a person who is no longer capable of stating them may be put into effect.</p> <p>Lengthy, expensive court procedures to determine treatment may be avoided.</p>
4. Potential Disadvantage	An unsettled, changing area of law.

K. Laws Relating To Abuse

1. Family Protection and Domestic Violence Intervention Act of 1994	<p>The Family Protection and Domestic Violence Intervention Act was passed in 1994. This comprehensive legislation includes major revisions to the Family Court Act and the Criminal Procedure Law providing for more aggressive law enforcement and criminal justice interventions and protections for victims of domestic violence.</p> <p>The legislation addresses the following major areas:</p>
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	<ul style="list-style-type: none"> • notice; and <p>With the exception of the mandatory arrest provisions, this law was effective January 1, 1995. The mandatory arrest provisions are effective July 1, 1995.</p>
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a. Legal Authority	Family Protection and Domestic Violence Intervention Act of 1994, Chapters 222 and 224 of the Laws of 1994.
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b. Key Provisions

1. Choice of Forum	Eliminates the three-day "choice of forum" rule which precluded victims of family violence from securing access to both family and criminal courts. The new law establishes concurrent family court and criminal court jurisdiction over family offense matters, permitting victims to proceed in either court or in both courts. These revisions allow victims of domestic violence access to the different types of relief available from the family and criminal courts.
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2. Mandatory Arrest Policy	The law establishes a mandatory arrest policy, under certain circumstances, in family offense
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cases. Under this section, a police officer is required to arrest a person, and must not attempt to reconcile the parties or mediate where the officer has reasonable cause to believe:

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A family offense includes acts which would

constitute disorderly conduct, harassment in the first and second degree, menacing in the second and third degree, reckless endangerment, assault in the second or third degrees, or attempted assault between spouses or former spouses, or between parent and child or between members of the same family or household.

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<p>3.Orders of Protection</p>	<p>The new legislation requires the creation of a statewide registry of all orders of protection for purposes of enforcing the mandatory arrest provisions when there has been a violation of an order of protection and to allow authorities throughout the state to ascertain the existence of orders of protection.</p> <p>The law also provides for longer orders of protection (up to three years) and immediate arrest of the batterer if aggravating circumstances exist.</p> <p>Aggravating circumstances include:</p> <p>serious</p> <p>weap</p>
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	<p style="text-align: right;">of ord</p> <p style="text-align: right;">crime</p> <p style="text-align: right;">famil injury ongo of the</p> <p>The law also gives the court authority to require the batterer to attend a batterers education program and may include referral to drug and alcohol counseling. The victim may not be ordered to pay the cost of counseling. The court may also order payment of restitution in an amount not to exceed \$10,000.</p>
4.Notice	The law expands the notice that police and district attorneys must give a domestic violence victim concerning the availability of services and their rights under the law.
5.Training	Police, judges and district attorneys are to be trained in the requirements of the law.
2.Adult Abuse Law	Adult abuse legislation which amends the Social Services Law became effective in November 1995. The Law contains provisions for mandatory reporting, definitions of abuse and confidentiality sections which will improve the ability of state and local government to identify, prevent and intervene

	in situations involving the abuse, exploitation and neglect of impaired adults. (See p.35 for a full explanation of the Adult Abuse Law).
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3. Order Of Protection

a. Legal Authority	Family Court Act, Article 8. Criminal Procedure Law, Article 530
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b. Generally	<p>An order of protection can be used to control acts between family members or people who live together in the same household (see page 50) if the acts are such that they would constitute a crime, (for example, assault, disorderly conduct, harassment, menacing or reckless endangerment). An order of protection can be obtained in Family Court, Criminal Court, or both.</p> <p>When an order of protection is obtained the judge gives a person an order telling how to modify his/her behavior. Each order is tailored to fit a specific situation. A person can be ordered to do something (for example, to participate in a counseling or educational program) or not to do something (for example, not to prevent a home attendant from entering the home to provide care). Orders are good for up to one year's duration or up to three years if the court finds aggravating circumstances (see page 50). An order of protection is entitled to enforcement by the police.</p>
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c. Who Can Initiate	Petitions for orders of protection can be brought to Family Court by individuals or by agencies. It is possible for a social work agency which is aware of a situation involving abuse to bring the problem before a court and obtain help for the abused individual.
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d. Temporary Orders	It is possible to get a temporary order of protection as soon as a petition has been filed in Family Court. A temporary order can provide the protection requested before the matter has been fully
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	investigated and decided. Temporary orders are also designed to make it easier to get police protection.
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e. Potential Advantages	<p>Authority of the court can be used to alleviate extreme family problems and avoid violence and abuse.</p> <p>Relief for family difficulties may be obtained without criminal prosecution. Victims of domestic violence may proceed in either family court, criminal court or both, allowing them access to the different types of relief available in both court systems. Police protection may be more readily obtained.</p>
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f. Potential Disadvantage	Police protection not always available.
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3. Nursing Home Patient Abuse Law

a. Legal Authority	Public Health Law, Section 2803-d
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b. Generally	Operators and employees of residential health care facilities are required to report to the Commissioner of the Department of Health any suspected instances of physical abuse, mistreatment or neglect of a resident. The person who reports is immune from liability for reporting the suspicion. Failure to report constitutes professional misconduct.
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c. Potential Advantages	Curbing abuse, mistreatment and neglect.
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d. Potential Disadvantages	<p>Long delays in investigation of complaints.</p> <p>Discipline of employee responsible for abuse left to individual facility.</p>
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4. Endangering the Welfare of an Incompetent or Physically Disabled Person

a. Legal Authority	Laws of New York, 1998, Chapter 381, Penal Law Section 260.25
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b. Generally	A person is guilty of endangering the welfare of an incompetent or physically disabled person when he knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a person who is unable to care for him or herself because of physical disability, mental disease or defect. This crime is a class A misdemeanor.
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5. Endangering the Welfare of a Vulnerable Elderly Person in the Second and First Degree

a. Legal Authority	Laws of New York, 1998, Chapter 381, Penal Law Sections 260.30, 260.32 and 260.34
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b. Key Provisions

1. Generally	These laws significantly increase penalties where a person who is a caregiver assaults or sexually abuses a vulnerable elderly person in his or her care. A violation of Penal Law section 260.32 (Endangering the Welfare of a Vulnerable Elderly Person in the Second Degree, a class E felony) occurs, for example, when a caregiver assaults such an elderly person causing physical injury, or exposes such person to unwanted sexual contact. A violation of Penal Law section 260.34 (Endangering the Welfare of a Vulnerable Elderly Person in the First Degree, a class D felony) occurs, for example, when an assault by a caregiver results in serious physical injury to a vulnerable elderly person.
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2. Definitions	(Penal Law Section 260.30) "Caregiver" is a person who: • assumes responsibility for the care of a vulnerable
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	<p>elderly person pursuant to a court order; or</p> <ul style="list-style-type: none"> receives monetary or other valuable consideration for providing care for a vulnerable elderly person. Th <p>A "Vulnerable Elderly Person" is:</p> <ul style="list-style-type: none"> a person who is 60 years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by demonstrable physical, mental or emotional dysfunction to the extent that the person is incapable of adequately providing for his or her own health or personal care.
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<p>c. Potential Advantages</p>	<p>Ensures new protections for the vulnerable elderly who are often totally reliant on caregivers in the institutional or homecare setting. The enhanced penalties of this law should deter abusive behavior by caregivers.</p> <p>PSA workers are required to report to the police whenever they suspect that one of these crimes has been committed (SSL 473.5).</p>
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<p>d. Potential Disadvantages</p>	<p>Only applies to persons who are 60 or older.</p> <p>Caregivers who do not receive money or other valuable consideration are not covered.</p>
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(END OF TRAINING MANUAL)