



## GUIDELINES FOR THE INVOLUNTARY INTERVENTION

Prior to enactment of the Older Adult Protective Services Act, 35 P.S. Sections 10211-10220 (Act 79), protective service workers had few avenues to provide an emergency involuntary intervention for a client in an extremely dangerous situation. Guardianship laws and personal persuasion were some of the few routes available to assist a client who was reluctant to leave a dangerous situation. With the inception of Act 79, protective service workers were provided a tool to intercede in such situations. Careful consideration, however, was given to develop regulations that protect the rights of older adults when used.

An Emergency Involuntary Intervention Order (described at Sections 15.71-15.76 of the regulations), is an intrusive action that must only be utilized as an action of last resort when all other attempts for a resolution have failed. When there is clear and convincing evidence that, if protective services are not provided, the person to be protected is at imminent risk of death or serious physical harm, the agency may petition the Court for an emergency order to provide the necessary services.

It is an action that must be considered only when failure to intervene could lead to serious consequences such as a serious bodily injury or death. Before any action is taken, protective service workers, following regulations and good casework practice, must always be concerned about their client's right to **SELF DETERMINATION** and **LEAST RESTRICTIVE ALTERNATIVES.**

The client's safety is the primary consideration. All steps in this process (as described below) are to be considered in every case. The protective service worker must utilize good judgement, however, when considering process versus client safety during a medical emergency.

- o utilize all available resources
- o clearly identify the potential dangerous outcome
- o evaluate the client's ability to make an informed decision
- o evaluate all reasonable alternatives
- o discuss these alternatives with the client or significant other
- o encourage the most appropriate alternative(s)
- o assure legal counsel for the client
- o be very specific in the petition
- o remain actively involved and reassess the client's need for protective services until its resolution
- o accumulate information to support all actions
- o retain all court records and correspondence
- o document all actions including failed efforts

The remainder of this paper will include a detailed clarification of these twelve (12) points followed by an in depth case scenario where an involuntary intervention order is used. This scenario was designed to illustrate all aspects of the process.

### **Utilize All Available Resources**

It is very important that protective service workers utilize all available resources when making the determination that it is necessary to file the petition. Before petitioning, however, they must work through at least four important steps.

- o identify the potential danger
- o identify alternatives
- o determine the need for the order
- o identify (for the petition) the desired action (services to be provided) to reduce the danger

Within the AAA, there are several professionals available to protective service workers for consultation when this very important, but difficult, decision is to be made. Protective service workers are encouraged to consult with any or all of these professionals when involuntary intervention is being considered.

- o AAA Director
- o Protective Services Supervisor
- o Legal Counsel
- o Physician Consultant
- o Nurse Consultant

Protective service workers should also examine the potential assistance that can be provided by the professionals who are directly involved with the client.

- o Primary Physician
- o Other Specialists
- o In Home Service Providers
- o Legal Counsel
- o Clergy

Protective service workers should never underestimate the importance of informal supports when trying to obtain information or seek assistance with the development and implementation of a care plan.

- o Relatives
- o Neighbors
- o Friends

The goal should always be to seek the **LEAST RESTRICTIVE ALTERNATIVE** and avoid the need to attempt an emergency involuntary intervention order. When this goal cannot be achieved, however, sufficient time and attention should be

paid to examine its necessity by utilizing available resources and examining pertinent reports or other documentation generated by these professionals.

### ***Clearly Identify the Potential Dangerous Outcome***

Act 79 provides that "when there is clear and convincing evidence that, if protective services are not provided, the person to be protected is at imminent risk of death or serious physical harm, the agency may petition the court for an emergency order to provide the necessary services." (Section 10220 (a)). The Act further requires that the older adult to be protected must fit the criteria of an older adult in need of protective services. "Older adult in need of protective services" is defined in Section 15.2 of the Regulations. It is therefore the responsibility of the protective service worker to first: identify the client as an older adult in need of protective services and then: obtain sufficient information (by utilizing appropriate resources) to identify the potentially dangerous outcome that would result if services are not provided.

It is essential, for the safety, well being and dignity of the client, as well as the agency's credibility, for protective service workers to provide sufficient information to support the extreme condition and consequences that warrant the petition. Special care must be given to avoid making assumptions about situations involving speculative risk rather than imminent risk. For example, it may be appropriate to consider an intervention order for a client who chain smokes, is confused, disoriented and uses oxygen and kerosene heat, especially if the house is a fire hazard with cans of kerosene, newspapers, oily rags and other materials cluttering the house, and the client has a documented history of setting fires from careless smoking. This would constitute imminent risk. On the other hand, it would be premature to consider such an action with another client who the protective service worker fears may fall asleep with a lit cigarette, but has no such history, and where there is no additional concrete evidence that there is a real threat. This would be a case where the risk was only a matter of speculation.

Protective service workers should also utilize other professionals to help articulate the emergency, and the potential dangerous outcome, so it can be specifically stated in the petition. Some agencies use a standard form, completed by a physician, as an attachment to the petition for further documentation. Since the danger to the client is the particular situation that generates such petitions for court intervention, it is extremely important that the petition clearly identify the "the imminent risk of death or serious physical harm."

### ***Evaluate the Client's Ability to Make an Informed Decision***

The criteria for an older adult in need of protective services includes the word "incapacitated" (15.2). This does not mean that the older adult must be bedbound and incoherent. An older adult may be ambulatory, alert and oriented but still lack the capacity to obtain services to maintain physical or mental health or property. This could be the result of some type of psychological or

physical intimidation. The "incapacity" set forth in Section 15.2 refers to this lack of capacity to obtain services to maintain physical or mental health or property. It does not refer to a finding of "incapacity" under Pennsylvania's Guardianship law.

In general, the client is provided the right to refuse services. An Emergency Involuntary Intervention, however, is the only circumstance where a client is not required to consent to the provision of services (Act 79, Sections 10217(b) and 10220). The protective service worker should, however, evaluate the client's ability to make an informed decision prior to considering an emergency petition as it is important to determine the client's understanding of the risk and its consequences. Although the consideration of the client's ability to make an informed decision is an essential part of the caseworker's evaluation, the caseworker should keep in mind that Emergency Involuntary Intervention can occur even in cases in which the client makes an informed decision to refuse services.

### ***Evaluate All Reasonable Alternatives***

Although there is a certain immediacy in these situations, Act 79 requires, and good casework practice dictates, that alternatives be evaluated and offered to remedy the situation before initiating such an intrusive action as an Emergency Involuntary Intervention order. In all cases, these options should be realistic with careful consideration given to the client's individual needs and desires when examining least restrictive alternatives. To do less would be a disservice to the client, their significant others, and would place the AAA's credibility at risk with the local courts.

Protective service workers must always be aware that they have resources, provided by the Act, that can be used to alleviate dangerous situations. They must, however, understand that, although available, these resources must be considered as measures of last resort. Protective service workers must be very careful about falling into a trap of identifying a serious problem with all subsequent actions becoming the process of working towards obtaining a court order to resolve the problem. Other resolutions must be sought and considered.

### ***Discuss These Alternatives with the Client or Significant Others***

Client's Right to Self Determination is one of the most important casework principles. When considering other alternatives, and even when considering an involuntary intervention, the client's opinion and input (as well as that of significant others) must be solicited and considered. This doesn't mean that the care plan will be client-directed, as it may sometimes be necessary to reject many (if not all) of the client's requests. Protective service workers will be more successful if they treat their clients with dignity by asking for input and sincerely considering the clients' requests.

Because of its nature, time is always of the essence when considering an emergency involuntary intervention. Act 79, however, requires an interaction between the protective service worker and client. Whenever possible,

protective service workers must allot sufficient time to discuss appropriate alternatives with all interested parties and to ascertain their desires. Consequently, the protective service worker will have to evaluate the feasibility of including those desires in the care plan or petition. The time required in this effort, however, must not be to the detriment of the client. As in many other aspects of Act 79, protective service workers must use good judgement when determining how much time can be spent in this effort before it creates an additional risk.

### ***Encourage the Most Appropriate Alternative(s)***

After evaluating all appropriate alternatives and discussing them with clients, and significant others, a protective service worker must determine the most appropriate approach, and motivate the client towards it. Priority must be given to least restrictive alternatives, but only safe and realistic outcomes should be pursued. In most cases, there will not be a great deal of time to persuade the client. Sufficient time, however, must be provided to assure that everyone understands the situation, its consequences and all recommendations, as well as, a determination of the client's ability to make an informed decision. The petition is to include, and the judge will be assessing, the agency's efforts to remedy the situation before requesting the court order.

Protective service workers must also be very careful to represent their intentions accurately without using the possibility of a petition to the courts in a threatening manner. The ability to petition for an emergency involuntary intervention order should never be used as a "hammer" to motivate client behavior.

### ***Assure Legal Counsel for the Client***

Section 15.71(b) of the regulations promulgated under Act 79 require that "when the agency petitions the court for emergency involuntary intervention, the agency shall make sure the older adult has the opportunity to be represented by counsel AT ALL STAGES OF THE PROCEEDINGS." It further requires that if the client's attorney is known, the agency "shall attempt to notify that attorney before it files a petition for emergency involuntary intervention."

Due to the nature of the Emergency Involuntary Intervention, it is imperative that protective service workers protect the legal rights of all clients. This is true even though zealous advocacy by the client's legal representative may sometimes result in permitting the client to remain in a life threatening situation. Every client is entitled to effective legal representation. The fact that a client has a competent legal advocate should have no bearing on the decision to petition. As long as the agencies adhere to the regulations, act in good faith and utilize sound judgement, denial of a petition should not be considered a failure or deter the agency in the future. Assuring the client's opportunity to have legal representation can be as important as petitioning for the Emergency Involuntary Intervention.

If the older adult does not have legal representation at the time the emergency order is requested, Act 79 requires the agency to inform the court of its efforts to notify the client's counsel. If the older adult is unable to provide for counsel, the court will appoint counsel as authorized by the Act at the time the emergency order is entered to ensure that legal representation will be provided at the time of the emergency protective services review hearing.

### ***Be Very Specific in the Petition***

A great amount of attention should be given to the detail of the petition to assure all requirements of Act 79 are met and that all actions and services required are considered and ordered. The Department's regulations require that the petitions contain the following information:

- o The name, age and physical description of the older adult insofar as these facts have been ascertained.
- o The address or other location where the older adult can be found.
- o The name and relationship of a guardian, caregiver or other responsible party residing with the older adult, when applicable.
- o A description of how the older adult is at imminent risk of DEATH OR SERIOUS PHYSICAL HARM.
- o The physical and mental status of the older adult, to the extent known.
- o The attempts made by the agency to obtain the informed consent of the older adult, or the older adult's court appointed guardian, when applicable, to the provision of protective services by the agency.
- o The specific SHORT-TERM, LEAST RESTRICTIVE, involuntary protective services which the agency is petitioning the court for an order to provide.
- o A description of how the proposed services would remedy the situation or condition which presents an imminent risk of DEATH OR SERIOUS PHYSICAL HARM.
- o A statement showing why the proposed services are not overbroad in extent or duration and why LESS RESTRICTIVE ALTERNATIVES, as to their extent or duration, are not adequate.
- o A statement that other voluntary protective services have been OFFERED, ATTEMPTED OR HAVE FAILED to remedy the situation.
- o A statement that reasonable efforts have been made to communicate with the older adult in a language the older adult understands in the case of an older adult who is hearing impaired or who does not understand the English language.

- o Other relevant information deemed appropriate by the agency.
- o The agency must request an emergency order of a specific duration which may not exceed 72 hours from the time the the order is granted.
- o The agency must request the court of common pleas to hold a hearing when the initial emergency order expires to review the need for an additional emergency court order or other continued court and protective services both.

When preparing the petition, the agency should be mindful of all action and assistance that may be required to satisfy the reduction of risk to the client. This could include, but is not limited to the following:

- o police assistance
- o assistance from an ambulance and EMT's
- o hospitalization
- o emergency medical care
- o medical tests
- o psychiatric/psychological tests
- o emergency shelter
- o other emergency placement (i.e.. nursing home or PCH)
- o completion of forms (i.e. M.A. applications)
- o receipt of reports
- o provision of in home services

By assuring its initial petition is complete and specific, the agency will eliminate the need to file other petitions or become involved in additional hearings.

***Remain Actively Involved and Reassess the Client's  
Need for Protective Services Until Its Resolution***

The protective service worker's responsibility does not end when the petition for an Emergency Involuntary Intervention order has been granted. To the contrary, the worker's involvement and responsibility continue and may become even more intense. Close contact must be maintained with the client, providers of service, legal counsel and the courts so the protective service worker can:

- o assure compliance with the court order
- o determine some type of measurable outcome of the court ordered services
- o ascertain the impact of those services to the overall reduction of risk
- o collect sufficient information to report back to the court when the order expires

- o make further recommendations on the need and necessary services to reduce additional risk
- o respond to questions by the judge and client's attorney at the follow-up hearing
- o implement a care plan, if one is agreed upon, at the follow-up hearing
- o be prepared to terminate protective services if so ordered
- o determine when it may be appropriate to terminate protective services
- o maintain appropriate contacts and follow-up for any additional court orders
- o assure continuous legal representation, if appropriate

***Accumulate Information to Support All Actions***

At all stages of this process, the protective service worker must obtain sufficient pertinent information to document and support all efforts, and to assist in making appropriate determinations as to the direction of the case. Information may be obtained with consent of the client or through other avenues available to the protective service worker. This information can be in the form of reports, signed affidavits or even pictures. This information could include, but is not limited to:

- o medical history
- o present medical condition including medications and therapies
- o psychiatric/psychological evaluations
- o current medical reports
- o social history
- o medical/mental health opinion of current condition
- o client's ability to make an informed decision
- o medical opinion on risk
- o client's environment
- o police reports
- o other court documents

In most cases, the majority of this information will be needed.

***Retain All Court Records and Correspondence***

The case file must include a copy of all court records (i.e. petitions and orders) and relevant correspondence (i.e. medical reports and letters to the client's attorney) to identify and support all casework actions. This information should be kept in chronological order so a logical progression of actions is documented.

## Document All Actions Including Failed Efforts

Last, but certainly not least, is the important effort and detail that must be given to documenting all casework actions. This is especially important when demonstrating the alternatives suggested, and efforts made, to provide services that would reduce or eliminate the risk. This would include all home visits, phone contacts, or other actions with or on behalf of the client. Case narratives should be concise but include all pertinent data. They should be neat and professional in appearance, signed, dated and in chronological order. Protective service workers should document every case file as if the file were to be reviewed by a judge.

### CASE SCENARIO

#### The Case of Mrs. W.

Mrs. W. is 86 years old, frail and suffers from diabetes, glaucoma, high blood pressure and congestive heart failure. She lives alone (in her own home), visits her physician regularly, has no immediate family in the area but is regularly visited by a neighbor, niece and minister. Up until two weeks ago, Mrs. W. was self sufficient with minimal assistance from her niece and neighbor.

The Report of Need was initiated when the neighbor called the AAA with a concern about Mrs. W.'s behavior and health. The report alleged that there was evidence that Mrs. W. did not take any medication for two days, was not following her diabetic diet, was short of breath, had a significant increase in swelling of her ankles, was experiencing some confusion and was having difficulty ambulating.

The protective service worker made the initial home visit with the agency's nurse consultant who observed a systematic arrangement of Mrs. W.'s medication that clearly indicated that the medications for the last two days had not been taken. There was no evidence that Mrs. W. had prepared any diabetic meals for a couple of days. There was only evidence that she was eating snacks and already prepared food, none of which were appropriate for her special diet. The nurse consultant took Mrs. W.'s vital signs and her blood pressure, pulse and respirations, as well as temperature, were slightly elevated. Also observed were swollen ankles, labored breathing, and some confusion.

The protective service worker administered the SPSMQ and observed that Mrs. W. had difficulty concentrating and was able to answer only the first three questions. She also noticed some discrepancies in Mrs. W.'s conversation, as well as, some problems with short term memory and inappropriate responses. The protective service worker was able to ascertain from the neighbor that Mrs. W., although frail, is usually self sufficient, alert and oriented.

The nurse consultant phoned Mrs. W.'s physician and relayed the information. The physician indicated that he saw Mrs. W. as recently as two weeks ago and found nothing unusual. He confirmed the neighbor's assessment that Mrs. W. is usually alert, oriented, compliant and self sufficient. He

relayed diagnosis, medication, and a brief history. The physician suggested that Mrs. W. be brought to the hospital and that he be notified of her arrival. He was concerned that Mrs. W. was at risk for diabetic coma and/or cardiac arrest if left untreated much longer.

Mrs. W., however, not being of sound mind, was unable to be convinced to go to the hospital, even though the nurse consultant was very patient and thorough in describing the potential harm to Mrs. W. The physician, upon hearing this, dispatched a visiting nurse to obtain a blood sample to measure sugar levels. Mrs. W. became agitated, refused to cooperate, was able to be calmed but could not be convinced to go to the hospital. The protective service worker was not able to contact the niece but did reach the minister who arrived quickly but was also unsuccessful.

After two hours had passed and all attempts had failed, the protective service worker discussed, with the physician and nurse consultant, the need for an emergency involuntary intervention order. It was agreed that although serious, the situation was not yet critical and at least 24 to 48 hours were available for observation and to attempt to change Mrs. W.'s mind about hospitalization. Mrs. W.'s physician agreed to provide information for the petition, if initiated.

Since Mrs. W. was demanding that the AAA staff leave, the neighbor and minister agreed to stay with her and try to get her to take her meds, eat properly or agree to hospitalization.

The plan was that:

- o the protective service worker would try to contact the niece and if successful get her involved
- o the minister arranged for members in the congregation to coordinate visits to encourage Mrs. W. to eat and take medications. Visitors would observe any changes, encourage Mrs. W. to agree to hospitalization, and call protective services if it became an emergency
- o the protective service worker and nurse consultant would visit every morning and maintain contact with the physician until resolved
- o the protective service worker contacted Mrs. W.'s attorney to relay the situation and to inform him of a possible emergency involuntary intervention
- o staff the case with the PS Supervisor before initiating any court action

After two days, all efforts to convince Mrs. W. of the seriousness of the situation failed. She had not eaten or taken her medications for several days and her physical and mental health had severely deteriorated. Mrs. W.'s physician now recommended immediate hospitalization. The protective service worker and nurse consultant had made one last effort to convince Mrs. W. including a discussion of a court order. Mrs. W. refused and the decision was made to file a petition for an emergency involuntary intervention order. The protective service worker then contacted Mrs. W.'s attorney to make him aware

of this action and had a conference call with the county solicitor, physician, nurse consultant and PS Supervisor to discuss the content of the petition. After some deliberations, it was agreed that the petition would include the following:

- o all efforts that were made to convince Mrs. W. to receive appropriate treatment
- o the extent of the deterioration in Mrs W's. physical and mental health and the imminent risk
- o the need for ambulance transport to the hospital
- o the need for medical evaluation and treatment as indicated
- o the need for a geriatric assessment to determine capacity and appropriate level of care
- o review hearing to occur within 72 hours
- o as well as, all other information required by Act 79 and the Department's regulations (6 Pa. Code Section 15.72)

The petition was filed, the order granted, and Mrs. W. was transported to a local hospital where she responded well to treatment. At the review hearing, the court was notified that Mrs. W. was improving and now in agreement with the hospitalization. The physician indicated that hospitalization should continue for at least 3 more days and Mrs. W. could return home with the support of in-home services. Mrs. W's. attorney agreed, on behalf of Mrs. W., to a care plan that would include discharge home, at the physician's discretion, with in home services and Care Management to follow.

The protective service worker remained involved until confident that the implemented care plan would meet Mrs. W's. needs and that it had successfully reduced the risk. The case was then transferred to Care Management.

KEEP IN MIND that this case scenario was designed to show some guidelines for the protective service worker when considering an emergency involuntary intervention order by utilizing "steps" in the process that were previously described in this paper.