

I. Purpose

The purpose of this release is to provide guidance to local departments of social services (LDSS) as to permissible means for the sharing of client-identifiable information between Child Protective Services (CPS) and Protective Services for Adults (PSA) units of an LDSS. The release includes information about a new provision of law, enacted as Chapter 440 of the Laws of 2011, as well as information about other applicable longstanding provisions of law. Some LDSSs have sought clarification of permissible means under current law of sharing client identifiable CPS information with PSA, and the enactment of this new chapter law makes it necessary to provide such guidance at this time.

II. Background

CPS: CPS is a state-mandated service provided without regard to income by the CPS unit in an LDSS. CPS investigates reports of suspected child abuse and maltreatment in order to protect children from further abuse or maltreatment. After an investigation, all CPS reports are either “indicated,” if there is some credible evidence that one or more persons abused or maltreated one or more children, or “unfounded,” where no such evidence is found. Reports of child abuse or maltreatment as well as any other information obtained, reports written or photographs taken concerning such reports of child abuse or maltreatment that are in the possession of an LDSS or OCFS are confidential in accordance with Social Services Law (SSL) Section 422. Such information may only be disclosed where authorized by statute. Unauthorized disclosure of confidential CPS information may subject the individual responsible for such disclosure to criminal and/or civil penalties. CPS information contained in reports pending determination or in indicated reports of child abuse or maltreatment may be disclosed only where and to the extent authorized by SSL Section 422(4)(A)(a)-(aa). Among the exceptions in which disclosures are permitted are disclosures made pursuant to court order or upon the authorization of the subject of the report or other person named in the report.

Another exception to the prohibition on disclosing CPS information in reports pending determination or in indicated reports of child abuse or maltreatment, which may be of particular interest to PSA units, is set forth in SSL Section 422(4)(A)(o). That section permits a CPS or an LDSS to provide CPS information to a provider or coordinator of services to which the CPS or LDSS has referred a child named in a CPS report or the child’s family, or to whom the child or the child’s family have referred themselves at the request of CPS or the LDSS, where the child has been reported to the Statewide Central Register of Child Abuse and Maltreatment. The statute authorizes CPS to provide reports or other information necessary to enable the provider or coordinator of services to establish and implement a services plan for the child or family, to monitor the provision or coordination of services, or to directly provide services to the child or family. Such disclosure may not include information that would identify the source of the report, absent the written consent of the source. CPS information received by the provider or coordinator of services is also subject to limitations on redisclosure, as set forth in SSL Section 422(4)(A).

There is no authority in SSL Section 422(4)(A)(o) for the disclosure to providers or coordinators of services of CPS information from an unfounded report of child abuse or maltreatment.

A PSA unit of an LDSS is considered to be a permissible provider or coordinator of services to which CPS may refer a family involved in a CPS case that is pending determination or that is an indicated report.

A new exception permitting disclosure of certain CPS reports to PSA was enacted pursuant to Chapter 440 of the Laws of 2011. Known for the purposes of this release as the “access while a child” exception, this new provision, signed into law on August 17, 2011, and effective immediately upon enactment, added SSL§422(4)(aa) to provide specific authority for PSA to receive confidential CPS records on pending or indicated reports of child abuse or maltreatment when a social services official who is investigating whether an adult is in need of PSA has reasonable cause to believe such adult may be in need of protective services for adults due to the conduct of an individual or individuals who had access to such adult when such adult was a child, and the child abuse or maltreatment reports and information are needed to further the present PSA investigation. A copy of this new law is attached as Appendix A.

PSA: PSA is a state-mandated service which, pursuant to SSL Section 473(1), is provided without regard to income by a PSA unit in an LDSS to assist adults age 18 or older who:

- (a) because of mental or physical impairments,
- (b) are unable to manage their own resources, carry out the activities of daily living, or protect themselves from physical abuse, sexual abuse, emotional abuse, active, passive or self-neglect, financial exploitation or other hazardous situations without assistance from others, and
- (c) have no one available who is willing and able to assist them responsibly.

PSA staff receive and investigate referrals, interview clients and collaterals to determine eligibility for services, assess client risks, develop services plans to address identified risks and, as appropriate, provide or arrange for the provision of protective services in accordance with the services plan. PSA reports, as well as the names of referral sources, photographs and any other information obtained concerning such reports, that are in the possession of the LDSS or OCFS are confidential, pursuant to SSL Section 473-e(2), and may only be disclosed where authorized by that statute. PSA may disclose confidential information to a provider of services of a current or former PSA client when the LDSS believes that such information is necessary to determine the need for or to provide or to arrange for the provision of such services [SSL Section 473-e(2)(b)].

III. Program Implications

PERMISSIBLE MEANS OF SHARING CLIENT IDENTIFIABLE CPS INFORMATION BY CPS TO PSA

A. Referral by CPS to PSA

In accordance with SSL Section 422(4)(A)(o), an LDSS or CPS may disclose client-identifiable CPS information contained in a report pending determination or an indicated report to “a provider or coordinator of services” to which a CPS or an LDSS has referred the child or the child’s family, or to which the child or child’s family has referred themselves at the request of the CPS or LDSS. This authorizes the sharing of CPS information either within the same LDSS or with a PSA unit in a different LDSS to which a referral has been made. PSA is considered to be “a provider or coordinator of services” under this provision.

These provisions apply to an open or indicated CPS report when there is either: (i) a referral made by CPS or the LDSS to PSA of an adult in the child’s family who may be in need of PSA, or (ii) a referral by the child’s family to PSA, made at the request of CPS or an LDSS, where the CPS information is necessary to enable the LDSS PSA to establish and implement a plan of service to a vulnerable adult, or to monitor the provision or coordination of PSA services, or to directly provide PSA services to the child’s family. The term “family” for this purpose includes the children, the parents, and other adults residing in the same household as the children. An example of a situation in which CPS may refer a family to PSA and share CPS information on pending or indicated CPS reports is one where the CPS investigation identifies that there is an adult in the child’s household who may be in need of PSA, as set forth in SSL Section 473. Such referral may be made during or at the conclusion of a CPS investigation. Referral is also appropriate if an individual who is part of a closed CPS case communicates with CPS about an issue relating to the abuse, neglect or financial exploitation of a vulnerable adult.

NOTE:

- CPS information provided to PSA may **not** include the identity of the source of the report, absent the written consent of the source.
- CPS information may be provided by CPS to the PSA unit as a provider or coordinator of services pursuant to SSL Section 422(4)(A)(o) only where there is a CPS report pending determination or an indicated CPS case, but may not be shared where a CPS case is “unfounded.”

B. Release/Consent to Disclose

In accordance with SSL Section 422(4)(A), the subject of a report (i.e., the person who is named in a report as being responsible for the abuse or maltreatment of the child) or another person named in the report (the child named in the report or the child’s parent, guardian, custodian or other person legally responsible for the child who has not been named in the report as being responsible for the abuse or maltreatment) may consent to the disclosure of client-identifiable CPS information in open (pending determination) or indicated reports.

Such consent may be documented through the execution of a written release that expressly refers to the disclosure of CPS information.

In accordance with SSL Section 422(5)(a)(iv), the subject of the report may also authorize the disclosure of an unfounded CPS report to LDSS PSA through a release. Other persons named in the report may not authorize the disclosure of an unfounded CPS report.

Please refer to Appendix B for a model of a consent form authorizing disclosure of CPS information.

C. Multidisciplinary Investigative Team

In accordance with SSL Section 422(4)(A)(x), LDSS CPS may disclose client-identifiable CPS information on pending or indicated CPS reports to members of a local Multidisciplinary Investigative Team (MDT) established by the LDSS. In accordance with SSL Section 423(6), LDSS PSA staff may be members of an MDT. Participation in an MDT would enable LDSS PSA to become aware of CPS reports, including specifically reports of physical abuse, sexual abuse, child fatalities, and serious and/or ongoing maltreatment. PSA would be able to participate jointly with CPS and other appropriate MDT member agencies in the investigation of cases involving vulnerable adults who may be eligible for PSA.

In accordance with SSL Section 422(5)(a)(iii), members of an MDT have access to legally sealed unfounded CPS reports when there is a subsequent report involving the same subject, child, or sibling of a child named in an unfounded report. In such situations, LDSS PSA staff who are members of an MDT might sometimes obtain access to unfounded report information in the context of the investigation of a subsequent CPS report. In accordance with SSL Section 423(6), LDSS PSA staff who are members of an MDT may share client-identifiable PSA information concerning a child or a child's family with other members of the MDT to facilitate the investigation of suspected child abuse or maltreatment.

D. PSA Requests for Access to CPS Information

The situation may arise in which a PSA unit has reason to believe that there may have been prior or ongoing CPS involvement with a family that is also being served by the PSA unit and that the CPS information may be of assistance to the PSA unit in meeting its statutory and regulatory duties and obligations.

In order for the PSA unit to access CPS information, one of the exceptions to the ban on sharing information included in SSL Sections 422(4)(A)(a)-(aa) would have to apply. The applicable exceptions are those pertaining to a court order, MDT, CPS release, provider or coordinator of services, or the new "access while a child" exception noted on page 3.

A PSA unit would have a right to access CPS information on pending and indicated CPS cases if the PSA unit is granted a court order allowing such access. This exception is most likely to occur when the PSA unit is seeking CPS information in the possession of another LDSS. In addition, the PSA unit would have a right to access CPS information from

pending and indicated reports if the subject of the CPS report or any other person named in such report (including the PSA client) executes a release that specifically includes CPS information, subject to the same limitations noted in section B of this Informational Letter. Where access to CPS information is authorized by either a court order or a CPS-specific release, the PSA unit is not required to provide further justification to the CPS unit to gain access to CPS information.

If the PSA unit is not able to access CPS information by either a court order, a CPS-specific release, or through an MDT, the PSA unit may request that the CPS unit share CPS information using the provider or coordinator of services exception in SSL Section 422(4)(A)(o). For this exception to apply, the family must otherwise satisfy the requirements in Section 422(4)(A)(o), which are that:

- the family was referred to the PSA unit by CPS or an LDSS,
or
- the family referred themselves at the request of CPS or an LDSS
and, for either type of referral,
- the PSA unit needs the CPS information to establish and implement a plan of PSA for the family, or to monitor the provision of PSA, or to directly provide PSA, including a PSA investigation.

Should the PSA unit make such a representation to the CPS unit within an LDSS, the CPS unit may share with the PSA information on pending and indicated CPS reports regarding such family, subject to the limitations referenced in section A of this Informational Letter. The PSA unit's request for CPS information should be made in writing to the CPS unit and should set forth the basis for the request. Where CPS information is provided to the PSA unit, the LDSS should document the basis for the transfer of such information.

Finally, the PSA unit may also request confidential CPS records under the "access while a child exception," where the PSA unit is investigating whether an adult is in need of PSA and has reasonable cause to believe such adult may be in need of protective services due to the conduct of an individual or individuals who had access to such adult when such adult was a child, and such records and information are needed to further the present investigation.

RECOMMENDED ACTION:

LDSS staff (Directors of Services, CPS and PSA, together with LDSS attorneys) should review and consider the above mentioned permissible means available under current law to enable CPS, a local or regional MDT, and PSA to share confidential information under certain circumstances; determine how these provisions may apply to future cases; and determine what changes in procedures may be necessary or desirable as a result. In particular, consideration should be given to whether an LDSS may wish to establish an MDT - or expand an existing MDT - to include PSA as well as CPS staff, in order to better address particular PSA cases.

LDSS CPS staff and MDT member agencies should become familiar with the eligibility criteria for PSA, with possible indicators of abuse, neglect and exploitation of vulnerable

adults who may be eligible for PSA, and with the range of services available under PSA. Such information is available under the “Protective Services for Adults” sections of the OCFS Internet and intranet websites; in Publication 1307, “Protecting Adults: A Community Concern”; in Publication 1326, “Protecting Adults From Abuse and Neglect”; and in Publication 4664, “Financial Exploitation of Elderly and Impaired Adults.” More detailed information concerning PSA services, procedures and policies can be found in numerous Administrative Directives, Information Letters and Local Commissioner Memoranda issued in previous years, and may be obtained by contacting the OCFS Bureau of Adult Services.

/s/ Laura M. Velez

Issued By:

Name: Laura M. Velez

Title: Deputy Commissioner

Division/Office: Division of Child Welfare and Community Services

ATTACHMENT A

A07633 Text:

STATE OF NEW YORK

7633

2011-2012 Regular Sessions

IN ASSEMBLY

May 11, 2011

Introduced by M. of A. PAULIN, PEOPLES-STOKES, SCARBOROUGH -- read once
and referred to the Committee on Children and Families

AN ACT to amend the social services law, in relation to permitting
social services officials investigating whether an adult is in need of
protective services to have access to certain confidential reports

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND
ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subparagraphs (y) and (z) of paragraph (A) of subdivision 4
2 of section 422 of the social services law, subparagraph (y) as amended
3 and subparagraph (z) as added by section 1 of part A of chapter 327 of
4 the laws of 2007, are amended and a new subparagraph (aa) is added to
5 read as follows:

6 (y) members of a citizen review panel as established pursuant to
7 section three hundred seventy-one-b of this article; provided, however,
8 members of a citizen review panel shall not disclose to any person or
9 government official any identifying information which the panel has been
10 provided and shall not make public other information unless otherwise
11 authorized by statute; [and]

12 (z) an entity with appropriate legal authority in another state to
13 license, certify or otherwise approve prospective foster and adoptive
14 parents where disclosure of information regarding the prospective foster
15 or adoptive parents and other persons over the age of eighteen residing
16 in the home of such prospective parents is required by paragraph twenty
17 of subdivision (a) of section six hundred seventy-one of title forty-two
18 of the United States code[.]; AND

19 (AA) A SOCIAL SERVICES OFFICIAL WHO IS INVESTIGATING WHETHER AN ADULT
20 IS IN NEED OF PROTECTIVE SERVICES IN ACCORDANCE WITH THE PROVISIONS OF
21 SECTION FOUR HUNDRED SEVENTY-THREE OF THIS CHAPTER, WHEN SUCH
OFFICIAL

22 HAS REASONABLE CAUSE TO BELIEVE SUCH ADULT MAY BE IN NEED OF
PROTECTIVE

23 SERVICES DUE TO THE CONDUCT OF AN INDIVIDUAL OR INDIVIDUALS WHO HAD
24 ACCESS TO SUCH ADULT WHEN SUCH ADULT WAS A CHILD AND THAT SUCH
REPORTS

25 AND INFORMATION ARE NEEDED TO FURTHER THE PRESENT INVESTIGATION.

26 S 2. This act shall take effect immediately.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD11521-01-1

ATTACHMENT B

AUTHORIZATION FOR INFORMATION

I, _____, currently residing at _____

_____, hereby authorize the New York Statewide Central Register of Child Abuse and Maltreatment to furnish all information which may be contained within the New York Statewide Central Register of Child Abuse and Maltreatment to _____ affiliated with _____ (agency), on my behalf in accordance with the Child Protective Services Act of 1973.

The names and birth dates of the children belonging to the individual listed on the first line of this form as well as previous addresses of this individual are necessary to conduct a thorough and accurate search of the Statewide Central Register database. Please furnish this information below:

Names and birth dates of children:

Previous addresses starting with most recent:

Signature

On this ____ day of _____, 20__, before me personally came _____ (individual) to me known and known to be the same person described in and who executed the within statement, and he/she duly acknowledged to me that he/she executed the same.

Notary Public