
Community Guardian Procedure (CGP)# 20-02

Date: October 16, 2020

DISTRIBUTION: ALL CGP STAFF

CLIENTS IN A RESIDENTIAL FACILITY/HOSPITAL SETTING

Purpose: To inform Community Guardian Program (CGP) staff of the procedure for managing clients who are admitted into a residential facility or hospital setting.

Background

The APS caseworker may submit a program referral to appoint a Community Guardian if the client:

- Is eligible for or in receipt of APS due to mental or physical impairments which render the clients unable to manage their resources, carry out activities of daily living, or protect themselves from abuse, neglect, or exploitation, or other unsafe conditions;
- Does not have a capable friend, relative, or responsible agency willing and able to serve as guardian; and
- Lives outside of a hospital or residential facility or, if living in a hospital or residential facility, the appointment of a Community Guardian is part of the discharge plan to return the client to the community.

If appointed, the CGP must act on behalf of the client and obtain medical, social, mental health, legal and other services required for the person's safety and well-being. Most importantly, the CGP must make every effort to maintain each client in a place other than a hospital or residential facility.

Community Guardian Guidelines – Discharge of Duties

The CGP is required to relinquish its duties as guardian if:

- The client is no longer in need of a guardian;
- A capable friend or relative becomes available to serve as guardian;
- The client enters a hospital or residential facility with the expectation of a long-term stay, which will exceed six months, and there is no anticipation of returning to the community; or
- The client will remain in a hospital for more than six months with no expectation of returning to the community.

When a client is institutionalized in a hospital or residential facility, the CGP caseworker must conference with the facility to assess the duration of stay and potential discharge plan within ten (10) days of the client's admittance.

If a discharge plan is available, the CGP caseworker will coordinate with the hospital/residential facility to return the client to the community with the appropriate supports.

When a client is admitted in a hospital/residential facility with the expectation of a long-term stay (over six months), the CGP must submit a Community Guardian Discharge Approval Request (**APS-768**) to HRA/APS Administration within thirty (30) days of the determination of long-term placement. Upon approval from APS Administration, the CGP must petition the court for permanent placement of the client and discharge of guardianship duties within thirty (30) days.

The Community Guardian must inform the hospital/residential facility of the plan to discharge the client using the Notice of Intent to Petition for Discharge. The notice must be submitted to the hospital/residential facility within five (5) business days of receiving HRA/APS's approval to discharge the client.

If the client is being assess and the duration of stay has not been determined, the Community Guardian will conference with the facility within thirty (30) days of the client's admittance. The Community Guardian will continue to contact the facility every thirty (30) days thereafter until a determination is made.

If there is no discharge plan within ninety (90) days of client's admission in a hospital/residential facility, the Community Guardian will assess the case for discharge from the CGP. The CGP must conference with HRA/APS Administration to develop an appropriate case plan based on the client's needs and circumstances.

Hospital/Residential Facilities Defined

Pursuant to New York State law, a hospital is an inpatient medical facility as defined by Section 2801 of the Public Health Law, or the inpatient services of a psychiatric center under the jurisdiction of the Office of Mental Health or any other psychiatric inpatient facility defined under the Mental Hygiene Law, which includes:

Hospitals

A facility or institution engaged principally in providing services by or under the supervision of a physician or, in the case of a dental clinic or dental dispensary, of a dentist, or, in the case of a midwifery birth center, of a midwife, for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including, but not limited to,

- A general hospital, public health center, diagnostic center, treatment center, dental clinic, dental dispensary, rehabilitation center other than a facility used solely for vocational rehabilitation, nursing home, tuberculosis hospital, chronic disease hospital, maternity hospital, midwifery birth center, lying-in-asylum, out-patient department, out-patient

lodge, dispensary and a laboratory or central service facility serving one or more such institutions.

- Hospital does not include an institution, sanitarium or other facility engaged principally in providing services for the prevention, diagnosis or treatment of mental disability and which is subject to the powers of visitation, examination, inspection and investigation of the department of mental hygiene except for those distinct parts of such a facility which provide hospital service.

Psychiatric Facilities

- In-patient services of a psychiatric center under the jurisdiction of the office of mental health or other psychiatric in-patient facility in the department,
- a psychiatric in-patient facility maintained by a political subdivision of the state for the care or treatment of the mentally ill,
- a ward, wing, unit, or other part of a hospital, as defined in article twenty-eight of the public health law, operated as a part of such hospital for the purpose of providing services for the mentally ill pursuant to an operating certificate issued by the commissioner of mental health, or
- other facility providing in-patient care or treatment of the mentally ill which has been issued an operating certificate by such commissioner.

Residential Facilities

Community Residential Facility

Community residential facilities are facilities operated or subject to licensure by the state which provides a supervised residence for mentally, emotionally, physically, or socially disabled persons or for persons in need of supervision.

Community residential facilities include, but are not limited to:

- community residences for the mentally disabled operated or licensed by the offices of mental health or mental retardation and developmental disabilities or by the divisions of the office of alcoholism and substance abuse,
- agency operated boarding homes, group homes or private proprietary homes for adults operated or licensed by the Department of Social Services,
- group homes operated by, contracted for or licensed by the division for youth and half-way houses operated or licensed by the division of substance abuse services.
- Skilled nursing facility or health-related facility operated pursuant to article 28 of the Public Health Law;
- An alcoholism or substance abuse treatment facility operated pursuant to article 19 or 23 of the MHL;
- A community residence, family care home, or other community care facility for the mentally disabled operated pursuant to article 31 of the MHL; or

- An adult care facility operated pursuant to article 7 of the Social Services Law.

Assisted Living (ASL) Program

An entity or entities which are approved to operate and possesses a valid operating certificate as an adult care facility, other than a shelter for adults, a residence for adults or a family type home for adults, and which possesses either:

- a valid license as a home care services agency issued pursuant to section thirty-six hundred five of the public health law; or
- a valid certificate of approval as a certified home health agency issued pursuant to section thirty-six hundred six of the public health law; or
- valid authorization as a long term home health care program issued pursuant to section thirty-six hundred ten of the public health law.

Congregate Care:

- Congregate care level I- family care in a family type home for adults, which is certified by the New York State Office of Children and Family Services (OCFS), or a family care home certified by OMH or OPWDD in accordance with applicable provisions of law and regulations.
- Congregate care level II - residential care in a residence for adults or a privately-operated community residence, residential substance abuse treatment program or a community residential facility for alcoholism, certified by the appropriate Office of the Department of Mental Hygiene or a residential care center for adults certified by OMH in accordance with applicable law and regulations.
- Congregate care level III- enhanced residential care in a privately-operated school for the mentally retarded and developmentally disabled which is certified by OPWDD in accordance with the applicable provisions of law and regulations or an adult home or enriched housing program certified by the New York State Department of Health (DOH) in accordance with applicable law, rules and regulations to the extent permitted by federal law and regulations. Enhanced residential care facilities include: Adult Homes and Enriched Housing programs certified by the DOH or schools for the mentally retarded certified by OPWDD.

Adult Home

An adult care facility established and operated for the purpose of providing long-term residential care, room, board, housekeeping, personal care, (either directly or indirectly), and supervision to five or more adults unrelated to the operator.

Effective immediately

References:

18 NYCRR §457
Mental Hygiene Law (MHL) article 81
MHL §1.03
Public Health Law §2801
Social Services Law §§ 2, 461, 463

Related Forms

Community Guardian Discharge Approval Request (**APS-768**)
Notice of Intent to Petition for Discharge