

ADULT ABUSE—LONG TERM CARE OMBUDSMAN

CHAPTER 395

S. 2419-A

Memorandum relating to this chapter, see Legislative Memoranda, post

Approved Aug. 2, 1995

Effective Nov. 1, 1995

AN ACT to amend the executive law, in relation to creating a long term care ombudsman and to amend the social services law, in relation to abuse and neglect of adults, and to repeal sections 544 and 545 of the executive law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Sections 544 and 545 of the executive law are REPEALED and two new sections 544-a and 544-b are added to read as follows:

§ 544-a. Long term care ombudsman

1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Local ombudsman" shall mean an individual who is employed by the local entity designated pursuant to subdivision four of this section and who has been approved by the state ombudsman to perform or carry out the activities of the local long term care ombudsman program. The local ombudsman may be either a paid employee or volunteer of the local entity.

(b) "Long term care facilities" shall mean residential health care facilities as defined in subdivision three of section twenty-eight hundred one of the public health law and adult care facilities as defined in subdivision twenty-one of section two of the social services law.

(c) "State ombudsman" shall mean the state long term care ombudsman appointed by the director pursuant to subdivision three of this section.

2. Office established. There is hereby established within the office for the aging an office of the state long term care ombudsman for the purpose of receiving and resolving complaints affecting applicants, patients and residents in long term care facilities and, where appropriate, referring complaints to appropriate investigatory agencies and acting in concert with such agencies.

3. State long term care ombudsman. (a) The director shall appoint a full-time state long term care ombudsman to administer and supervise the office of the state long term care ombudsman.

(b) The state ombudsman shall be selected from among individuals with expertise and experience in the fields of long term care and advocacy, and with other qualifications determined by the director to be appropriate for the position.

(c) The state ombudsman shall, personally or through authorized representatives as provided for in paragraph (d) of this subdivision:

(i) identify, investigate and resolve complaints that are made by, or on behalf of, long term care residents in this state and that relate to actions, inactions or decisions that may adversely affect the health, safety and welfare or rights of such residents; provided, however, that the state ombudsman shall immediately refer to the appropriate investigatory agency information obtained during the investigation of a complaint which suggests the possible occurrence of physical abuse, mistreatment or neglect or Medicaid fraud, in accordance with procedures established by the state ombudsman. Such procedures shall include, but not be limited to, the reporting to the appropriate investigatory agency any information which suggests the possible occurrence of physical abuse, mistreatment or neglect as defined in section twenty-eight hundred three-d of the public health law. Nothing in this section shall

be construed as authorizing the state ombudsman to impose a resolution unacceptable to either party involved in a complaint or to assume powers delegated to the commissioner of health or the department of health pursuant to article twenty-eight of the public health law or to the commissioner of social services or the department of social services pursuant to the social services law;

(ii) provide services to assist residents in protecting their health, safety, welfare and rights;

(iii) inform the residents about means of obtaining services provided by public health and social services or other public agencies;

(iv) analyze and monitor the development and implementation of federal, state and local laws, regulations or policies with respect to the adequacy of long term care facilities and services in the state;

(v) in consultation with the director, establish procedures for the training of the authorized representatives and of local ombudsmen and their staff which at a minimum shall specify the minimum hours of training and the content of the training, including, but not limited to, training relating to federal, state and local laws, regulations and policies with respect to long term care facilities in the state; and

(vi) carry out such other activities as the director determines to be appropriate pursuant to the Older Americans Act¹ and other applicable federal and state laws and related regulations as may, from time to time, be amended.

(d)(i) The state ombudsman, with the approval of the director, may appoint one or more authorized representatives to assist the state ombudsman in the performance of his or her duties under this section.

(ii) The state ombudsman shall appoint only those individuals who have been certified as having completed the training program developed pursuant to paragraph (c) of this subdivision.

(c) No state ombudsman, authorized representative or local ombudsman shall:

(i) have a direct involvement in the licensing or certification of a long term care facility or of a provider of a long term care service;

(ii) have an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long term care facility or a long term care service;

(iii) be employed by, or participate in the management of, a long term care facility; and

(iv) receive remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long term care facility.

4. Local long term care ombudsman program. (a) The state ombudsman, with the approval of the director, may designate an entity to operate a local long term care ombudsman program for one or more counties.

(b) The designated entity shall be an area agency on aging, a public agency or a private not-for-profit corporation which is neither a provider or regulator of long term care facilities, or an affiliate or unit of such agency or corporation.

(c)(i) Each local long term care ombudsman program shall be directed by a qualified individual who is employed and paid by the local entity and who shall have the duties and responsibilities as provided in regulations, consistent with the provisions of this section and of Title VII of the Federal Older Americans Act, as amended. In addition, upon designation, the entity is responsible for providing for adequate and qualified staff, which may include trained volunteers to perform the functions of the local long term care ombudsman program.

(ii) No local program staff, including the supervisor and any volunteers, shall perform or carry out the activities on behalf of the local long term care ombudsman program unless such staff has received the training pursuant to paragraph (c) of subdivision three of this section and has been approved by the state ombudsman as qualified to carry out the activities on behalf of the local program.

(d) The director, in consultation with the state ombudsman, shall establish in regulations standards for the operation of a local long term care ombudsman program.

Additions are indicated by underline; deletions by ~~strikeout~~

(e) When the state ombudsman determines that a local long term care ombudsman program does not meet the standards set forth in this section and in any related regulations, the state ombudsman shall with the approval of the director withdraw the designation of the local program. Prior to taking such action, the state ombudsman shall send to the affected local program a notice of intention to withdraw the designation, which notice shall also inform the local program of its right to an administrative hearing prior to the director's final determination. Such administrative hearing shall be conducted in accordance with procedures set forth in regulations.

5. Review of complaint. (a) Upon receipt of a complaint, the ombudsman shall determine immediately whether there are reasonable grounds for an investigation. Such investigation shall be conducted in a manner prescribed in regulations. The state ombudsman, or the local ombudsman, whoever is appropriate, shall immediately refer to the appropriate investigatory agency information obtained during the investigation of a complaint which suggests the possible occurrence of physical abuse, mistreatment or neglect or Medicaid fraud, in accordance with procedures established by the state ombudsman. Such procedures shall include, but not be limited to, the reporting to the appropriate investigatory agency if there is reasonable cause to believe the occurrence of physical abuse, mistreatment or neglect as defined in section twenty-eight hundred three-d of the public health law.

(b) If the referral is made by the local ombudsman, a copy of the referral, together with copies of any relevant information or records, shall be sent forthwith to the state ombudsman.

6. Retaliatory discrimination prohibited. (a) No person shall discriminate against any resident of a long term care facility because such resident or any person acting on behalf of the resident has brought or caused to be brought any complaint to the state or local long term care ombudsman for investigation, or against any resident or employee of a long term care facility or any other person because such resident or employee or any other person has given or provided or is to give or provide any statements, testimony, other evidence or cooperation for the purposes of any such complaint.

(b) Any resident who has reason to believe that he or she may have been discriminated against in violation of this subdivision may, within thirty days after such alleged violation occurs, file a complaint with the commissioner of health pursuant to subdivision ten of section twenty-eight hundred one-d of the public health law.

7. Record access. (a) The state ombudsman, with the approval of the director, shall appoint one or more record access ombudsmen, who shall be an employee of the office of state long term care ombudsman or of the local entity designated to operate a local long term care ombudsman program, except that the state ombudsman may appoint as a records access ombudsman a volunteer under the direct supervision of the state ombudsman or of the supervisor of the local program, whichever is appropriate, if such volunteer is licensed or certified in a medical, legal, or social work profession, or whose experience and training demonstrate equivalent competency in medical and personal records review.

(b) Except as otherwise provided by law, no person, including the state ombudsman, his or her authorized representatives, or any local ombudsman, shall be authorized to have access to or review the medical or personal records of a patient or resident pursuant to section twenty-eight hundred three-c of the public health law and section four hundred sixty-one-a of the social services law or pursuant to written consent to such access by the patient or resident, or his or her legal representative unless such person has been:

(i) Certified as having satisfactorily completed a training program prescribed by the office and designed, among other purposes, to

(A) impress upon the participant the value, purpose, and confidentiality of medical and personal records,

(B) familiarize the participant with the operational aspects of long term care facilities, and

(C) deal with the medical and psycho-social needs of patients or residents in such facilities; and

(ii) Certified as a records access ombudsman by the state ombudsman.

(c) Except as provided in section twenty-eight hundred three-d of the public health law or pursuant to court order, no ombudsman shall disclose to any person outside of the ombuds-

man program any information obtained from a patient's or resident's records without the express written consent of the patient, resident or, where appropriate, the committee for an incompetent, guardian or other legal representative authorized to consent to disclosure of such records for such disclosure. No records access or other ombudsman who directly or indirectly obtains access to a patient's or resident's medical or personal records pursuant to section twenty-eight hundred three-c of the public health law shall disclose to such patient or resident or to any other person outside of the ombudsman program the content of any such records to which such patient, resident or other person had not previously had the right of access, provided that this restriction shall not prevent such ombudsman from advising such patient or resident of the status or progress of an investigation or complaint process initiated at the request of such patient or resident or from referring such complaint, together with the relevant records, to appropriate investigatory agencies. Any person who intentionally violates the provisions of this subdivision shall be guilty of a misdemeanor. Nothing contained in this section shall be construed to limit or abridge any right of access to records, including financial records, otherwise available to ombudsmen, patients or residents, or any other person.

8. Failure to cooperate. Any long term care facility which refuses to permit the state ombudsman, his or her authorized representative, or any local ombudsman entry into such facility or refuses to cooperate with the state ombudsman, his or her authorized representative, or any local ombudsman in the carrying out of their mandated duties and responsibilities set forth in this section and any regulations promulgated pursuant thereto, or refuses to permit patients or staff to communicate freely and privately with the state ombudsman, his or her authorized representative, or any local ombudsman shall be subject to the appropriate sanction or penalties of the state agency that licenses the facility.

9. Civil immunity. Notwithstanding any other provision of law, ombudsmen designated under this section or who are also records access ombudsmen functioning in accordance with this section shall be included within the definition of employee as set forth in section seventeen of the public officers law and shall be defended and indemnified in accordance with the provisions of article two of such law.

10. Regulations. The director is authorized to promulgate regulations to implement the provisions of this section.

11. Annual report. On or before March thirty-first, nineteen hundred ninety-six, and annually thereafter, the state ombudsman shall submit to the speaker of the assembly, temporary president of the senate and the director a report:

- (a) describing the activities carried out by the office of the state long term care ombudsman during the prior calendar year;
- (b) containing and analyzing data relating to complaints and conditions in long term care facilities and to residents for the purpose of identifying and resolving significant problems;
- (c) evaluating the problems experienced by, and the complaints made by or on behalf of, residents;
- (d) containing recommendations for:
 - (i) appropriate state legislation, rules and regulations and other action to improve the quality of the care and life of the residents; and
 - (ii) protecting the health, safety and welfare and rights of the residents;
- (e) any other matters as the state ombudsman, in consultation with the director, determines to be appropriate.

§ 544-b. Elderly abuse education and outreach program

1. Definitions. For the purposes of this section, the terms "director", "designated agency" and "elderly person" shall have the same meaning as ascribed to them in section five hundred forty-one of this article.

2. The director, within the amounts appropriated therefor, shall, in conjunction with the department of social services, establish an elderly abuse education and outreach program for the purpose of providing education and outreach to the general public, including elderly

persons and their families and caregivers, to identify and prevent elderly abuse, neglect and exploitation.

3. (a) As part of the program, the director may award grants to qualified designated agencies to establish local elderly abuse education and outreach programs. Grants may also be awarded to expand or enhance existing programs.

(b) In making such grants, the director shall consider:

(i) the need within the jurisdiction of the designated agency for such education and outreach;

(ii) the manner in which the designated agency proposes to provide such education and outreach;

(iii) the capacity of the designated agency to coordinate its services with health, human service and law enforcement and public agencies which provide services or assistance to the elderly, including the local department of social services adult protective services unit; and

(iv) any other criteria determined by the director to be appropriate.

4. (a) The state office for the aging may use up to five percent of the total funds appropriated pursuant to this section for administration.

(b) A designated agency which has been awarded a grant pursuant to subdivision three of this section may use up to five percent of the total of any funds provided to a designated agency pursuant to this section for administration.

¹ 42 USCA § 3001 et seq.

§ 2. Subdivision 1 of section 473 of the social services law, as amended by chapter 446 of the laws of 1979, paragraph (c) as amended by chapter 846 of the laws of 1986, paragraph (f) as amended by chapter 231 of the laws of 1987, and such section as renumbered by chapter 991 of the laws of 1981, is amended to read as follows:

1. In addition to services provided by social services officials pursuant to other provisions of this chapter, such officials shall provide protective services in accordance with federal and state regulations to or for individuals without regard to income who, because of mental or physical dysfunction impairments, 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 have no one available who is willing and able to assist them responsibly. Such services shall include:

(a) receiving and investigating reports of seriously impaired individuals who may be in need of protection;

(b) arranging for medical and psychiatric services to evaluate and whenever possible to safeguard and improve the circumstances of those with serious impairments;

(c) arranging, when necessary, for commitment, guardianship, conservatorship or other protective placement of such individuals either directly or through referral to another appropriate agency, or for conservatorship or committeehip pursuant to the provisions of title three of this article, provided, however, that where possible, the least restrictive of these measures shall be employed before more restrictive controls are imposed;

(d) providing services to assist such individuals to move from situations which are, or are likely to become, hazardous to their health and well-being;

(e) cooperating and planning with the courts as necessary on behalf of individuals with serious mental impairments; and

(f) other protective services for adults included in the social services district's multi-year consolidated service plan as provided in accordance with title XX of the Federal Social Security Act regulations of the department.

§ 3. Section 473 of the social services law is amended by adding a new subdivision 5 to read as follows:

5. Whenever a social services official, or his or her designee authorized or required to determine the need for, or to provide or arrange for the provision of protective services to

adults in accordance with the provisions of this title has a reason to believe that a criminal offense has been committed, as defined in the penal law, against a person for whom the need for such services is being determined or to whom such services are being provided or arranged, the social services official or his or her designee must report this information to the appropriate police or sheriff's department and the district attorney's office when such office has requested such information be reported by a social services official or his or her designee.

§ 4. Section 473 of the social services law is amended by adding a new subdivision 6 to read as follows:

6. Definitions. When used in this title unless otherwise expressly stated or unless the context or subject matter requires a different interpretation:

(a) "Physical abuse" means the non-accidental use of force that results in bodily injury, pain or impairment, including but not limited to, being slapped, burned, cut, bruised or improperly physically restrained.

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

(c) "Emotional abuse" means willful infliction of mental or emotional anguish by threat, humiliation, intimidation or other abusive conduct, including but not limited to, frightening or isolating an adult.

(d) "Active neglect" means willful failure by the caregiver to fulfill the care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment, willful deprivation of food, water, heat, clean clothing and bedding, eyeglasses or dentures, or health related services.

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

(f) "Self neglect" means an adult's inability, due to physical and/or mental impairments to perform tasks essential to caring for oneself, including but not limited to, providing essential food, clothing, shelter and medical care; obtaining goods and services necessary to maintain physical health, mental health, emotional well-being and general safety; or managing financial affairs.

(g) "Financial exploitation" means improper use of an adult's funds, property or resources by another individual, including but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets.

§ 5. Section 473-c of the social services law, as added by chapter 846 of the laws of 1986, is renumbered section 473-d and a new section 473-e is added to read as follows:

§ 473-e. Confidentiality of protective services for adults' records

1. Definitions. When used in this section unless otherwise expressly stated or unless the context or subject matter requires a different interpretation:

(a) "Subject of a report" means a person who is the subject of a referral or an application for protective services for adults, or who is receiving or has received protective services for adults from a social services district.

(b) "Authorized representative of a subject of a report" means (i) a person named in writing by a subject to be a subject's representative for purposes of requesting and receiving records under this article; provided, however, that the subject has contract capacity at the time of the writing or had executed a durable power of attorney at a time when the subject had such capacity, naming the authorized representative as attorney-in-fact, and such document has not been revoked in accordance with applicable law; (ii) a person appointed by a court, or otherwise authorized in accordance with law to represent or act in the interests of the subject; or (iii) legal counsel for the subject.

2. Reports made pursuant to this article, as well as any other information obtained, including but not limited to, the names of referral sources, written reports or photographs

taken concerning such reports in the possession of the department or a social services district shall be confidential and, except to persons, officers and agencies enumerated in paragraphs (a) through (g) of this subdivision, shall only be released with the written permission of the person who is the subject of the report, or the subject's authorized representative, except to the extent that there is a basis for non-disclosure of such information pursuant to subdivision three of this section. Such reports and information may be made available to:

- (a) any person who is the subject of the report or such person's authorized representative;
- (b) a provider of services to a current or former protective services for adults client, where a social services official, or his or her designee determined that such information is necessary to determine the need for or to provide or to arrange for the provision of such services;
- (c) a court, upon a finding that the information in the record is necessary for the use by a party in a criminal or civil action or the determination of an issue before the court;
- (d) a grand jury, upon a finding that the information in the record is necessary for the determination of charges before the grand jury;
- (e) a district attorney, an assistant district attorney or investigator employed in the office of a district attorney, a member of the division of state police, or a police officer employed by a city, county, town or village police department or by a county sheriff when such official requests such information stating that such information is necessary to conduct a criminal investigation or criminal prosecution of a person, that there is reasonable cause to believe that the criminal investigation or criminal prosecution involves or otherwise affects a person who is the subject of a report, and that it is reasonable to believe that due to the nature of the crime under investigation or prosecution, such records may be related to the criminal investigation or prosecution;
- (f) a person named as a court-appointed evaluator or guardian in accordance with article eighty-one of the mental hygiene law, or a person named as a guardian for the mentally retarded in accordance with article seventeen-A of the surrogate's court procedure act; or
- (g) any person considered entitled to such record in accordance with applicable law.

3. The commissioner or a social services official may withhold, in whole or in part, the release of any information in their possession which he or she is otherwise authorized to release pursuant to subdivision two of this section, if such official finds that release of such information would identify a person who made a referral or submitted an application on behalf of a person for protective services for adults, or who cooperated in a subsequent investigation and assessment conducted by a social services district to determine a person's need for such services and the official reasonably finds that the release of such information will be detrimental to the safety or interests of such person.

4. Before releasing a record made pursuant to this article in the possession of the department or a social services district, the appropriate official must be satisfied that the confidential character of the information will be maintained in accordance with applicable law, and that the record will be used only for the purposes for which it was made available.

5. In addition to the requirements of this section, any release of confidential HIV related information, as defined in section twenty-seven hundred eighty of the public health law, shall comply with the requirements of article twenty-seven-F of the public health law.

6. When a record made under this article is subpoenaed or sought pursuant to notice to permit discovery, a social services official may move to withdraw, quash, fix conditions or modify the subpoena, or to move for a protective order, as may be appropriate, in accordance with the applicable provisions of the criminal procedure law or the civil practice law and rules, to (a) delete the identity of any persons who made a referral or submitted an application for protective services for adults on behalf of an individual or who cooperated in a subsequent investigation and assessment of the individual's needs for such services, or the agency, institution, organization, program or other entity when such persons are employed, or with which such persons are associated, (b) withhold records the disclosure of which is likely to be

detrimental to the safety or interests of such persons, or (c) otherwise to object to release of all or a portion of the record on the basis that requested release of records is for a purpose not authorized under the law.

§ 6. This act shall take effect on the first day of November next succeeding the date on which it shall have become a law.

ALCOHOLIC BEVERAGE LICENSE APPLICATIONS AND RENEWALS— CERTIFICATES OF OCCUPANCY REQUIRED

CHAPTER 396

A. 30009

Approved and effective Aug. 2, 1995

AN ACT to amend the alcoholic beverage control law, in relation to requiring applicants for licenses and renewals to submit certificate of occupancy

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Subdivision 1 of section 109 of the alcoholic beverage control law, as amended by chapter 630 of the laws of 1984, is amended to read as follows:

1. Each license and permit, except a temporary permit effective for one day only, issued pursuant to this chapter may be renewed upon application therefor by the licensee or permittee and the payment of the annual fee for such license or permit as prescribed by this chapter. In the case of applications for renewals, the liquor authority may dispense with the requirements of such statements as it deems unnecessary in view of those contained in the application made for the original license or permit, but in any event the submission of photographs of the licensed premises shall be dispensed with provided the applicant for such renewal shall file a statement with such authority to the effect that there has been no alteration of such premises since the original license was issued. An applicant for a retail license for on-premises consumption shall also submit to the authority a copy of the valid certificate of occupancy or such other document issued by the local code enforcement agency for the premises for which the original license was issued. The liquor authority may make such rules as may be necessary not inconsistent with this chapter regarding applications for renewals of licenses and permits and the time for making the same.

§ 2. Subdivision 3 of section 110 of the alcoholic beverage control law, as amended by chapter 304 of the laws of 1953, is amended to read as follows:

3. The premises to be licensed stating the street and number, if the premises have a street and number, and otherwise such apt description as will reasonably indicate the locality thereof. An applicant for a retail license for on-premises consumption shall also submit to the authority a copy of the valid certificate of occupancy or such other document issued by the local code enforcement agency for the premises. The applicant shall also state the nature of his interest in the premises; and the name of any other person, either as principal or associate, interested with the applicant either in the premises or in the business to be licensed:

§ 3. This act shall take effect immediately.

Additions are indicated by underline; deletions by ~~strikeout~~

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BUREAU OF
COMMUNITY SERVICES

Section 457.1 is amended by renumbering subdivisions (b) and (c) as (c) and (d) and adding a new subdivision (b) to read as follows:

(b) Definitions. When used in this Part unless otherwise expressly stated or unless the context or subject matter requires a different interpretation:

(1) "Physical abuse" means the non-accidental use of force that results in bodily injury, pain or impairment, including but not limited to, being slapped, burned, cut, bruised or improperly physically restrained;

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

(3) "Emotional abuse" means willful infliction of mental or emotional anguish by threat, humiliation, intimidation or other abusive conduct, including but not limited to, frightening or isolating an adult.

(4) "Active neglect" means willful failure by the caregiver to fulfill the care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment, willful deprivation of food, water, heat, clean clothing and bedding, eyeglasses or dentures, or health related services.

(5) "Passive neglect" means non-willful failure of a caregiver to fulfill care-taking functions and responsibilities assumed by the caregiver, including but not limited to,

abandonment or denial of food or health related services because of inadequate caregiver knowledge, infirmity, or disputing the value of prescribed services.

(6) "Self neglect" means an adult's inability, due to physical and/or mental impairments to perform tasks essential to caring for oneself, including but not limited to, providing essential food, clothing, shelter and medical care, obtaining goods and services necessary to maintain physical health, mental health, emotional well-being and general safety; or managing financial affairs.

(7) "Financial exploitation" means improper use of an adult's funds, property or resources by another individual, including but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets.

Paragraphs (1) and (2) of the renumbered subdivision (c) of section 457.1 are amended to read as follows:

(1) are unable to meet their essential needs for food, shelter, clothing or medical care, secure entitlements due them or protect themselves from physical, sexual or emotional abuse [or mental injury], active, passive or self neglect, [maltreatment of] or financial exploitation; and

(2) are in need of protection from actual or threatened harm [,] due to physical, sexual or emotional abuse, or active, passive or self neglect, or financial exploitation or by hazardous conditions caused by the action or inaction of either themselves or other individuals; and

A new section 457.15 is added to read as follows:

457.15 Reports to law enforcement officials.

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(a) Whenever a social services official, or his or her designee authorized or required to determine the need for, or to provide or arrange for the provision of PSA, in accordance with the provisions of this Part, has a reason to believe that a crime (a misdemeanor or a felony), as defined in the Penal Law, has been committed against a person for whom the need for such services is being determined or to whom such services are being provided or arranged, the social services official or his or her designee must report this information to the appropriate police or sheriff's department. This information also must be reported to the district attorney's office when such office has requested this information.

(b) In determining whether there is a reason to believe that a crime, as defined in the Penal Law, has been committed against a person whose need for PSA is being determined, or a person for whom PSA is being provided or arranged, a social services official or his/her designee must review and evaluate, as necessary, the following:

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(1) Information obtained through observing and interviewing a person whose need for PSA is being determined, or a person for whom PSA is being provided or arranged;

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(2) Information obtained from other persons, agencies, offices or organizations who are involved in determining a person's need for PSA or providing or arranging services for a person who is receiving PSA;

(3) Information obtained from the person or persons who are suspected of committing a crime against a person whose need for PSA is being determined or a person for whom PSA is being provided or arranged; and

(4) Information obtained from other persons who have knowledge about the person whose need for PSA is being determined, or a person for whom PSA is being provided or arranged.

A new section 457.16 is added to read as follows:

457.16 Confidentiality

(a) Definitions When used in this section, unless otherwise expressly stated or unless the context requires a different interpretation:

(1) "Subject of a report" means a person who is the subject of a referral or an application for PSA or who is receiving or has received PSA from a social services district.

(2) "Authorized representative of a subject of a report" means (i) a person named in writing by a subject to be a subject's representative for purposes of requesting and receiving records under this Part; provided, however, that the subject has contract capacity at the time of the writing or had executed a durable power of attorney at a time when the subject had such capacity, naming the authorized representative as attorney-in-fact, and such document has not been revoked in accordance with applicable law; (ii) a person appointed by a court, or otherwise authorized in accordance with law to represent or act in the interests of the subject; or (iii) legal counsel for the subject.

document has not been revoked in accordance with applicable law;
(ii) a person appointed by a court, or otherwise authorized in accordance with law to represent or act in the interests of the subject; or (iii) legal counsel for the subject.

(b) Information in the possession of the department or a social services district including, but not limited to, reports made pursuant to this Part, the names of referral sources, written reports or photographs, required forms, progress notes and other information in the case record concerning the subject of a report, is confidential. Accordingly, the department or a social services district must not release reports or other information in their possession which pertain to a person who is the subject of a report without the approval of such subject or his or her authorized representative, except as provided for in subdivision (c) of this section.

(c) The following persons, officers and agencies may receive information from the department or a social services district concerning the subject of a report:

(1) any person who is the subject of a report or such person's authorized representative;

(2) a provider of services to a current or former PSA client where a social services official, or his/her designee, has determined that such information is necessary to determine the need for, or to provide or arrange for the delivery of PSA. For the purposes of this section a PSA client means the subject of a PSA report;

(3) a court, upon a finding that the information in the record is necessary for the use by a party in a criminal or civil action or in the determination of an issue before the court;

(4) a grand jury, upon a finding that the information in the record is necessary for the determination of charges before the grand jury;

(5) a district attorney, assistant district attorney or an investigator employed in the office of the district attorney, a member of the division of the State police, a police officer employed by a city, county, town or village police department or by a county sheriff when such official requests such information stating that:

(i) the information is necessary to conduct a criminal investigation or criminal prosecution of a person;

(ii) there is reasonable cause to believe that a criminal investigation or prosecution involves or otherwise affects a person who is the subject of a PSA referral or application or is receiving or has received PSA; and

(iii) it is reasonable to believe that due to the nature of the crime under investigation or prosecution, such records may be related to the criminal investigation or prosecution;

(6) a person named court appointed evaluator or guardian pursuant to Article 81 of the Mental Hygiene Law, or a person named as a guardian for the mentally retarded pursuant to Article 17-A of the Surrogate's Court Procedure Act; or

(7) any person entitled to such record in accordance with applicable law.

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(d) Prior to the release of a record or other information maintained pursuant to this Part to persons, officers and agencies specified in subdivision (c) of this section, the department or a social services district must be satisfied that the confidential character of the information will be maintained in accordance with applicable law and that such information will be used solely for the purposes for which it was made available. Furthermore, any release of confidential HIV information, as defined in section 2780 of the Public Health Law, must comply with the requirements of Article 27-f of such Law and Parts 357 and 403 of this Title.

(e) The commissioner or a local social services official may withhold in whole, or in part, the release of any information in their possession which they are otherwise authorized to release in accordance with subdivision (c) of this section, if such official determines that:

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(i) the release of such information would identify a person who made a referral or submitted an application on behalf of a person for PSA, or who cooperated in a subsequent investigation and assessment conducted by a social services district to determine a person's need for PSA; and

C
(ii) the official reasonably determines that the release of such information would be detrimental to the safety or interests of such individual.

S
(f) When a record made under this Part is subpoenaed or sought pursuant to notice to permit discovery, a social services official may move to withdraw, quash, fix conditions or modify the subpoena, or to move for a protective order, as may be

I appropriate, in accordance with the applicable provisions of the
Criminal Procedure Law or the Civil Practice Law and Rules to:

T (1) delete the identity of any persons who made a referral
or submitted an application for PSA on behalf of an individual, or
who cooperated in a subsequent investigation and assessment of the
A individual's need for such services, or the agency, institution,
program or other entity when persons are employed, or with which
such persons are associated;

L (2) withhold records, the disclosure of which is likely to
be detrimental to the safety or interests of such persons; or

I (3) otherwise object to the release of all or a portion of
the record on the basis that the requested release of records is
C for a purpose not authorized under the law.

S (g) For the purpose of this section, a record means any
information in the possession of the department or a social
services district regarding the subject of a report as defined in
paragraph (a) of this section.

(Deleted Material [bracketed]; new material underlined)



STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES
EXECUTIVE PARK TOWER
STUYVESANT PLAZA
ALBANY, NEW YORK 12203-3764

PAUL SHECHTMAN
DIRECTOR OF CRIMINAL JUSTICE
AND COMMISSIONER
DIVISION OF CRIMINAL JUSTICE SERVICES

STEPHEN M. BERNARDI
DEPUTY COMMISSIONER
BUREAU FOR MUNICIPAL POLICE

March 27, 1996

To: NYS Law Enforcement Executives

From: Deputy Commissioner Stephen M. Bernardi *SMB*

Subject: Chapter 395 Laws of 1995

The purpose of this memorandum is to inform local law enforcement agencies about the provisions of Chapter 395 of the laws of 1995, which went into effect on November 1, 1995. This law contains several provisions to improve the ability of State and local governments to identify, prevent and intervene in situations involving abuse, exploitation and neglect of impaired adults. I recommend, if you have not already done so, that you familiarize yourself and your staff with the provisions of this law which apply to law enforcement officers. Attached for your information is a copy of Chapter 395 of the Laws of 1995.

Section 5 of Chapter 395 adds a new Section 473-e to Social Services Law which pertains to confidentiality of Protective Services for Adults records. It is important to note that this section of the law authorizes social services officials to release otherwise confidential Protective Services for Adults records to law enforcement officials, including members of state police, a police officer employed by a city, county, town or village police department or a county sheriff when such official requests such information stating that: such information is necessary to conduct a criminal prosecution of a person; that there is reasonable cause to believe that the criminal investigation or criminal prosecution involves or otherwise affects a person who is the subject of Protective Services for Adult application or referral or who is receiving or has received Protective Services for Adults from a local department of social services; and, it is reasonable to assume that due to the nature of the crime under investigation or prosecution, such records may be related to the criminal investigation or prosecution.

Specifically, Section 3 of Chapter 395 adds a new Section 473.5 to Social Service Law which requires that whenever a social service official (commissioner) or his/her authorized designee (Protective Services for Adults worker) has reason to believe that a criminal offense has been committed against a person who is being assessed for or is receiving PSA, he/she must report

this information to the appropriate police/sheriffs department. For the purposes of this law, a criminal offense is being defined as a felony or a misdemeanor. This provision of the law is consistent with the policy set forth in the model PSA/Police Protocol developed by the NYS Department of Social Services and the Bureau for Municipal Police. This protocol was sent to you on June 21, 1995 in a memorandum from me entitled "Model Protocol Concerning the Working Relationship Between Police and Protective Services for Adults". This protocol followed a video and booklet entitled "Police and Protective Services for Adults: A Partnership", which was provided to you in December of 1994.

With the enactment of Chapter 395 of the laws of 1995 on November 1, 1995, the implementation of the aforementioned protocol by all police and sheriffs departments becomes imperative. If you have not yet implemented this protocol, we urge you and/or your staff to meet with the Protective Services for Adults contact person of your local department of social services to coordinate the implementation of this protocol. If you encounter any difficulties in implementing the protocol, please contact F. William Kervan of my staff at (518) 485-1414.

Thank you in advance for your consideration in this matter.

Enclosure

**Notice of Intent to Reduce Your
Public Assistance**

ATTACHMENT H
Page 1 of 2

4

Case Number:
Loc. Off./Unit/Worker: / /

General Telephone No. for
Questions or Help:

December 20, 1996

PUBLIC ASSISTANCE: This Notice is to tell you that this agency intends to reduce your benefits effective January 1, 1997.

This is because our records show that income from a federal benefit (social security, SSI or veterans non-service-connected disability benefits) is counted against your public assistance needs. As a result of a 2.9% increase in the federal benefits which will take effect in December 1996 and be received in January 1997, your public assistance grant must be reduced by the same dollar amount as the federal benefit increase. For example, if your social security benefit increases by \$16, your public assistance grant goes down by \$16.

Department regulations say that if a household's total monthly public assistance grant is less than \$10, the household will receive no cash grant. If the federal benefit increase causes you to be eligible for less than \$10 in public assistance, you will receive no cash grant.

Recoupment - If you have been notified previously that a recoupment is being taken against your grant, the recoupment will continue at the same percentage rate.

The Regulations which allow us to do this are 18 NYCRR 352.29, 352.31(d) and 352.32.

FOOD STAMPS: Your food stamp benefits will continue unchanged unless you get a separate notice telling you that your food stamps will change.

The Regulations which allow us to do this are 18 NYCRR 387.10, 387.12 AND 387.15.

MEDICAL ASSISTANCE: Your Medical Assistance benefits will continue unchanged.

The Regulation which allows us to do this is 18 NYCRR 360-3.3.

YOU HAVE THE RIGHT TO APPEAL THIS DECISION. READ BELOW ON HOW TO APPEAL THIS DECISION.

RIGHT TO A CONFERENCE: You may have a conference to review these actions. If you want a conference, you should ask for one as soon as possible. At the conference, if we discover that we made the wrong decision or if, because of information you provide, we determine to change our decision, we will take corrective action and give you a new notice. You may ask for a conference by calling us at the number on the top of this notice or by sending a written request to us at the address listed at the top of this notice. This number is used only for asking for a conference. It is not the way you request a fair hearing. If you ask for a conference you are still entitled to a fair hearing. If you want to have your benefits continue unchanged (aid continuing) until you get a fair hearing decision, you must request a fair hearing in the way described below. A request for a conference alone will not result in continuation of benefits. Read below for fair hearing information.

RIGHT TO A FAIR HEARING: If you believe that the above action(s) are wrong, you may request a State fair hearing by telephoning:

(PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL)

OR

Writing: By sending a copy of this notice completed, to the Office of Administrative Hearings, New York State Department of Social Services, P.O. Box 1930, Albany, New York 12201. Please keep a copy for yourself.

**Notice of Intent to Reduce Your
Public Assistance**

ATTACHMENT H

Page 2 of 2

☐ I want a fair hearing. The Agency's action is wrong because:

Name of Client (PRINT) _____

Signature of Client _____

Date _____

Client Address _____

Client Phone Number _____

County _____

Case Number _____

You have 60 days from the date your January 1997 Public Assistance benefits become available to request a fair hearing.

The date your January 1997 benefits become available is:

- The date you can access your public assistance benefits with your plastic CBIC card.

If you request a fair hearing, the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person or to represent yourself. At the hearing you, your attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing. Also, you have a right to bring witnesses to speak in your favor. You should bring to the hearing any documents such as this notice, paystubs, receipts, medical bills, heating bills, medical verification, letters, etc. that may be helpful in presenting your case.

If you request a hearing, a hearing will be scheduled; however, if at the hearing the hearing officer determines that you are not complaining about an incorrect computation of your grant, the hearing officer may determine that you did not have a right to a hearing.

Continuing your benefits: If you request a fair hearing within 10 days after your January 1997 benefits become available and our action affects your Public Assistance benefits, you will continue to receive your benefits unchanged until the fair hearing decision is issued.

If at the hearing the hearing officer determines that you are not complaining about an incorrect computation of your grant, the hearing officer may determine that you were not entitled to have your public assistance continue unchanged until the fair hearing decision is issued, and order that the reduction take effect immediately.

However, if you lose the fair hearing, you will owe any Public Assistance money that you should not have received. If you want to avoid this possibility, check the box below to indicate that you do not want your aid continued, and send this page along with your hearing request. If you do check the box, the action(s) described will be taken on the effective date as identified under the appropriate program.

☐ I do not want my public assistance continued unchanged until the fair hearing decision is issued.

Legal Assistance: If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers" or by calling the number indicated on the first page of this notice.

Access to Records / Information: You have the right to review your case record. Upon your request you have the right to free copies of documents which we will present into evidence at the fair hearing. Also, upon request, you have the right to free copies of other documents from your case record which you need for your fair hearing. To request such documents or to find out how you may review your case record, call the number indicated on the first page of this notice or send a written request to us at the address listed at the top of the first page of this notice.

If you want additional information about your case, how to request a fair hearing, how to gain access to your case file and/or additional copies of documents, you may call the number indicated on the first page of this notice or write us at the address listed at the top of the first page of this notice.

**NOTICE OF INTENT TO REDUCE
FOOD STAMPS - COLA
DECEMBER 20, 1996**

3

Case Number:

Loc. Off/Unit/Worker: / /

General Telephone No. for
Questions or Help:

Dear Food Stamp Recipient:

On January 1, 1997 your income will increase due to a cost-of-living adjustment (COLA) in your social security, SSI, and/or veterans non-service-connected disability benefits. This increase in income to your household must be used to figure out the amount of your food stamps. Because of this increase in your household's income you will get less food stamps beginning January 1997. Also effective January 1, 1997, the maximum excess shelter deduction will increase from \$247 to \$250. This increase may lessen the reduction in your food stamp benefits.

Generally, for every \$3 increase in food stamp net income, there is a \$1 reduction in food stamps. For example, if your total income increases by \$9 a month, you could receive a reduction of \$3 a month in food stamps. Even if your benefits are reduced to zero, your food stamp case remains active. You will continue to be responsible to report any changes to your household circumstances as long as your case remains open. If you are a one or two person food stamp household, and your food stamp allotment is not being reduced to recover a claim, the smallest monthly food stamp benefit you can receive is \$10.

The Regulations which allow us to do this are 18 NYCRR 387.10, 387.12 and 387.15.

YOU HAVE THE RIGHT TO APPEAL THIS DECISION. READ BELOW ON HOW TO APPEAL THIS DECISION

RIGHT TO A CONFERENCE: You may have a conference to review these actions. If you want a conference, you should ask for one as soon as possible after you receive your benefit. At the conference, if we discover that we made a wrong decision or if, because of information you provide, we determine to change our decision, we will take corrective action and give you a new notice. You may ask for a conference by calling us at the number on the top of this notice or by sending a written request to us at the address listed at the top of this notice. This number is used only for asking for a conference. **It is not the way you request a fair hearing.** If you ask for a conference you are still entitled to a fair hearing. If you want to have your benefits continue unchanged (aid continuing) until you get a fair hearing decision, you must request a fair hearing in the way described below. A request for a conference alone will **not** result in continuation of benefits. Even if you ask for a conference, you will still have only 90 days from the date your January 1996 food stamps become available to request a fair hearing and 10 days from the date your January benefits become available to request a fair hearing and have your benefits continue unchanged. Read below for fair hearing information.

RIGHT TO A FAIR HEARING: If you believe that the above action is wrong, you may request a State fair hearing by:

(1) **Telephoning:** (Please have this notice with you when you call)

OR

(2) **Writing:** By sending a copy of **BOTH SIDES** of this notice **completed**, to the Office of Administrative Hearings, New York State Department of Social Services, P.O. Box 1930, Albany, New York 12201. Please keep a copy for yourself.

NOTICE OF INTENT TO REDUCE
FOOD STAMPS - COLA

☐ I want a fair hearing. The Agency's action is wrong because:

ATTACHMENT I

Page 2 of 2

Name of Client (PRINT) _____

Signature of Client _____ Date _____

Client Address _____

Client Phone Number _____ County _____

Case Number _____

YOU HAVE 90 DAYS FROM THE DATE YOUR JANUARY 1997 FOOD STAMP BENEFITS BECOME AVAILABLE TO REQUEST A FAIR HEARING.

The date your January 1997 food stamps become available is the date you can access your January 1997 food stamp benefits with your plastic ID card.

If you request a fair hearing the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person or to represent yourself. At the hearing you, your attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing. Also, you have a right to bring witnesses to speak in your favor. You should bring to the hearing any documents such as this notice, paystubs, receipts, medical bills, heating bills, medical verification, letters, etc., that may be helpful in presenting your case.

CONTINUING YOUR BENEFITS: If you request a fair hearing within 10 days after your January 1997 food stamp benefits become available, your food stamps will be reinstated to the amount you received before the change until the fair hearing is issued. However, if you lose the fair hearing, you will owe any food stamps that you should not have received. We are required by Federal Law to recover any foodstamp overpayments. We must make a claim against you for any food stamps you receive that you were not entitled to, which may be collected by reduction of future food stamp allotments, lump sum installment payments or through legal action. If you want to avoid this possibility you can check the box below. You can also indicate over the telephone or in a letter that you do not want reinstatement of your food stamps. If you check the box ☒ below, your benefit will not be reinstated to the amount it was before the January 1997 food stamp issuance while you are waiting for your fair hearing.

☐ I do not want my benefits reinstated and continued unchanged until the hearing decision is issued.

If at the hearing, the hearing officer determines that you are not complaining about an incorrect computation of your benefits or that there has been a misapplication or misinterpretation of Federal Law or regulations, the hearing officer may determine that you were not entitled to have your food stamp benefits continue unchanged until the fair hearing decision is issued, and order that the reduction take effect immediately.

Legal Assistance: If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers" or by calling the number indicated on the top of the front of this notice.

Access to Records / Information: You have the right to review your case record. Upon your request, you have the right to free copies of other documents from your fair hearing. Also, upon request, you have the right to free copies of other documents from your case record which you need for your fair hearing. To request such documents or to find out how you may review your case record, call the number indicated on the top of the front of this notice.

If you want additional information about your case, how to request a fair hearing, how to gain access to your case file and/or additional copies of documents, you may call the number indicated on the top of the front of this notice or write us at the address listed at the top of the front of this notice.

☐ I want a fair hearing. The Agency's action is wrong because:

ATTACHMENT 1
Page 2 of 2

Name of Client (PRINT) _____

Signature of Client _____ Date _____

Client Address _____

Client Phone Number _____ County _____

Case Number _____

YOU HAVE 90 DAYS FROM THE DATE YOUR JANUARY 1997 FOOD STAMP BENEFITS BECOME AVAILABLE TO REQUEST A FAIR HEARING.

The date your January 1997 food stamps become available is the date you can access your January 1997 food stamp benefits with your plastic ID card.

If you request a fair hearing the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person or to represent yourself. At the hearing you, your attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing. Also, you have a right to bring witnesses to speak in your favor. You should bring to the hearing any documents such as this notice, paystubs, receipts, medical bills, heating bills, medical verification, letters, etc., that may be helpful in presenting your case.

CONTINUING YOUR BENEFITS: If you request a fair hearing within 10 days after your January 1997 food stamp benefits become available, your food stamps will be reinstated to the amount you received before the change until the fair hearing is issued. However, if you lose the fair hearing, you will owe any food stamps that you should not have received. We are required by Federal Law to recover any foodstamp overpayments. We must make a claim against you for any food stamps you receive that you were not entitled to, which may be collected by reduction of future food stamp allotments, lump sum installment payments or through legal action. If you want to avoid this possibility you can check the box below. You can also indicate over the telephone or in a letter that you do not want reinstatement of your food stamps. If you check the box ☒ below, your benefit will not be reinstated to the amount it was before the January 1997 food stamp issuance while you are waiting for your fair hearing.

☐ I do not want my benefits reinstated and continued unchanged until the hearing decision is issued.

If at the hearing, the hearing officer determines that you are not complaining about an incorrect computation of your benefits or that there has been a misapplication or misinterpretation of Federal Law or regulations, the hearing officer may determine that you were not entitled to have your food stamp benefits continue unchanged until the fair hearing decision is issued, and order that the reduction take effect immediately.

Legal Assistance: If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers" or by calling the number indicated on the top of the front of this notice.

Access to Records / Information: You have the right to review your case record. Upon your request, you have the right to free copies of other documents from your fair hearing. Also, upon request, you have the right to free copies of other documents from your case record which you need for your fair hearing. To request such documents or to find out how you may review your case record, call the number indicated on the top of the front of this notice.

If you want additional information about your case, how to request a fair hearing, how to gain access to your case file and/or additional copies of documents, you may call the number indicated on the top of the front of this notice or write us at the address listed at the top of the front of this notice.

NOTICE OF INTENT TO REDUCE
FOOD STAMPS - COLA (SDX)
JANUARY 21, 1997

1

Case Number: _____
Loc. Off/Unit/Worker: _____ / _____ / _____

General Telephone No. for
Questions or Help: _____

Dear Food Stamp Recipient:

On January 1, 1997 your income will increase due to a cost-of-living adjustment (COLA) in your social security, SSI and/or veterans non-service-connected disability benefits. This increase in income to your household must be used to figure out the amount of your food stamps. The amount of your income was figured using the State Data Exchange (SDX), a federal file of SSI benefit amounts. This information was not available in time to change your January 1997 food stamps; however, you will get less food stamps beginning in February 1997.

Generally, for every \$3 increase in food stamp net income, there is a \$1 reduction in food stamps. For example, if your total income increases by \$9 a month, you could receive a reduction of \$3 a month in food stamps. For a small number of households this change may result in zero food stamp benefits. Even if your benefits are reduced to zero, your food stamp case remains active. You will continue to be responsible to report any changes to your household circumstances as long as your case remains open. If you are a one or two person food stamp household, and your food stamp allotment is not being reduced to recover a claim, the smallest monthly food stamp benefit you can receive is \$10.

The Regulations which allow us to do this are 18 NYCRR 387.10, 387.12 and 387.15.

YOU HAVE THE RIGHT TO APPEAL THIS DECISION. READ BELOW ON HOW TO APPEAL THIS DECISION.

RIGHT TO A CONFERENCE: You may have a conference to review these actions. If you want a conference, you should ask for one as soon as possible after you receive your benefit. At the conference, if we discover that we made a wrong decision or if, because of information you provide, we determine to change our decision, we will take corrective action and give you a new notice. You may ask for a conference by calling us at the number on the top of this notice or by sending a written request to us at the address listed at the top of this notice. This number is used only for asking for a conference. **It is not the way you request a fair hearing.** If you ask for a conference you are still entitled to a fair hearing. If you want to have your benefits continue unchanged (aid continuing) until you get a fair hearing decision, you must request a fair hearing in the way described below. A request for a conference alone will **not** result in continuation of benefits. Even if you ask for a conference, you will still have only 90 days from the date your February 1997 food stamps become available to request a fair hearing and 10 days from the date your February 1997 benefits become available to have your benefits continue unchanged. Read below for fair hearing information.

RIGHT TO A FAIR HEARING: If you believe that the above action is wrong, you may request a State fair hearing by:

(1) **Telephoning:**

(Please have this notice with you when you call)

OR

(2) **Writing:**

By sending a copy of this notice **completed**, to the Office of Administrative Hearings, New York State Department of Social Services, P.O. Box 1930, Albany, New York 12201. Please keep a copy for yourself.

NOTICE OF INTENT TO REDUCE
FOOD STAMPS - COLA (SDX)

☐ I want a fair hearing. The Agency's action is wrong because:

ATTACHMENT J

Page 2 of 2

Name of Client (PRINT) _____

Signature of Client _____

Date _____

Client Address _____

Client Phone Number _____

County _____

Case Number _____

YOU HAVE 90 DAYS FROM THE DATE YOUR FEBRUARY 1997 FOOD STAMP BENEFITS BECOME AVAILABLE TO REQUEST A FAIR HEARING.

The date your February 1997 food stamps become available is the date you can access your February 1997 food stamp benefits with your plastic ID card.

If you request a fair hearing the State will send you a notice informing you of the time and place of the hearing. You have the right to be represented by legal counsel, a relative, a friend or other person or to represent yourself. At the hearing you, your attorney or other representative will have the opportunity to present written and oral evidence to demonstrate why the action should not be taken, as well as an opportunity to question any persons who appear at the hearing. Also, you have a right to bring witnesses to speak in your favor. You should bring to the hearing any documents such as this notice, paystubs, receipts, medical bills, heating bills, medical verification, letters, etc., that may be helpful in presenting your case.

CONTINUING YOUR BENEFITS: If you request a fair hearing within 10 days after your February 1997 food stamp benefits become available, your food stamps will be reinstated to the amount you received before the change until the fair hearing is issued. However, if you lose the fair hearing, you will owe any food stamps that you should not have received. We are required by Federal Law to recover any food stamp overpayments. We must make a claim against you for any food stamps you receive that you were not entitled to, which may be collected by reduction of future food stamp allotments, lump sum installment payments or through legal action. If you want to avoid this possibility you can check the box below. You can also indicate over the telephone or in a letter that you do not want reinstatement of your food stamps. If you check the box ☒ below, your benefit will not be reinstated to the amount it was before the February 1997 food stamp issuance while you are waiting for your fair hearing.

☐ I do not want my benefits reinstated and continued unchanged until the hearing decision is issued.

If at the hearing, the hearing officer determines that you are not complaining about an incorrect computation of your benefits or that there has been a misapplication or misinterpretation of Federal Law or regulations, the hearing officer may determine that you were not entitled to have your food stamp benefits continue unchanged until the fair hearing decision is issued, and order that the reduction take effect immediately.

Legal Assistance: If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers" or by calling the number indicated on the top of the front of this notice.

Access to Records / Information: You have the right to review your case record. Upon your request, you have the right to free copies of other documents from your fair hearing. Also, upon request, you have the right to free copies of other documents from your case record which you need for your fair hearing. To request such documents or to find out how you may review your case record, call the number indicated on the top of the front of this notice.

If you want additional information about your case, how to request a fair hearing, how to gain access to your case file and/or additional copies of documents, you may call the number indicated on the top of the front of this notice or write us at the address listed at the top of the front of