Legal Interventions

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Module Overview

This module sets the stage for your study of legal interventions available for protective services in Pennsylvania. This module will provide an overview of: involuntary interventions, guardianship and powers of attorney.

Learning Objectives

By the end of this module, you will:

Know the	goals an	d purpos	e of gua	ardianship	and i	powers of	f attorney

- ☐ Know when guardianship may be necessary
- ☐ Know the role of a guardian and power of attorney
- ☐ Know the evidence that must be presented to the court to secure guardianship
- ☐ Know the circumstances that require a protective services worker to petition the court for involuntary intervention
- ☐ Know how to petition the court for involuntary intervention

Study Steps

- 1. Attend a guardianship hearing, and involuntary and intervention hearing.
- 2. Review a power of attorney document.
- 3. Review a petition for involuntary intervention.
- 4. Read the narrative section.
- 5. Review the relevant sections of the laws and regulations.
- 6. Take the self-evaluation quiz.
- 7. Check your answers to the quiz
- 8. Review the content of any of the questions you answered incorrectly.
- 9. Plan with your supervisor to complete transfer of learning activities.

Content

Read the module, Legal Interventions.

Guardianship

Goals of Guardianship Act (See Chapter 55, Title 20, Incapacitated Persons)

- To establish a system which permits incapacitated persons to participate as fully as possible in all decisions which affect them, while meeting their physical health & safety needs.
- To protect incapacitated persons' rights & manage their financial resources, while assisting them to regain their abilities.
- To utilize the least restrictive alternatives in achieving the above.

When is Guardianship Necessary? (See 20 PA.C.S.A. § 5501)

- When the alleged incapacitated is unable to evaluate information and communicate decisions in any way and he/she is impaired to the point that financial, physical health and safety needs cannot be met by the impaired party. AND
- There is no system of family or friends available to intervene to meet the needs and protect the impaired party. <u>AND</u>
- There is no previously-executed Durable Power of Attorney which can serve as a substitute decision-making process for the incapacitated party.
- If a support system exists, there is no need for a guardian.

What are Guardians?

- Guardians are the Court's bailiffs, i.e., agents, as the incapacitated person is a ward (dependent) of the Court declaring the person to be incapacitated.
- It is the Court that is responsible for the incapacitated party and the Guardian, the Court's bailiff, is to see to the well-being of the incapacitated party, on behalf of the Court. The Guardian works for the Court in protecting the Court's ward (This is both common law & statutory law.)

Guardians' Duties (See 20 PA.C.S.A. § 5521, et. seq.)

- It is the duty of the guardian of the person to assert the rights and best interests of the incapacitated person giving due consideration to the incapacitated party's interests and wishes.
- Guardian of the estate has the duty to act in the best interest of the incapacitated party, to protect the party's estate and to manage it with an eye to maximizing the assets available to the incapacitated party for as long as is possible.
- Guardians must file reports at least annually with the Court regarding the incapacitated party's estate and person.

 Within 60 days of the death of the incapacitated, or when he/she has recovered his/her capacity, the Guardian must file a final report with the Court.

Duties Not Granted to Guardians (See 20 PA.C.S.A. § 5521)

- To admit the incapacitated person to an inpatient psychiatric facility or a state center for the mentally retarded.
- To consent, on behalf of the incapacitated person, to the relinquishment of the person's parental rights.

Duties Only Granted by Court (See 20 PA.C.S.A. § 5521)

- Consent on behalf of the incapacitated person for an abortion, sterilization, psychosurgery, electroconvulsive therapy or removal of a healthy body organ.
- Prohibit the marriage or consent to the divorce of the incapacitated person.
- Consent on behalf of the incapacitated party to the performance of any experimental biomedical or behavioral medical procedure or participation in any biomedical or behavioral experiment.

Evidence that Must Be Demonstrated to the Court to Establish a Guardianship

- To establish incapacity, the petitioner (any interested party) must present testimony (in person or by deposition) by individuals qualified by training and experience in evaluating individuals with the type of incapacity alleged in the petition, which establishes the nature and extent of the alleged incapacity & disabilities. (20 PA.C.S.A. § 5518)
- Petitioner must also put on the nature and extent of impairment of the alleged incapacitated person's mental, emotional and physical condition, as well as adaptive behavior and social skills.
- Petitioner must also present evidence regarding the services being utilized to meet essential requirements for the alleged incapacitated person's physical health & safety, to manage the person's finances or to develop or regain the person's abilities.
- Evidence must also demonstrate the types of assistance required by the person and why no less restrictive alternatives would be appropriate. Also, evidence regarding the probability that the extent of the person's incapacities may significantly lessen or change should be produced.

The Court Makes A Determination of Incapacity and Appointment of Guardian (20 PA.C.S.A. § 5512.1)

In all cases the Court shall consider & make specific findings of fact concerning:

• The nature of any condition or disability which impairs the individual's capacity to

Temple University Institute on Protective Services Basic Protective Services Legal Interventions make & communicate decisions.

- The extent of the individual's capacity to make & communicate decisions.
- The need for guardianship services in light of alleged incapacitated person's social assets (family, friends, etc.) & whether there exists any advance directives such as durable powers of attorney or trusts.
 - The type of guardian needed:
 - Limited or plenary;
 - Of the person and/or estate;
 - Based on nature of disabilities present;
 - Guided by capacity of individual to make and communicate decisions.
- The duration of the guardianship is established.
- The Court shall prefer limited guardianship.

Effect of Incapacity Determination

- A partially incapacitated person shall be incapable of making any contract or gift or any instrument in writing in those areas in which the person has been found to be incapacitated.
- A totally incapacitated person shall be incapable of making any contract or gift or any instrument in writing. (20 PA.C.S.A. § 5524).
- The alleged incapacitated party is guaranteed due process, notice of the proceeding to be initiated against him/her; court appointment of legal representation (in appropriate circumstances); presences at proceedings (also the ability not to be present); & other safe guards. Due Process (20 PA.C.S.A. § 5111)

Power of Attorney

Establishment of a Power of Attorney (POA) (See 20 PA.C.S.A. §5601, et. seq.)

- In order for a Principal to establish a POA he/she must be capacitated at the time it is established.
- The question of the level of capacity is of interest. There is some debate on what that level of capacity is, with some suggesting that the principal must have capacity sufficient to make a will, e.g., be aware of his/her estate e.g., be aware of the nature of his/her bounty and that he/she is disposing of that estate through the document.

Power of Attorney Relationship

- The elder (here the principal) appoints an agent (the person serving as attorney in fact, or POA) to act on behalf of the principal.
- The agent must act in the best interest of the principal and is in a <u>fiduciary</u> <u>relationship</u> with the principal (20 Pa.C.S. § 5601, et seq.)
- Agent's authority is limited to expressed permission granted by the principal.

Power of Attorney Relationship Can Obviate the Need for Guardianship

- In one context POAs have been seen by some as a potential mechanism for victimization of an elder.
- In the mental health context, with the appropriate agent, POAs can be a real benefit.

Power of Attorney Requires Notices

- Principal must be notified in the POA document that he/she may lose all of his/her assets by action of the agent.
- Agent must sign an attached document that he/she is in a fiduciary relationship
 (acting only in the best interest of the principal) and that he/she will keep principal's
 assets separate from his/her own and will keep records of transactions.

Power of Attorney Agent Capacities

The POA Act suggests a list of powers which a principal may grant to the agent.
 These include, among other things, the following powers (see 20 PA. C.S.A. § 5602):

- (8) "To authorize my admission to a medical, nursing, residential or similar facility and to enter into agreements for my care."
- (9) "To authorize medical & surgical procedures."
- To the extent that mental health treatments can be considered to be medical or surgical procedures, a POA agent may be able to authorize them. This is a matter that will vary by mental health provider and by county court interpretation.
- Guardians are specifically prohibited from admitting wards to in-patient psychiatric settings and only Courts can authorize other mental health procedures for wards.

Mental Health Procedures Act & Its Relationship to Capacity Issues

- The Mental Health Procedures Act is found at 50 P.S. § 7101, et. seq
- The policy underlying the Act is to make adequate mental health treatment available to those persons who are mentally ill.
- The policy of the Act specifically states that those "(P)ersons who are mentally retarded, senile, alcoholic or drug dependent" shall only receive services if they are also "mentally ill" & that the above identified conditions shall not be deemed to constitute "mental illness" (§ 7102).

Implications of MHPA Policy for Services to Elders

- Depending on the county in question, there are more or less difficulties in securing adequate mental health care for incapacitated elderly.
- The difficulty resides in the policy that mental health providers do not serve those who are "senile" as a primary diagnosis.

AAA Prevention Strategies

- AAAs should be encouraged to work with their aging populations to consider the
 development of power of attorney documents which can facilitate all aspects of care,
 if the senior becomes incapacitated.
- There are a number of legitimate concerns with the possibility of financial exploitation arising within the context of POA relationship, but these can be controlled.

AAA Has the Power to Intervene in POA Relationships

 Recent amendments to the Power of Attorney Act (see 20 Pa.C.S. § 5604(d), discovery of information and records regarding actions of agent), give the AAAs the ability to look into the agent's management of elders' funds and to allow AAAs to obtain court orders to review necessary documents in this regard.

Related POA and Joint Account Issue

- AAAs should be aware of Chapter 63, "Multiple-Party Accounts," in Pennsylvania's Statute, Title 20, "Decedents, Estates and Fiduciaries."
- This chapter has as its purpose "the determination of property rights among parties to multiple-party accounts and all claims made through them but do not apply to and do not affect financial institutions..."

Multiple-Party Accounts

- This legislation should be examined by AAAs solicitors with an eye to determining the
 extent to which it can be utilized in financial exploitation investigations where the
 alleged victim may have added the name of an alleged perpetrator to an account,
 through which the alleged victim has been victimized. This legislation on its face only
 applies to accounts during the lifetimes of the involved parties.
- 20 PA.C.S.A. § 6303, Ownership during lifetime, is relevant to determining ownership of joint accounts, e.g.,
 - (a) Joint Accounts A joint account belongs, during the lifetime of all
 parties, to the parties in proportion to the net contribution by each to the
 sum on deposit, unless there is clear and convincing evidence of a
 different intent.
 - 20 PA.C.S.A. § 6301, Definitions provides:
 - "Joint account" means an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship.

Involuntary Interventions

The entire *Emergency Involuntary Intervention Guidelines* can be located in the study guide Appendix B - Aging Program Directive (#94-24-01).

Guidelines for Involuntary Intervention

- A. Always consult with a supervisor and other professionals
 - a. Emergency interventions should be conducted with the on-going consultation and guidance of a protective services supervisor.
 - b. Within the AAA, there are several professionals available to protective service workers for consultation when this very important, but difficult, decision is to be made (medical personnel, mental health professionals and attorneys/county solicitors). Protective service workers are encouraged to consult with any or all of these professionals when involuntary intervention is being considered.
- B. Use careful consideration when considering using emergency involuntary intervention with an older adult who is at imminent risk of death or serious harm if intervention were not to occur.
 - a. The protective services worker must always consider the older adult's right to self-determinations, using least restrictive intervention methods and protect the older adult's rights when considering the use of emergency involuntary intervention. The client's safety is always the primary consideration.
 - b. The Older Adult Protective Services Act, 35 P.S. Sections 10225.101 *et. seq.* provides a tool for protective service workers to use so they can intercede when an older adult is at imminent risk of death or serious harm.
 - c. An Emergency Involuntary Intervention Order (described at Sections 15.71-15.76 of the regulations) is an intrusive action that must only be utilized as an action of last resort when all other attempts for a resolution have failed. When there is clear and convincing evidence that, if protective services are not provided, the person to be protected is at imminent risk of death or serious physical harm, the agency may petition the Court for an emergency order to provide the necessary services.
- C. Steps to complete before filing a petition
 - a. Clearly identify the potential dangerous outcome if intervention does not occur
 - i. The Act provides that "where there was <u>clear</u> and <u>convincing</u> evidence that, if protective services are not provided, the person to be protected is at **imminent risk of death or serious physical harm**, the agency may petition the court for an emergency order to provide the necessary services" (§ 10225.307 (a)). The Act further requires that the older adult to be protected must fit the criteria of

- an older adult in need of protective services. "Older adult in need of protective services" is defined in 6 Pa. Code §15.2. It is therefore the responsibility of the protective service worker to first: identify the client as an older adult in need of protective services and then: obtain sufficient information (by utilizing appropriate resources) to identify the potentially dangerous outcome that would result if services are not provided.
- ii. It is essential, for the safety, well-being, and dignity of the client, as well as the agency's credibility, for protective service workers to provide sufficient information to support the extreme condition and consequences that warrant the petition. Special care must be given to avoid making assumptions about situations involving speculative risk rather than imminent risk. For example, it may be appropriate to consider an intervention order for a client who chain smokes, is confused, disoriented and uses oxygen and kerosene heat, especially if the house is a fire hazard with cans of kerosene, newspapers, oily rags and other materials cluttering the house, and the client has a documented history of setting fires from careless smoking. This would constitute imminent risk. On the other hand, it would be premature to consider such an action with another client, who the protective service worker fears may fall asleep with a lit cigarette, but has no such history, and where there is no additional concrete evidence that there is a real threat. This would be a case where the risk was only a matter of speculation.
- b. Utilize all available resources
 - i. Primary Physician
 - ii. Other Specialists
 - iii. In-Home Service Providers
 - iv. Legal Counsel
 - v. Clergy
 - vi. Informal Resources
 - 1. Relatives
 - Neighbors
 - 3. Friends
- c. Evaluate the client's ability to make an informed decision
 - i. The criteria for an older adult in need of protective services includes the word "incapacitated" (6 Pa. Code § 15.2). This does not mean that the older adult must be bed bound and incoherent. An older adult may be ambulatory, alert and oriented but still lack the capacity to obtain services to maintain physical or mental health or property. This could be the result of some type of psychological or physical intimidation. The "incapacity" set forth in Section 15.2 refers to this lack of capacity to obtain services to maintain physical or mental health or property. It does not refer to a finding of "incapacity" under Pennsylvania's Guardianship law.

- ii. In general, the client is provided the right to refuse services. An Emergency Involuntary Intervention, however, is the only circumstance where a client is not required to consent to the provision of services (35 P.S. § 10225.307). The protective service worker should, however, evaluate the client's ability to make an informed decision prior to considering an emergency petition as it is important to determine the client's understanding of the risk and its consequences. Although the consideration of the client's ability to make an informed decision is an essential part of the caseworker's evaluation, the caseworker should keep in mind that Emergency Involuntary Intervention can occur even in cases in which the client makes an informed decision to refuse services.
- d. Evaluate all reasonable alternatives
 - i. Although there is a certain immediacy in these situations, the Act requires, and good casework practice dictates, that alternatives be evaluated and offered to remedy the situation before initiating such an intrusive action as an Emergency Involuntary Intervention order. In all cases, these options should be realistic with careful consideration given to the client's individual needs and desires when examining least restrictive alternatives. To do less would be a disservice to the client, their significant others, and would place the AAA's credibility at risk with the local courts.
 - ii. Protective service workers must always be aware that they have resources provided by the Act that can be used to alleviate dangerous situations. They must, however, understand that, although available, these resources must be considered as measures of last resort. Protective service workers must be very careful about falling into a trap of identifying a serious problem with all subsequent actions becoming the process of working towards obtaining a court order to resolve the problem. Other resolutions must be sought and considered.
- e. Discuss these alternatives with the client or significant other
 - i. Client's Right to Self-Determination is one of the most important casework principles. When considering other alternatives, and even when considering an involuntary intervention, the client's opinion and input (as well as that of significant others) must be solicited and considered. This doesn't mean that the care plan will be client-directed, as it may sometimes be necessary to reject many (if not all) of the client's requests. Protective service workers will be more successful if they treat their clients with dignity by asking for input and sincerely considering the client's requests.
 - ii. The Act requires an interaction between the protective service worker and client. Whenever possible, protective service workers must allot sufficient time to discuss appropriate alternatives with all interested parties and to ascertain their desires. Consequently, the

protective service worker will have to evaluate the feasibility of including those desires in the care plan or petition. The time required in this effort, however, must not be to the detriment of the client. As in many other aspects of the Act, protective service workers must use good judgment when determining how much time can be spent in this effort before it creates an additional risk.

- f. Collaborate with resources and the client to encourage the most appropriate alternative(s) to filing an emergency petition
 - i. Use interviewing skills that are provided in the Interviewing module of this study guide.
 - ii. After evaluating all appropriate alternatives and discussing them with clients, and significant others, determine the most appropriate approach, and motivate the client towards it.
 - iii. Priority must be given to least restrictive alternatives, but only safe and realistic outcomes should be pursued.
 - iv. Sufficient time, must be provided to assure that everyone understands the situation, its consequences and all recommendations, as well as, a determination of the client's ability to make an informed decision.
 - v. Represent protective services intentions accurately without using the possibility of a petition to the courts in a threatening manner. The ability to petition for an emergency involuntary intervention order should <u>never</u> be used as a "hammer" to motivate client behavior.
- g. Determine the need for the order
 - After all other steps have been exhausted and it is determined that the older adult is still at risk of death or serious bodily harm, begin the involuntary intervention process.
- D. Process of filing an Involuntary Intervention Order
 - a. Identify (for the petition) the desired action (services to be provided) to reduce the danger
 - b. Assure legal counsel for the client
 - i. The legal rights of all clients must be protected
 - 1. Assuring the client's opportunity to have legal representation can be as important as petitioning for the Emergency Involuntary Intervention.
 - 6 Pa. Code §15.71(b) of the regulations promulgated under the Act requires that "when the agency petitions the court for emergency involuntary intervention, the agency shall make sure the older adult has the opportunity to be represented by counsel AT ALL STAGES OF THE PROCEEDINGS."
 - 3. If the client's attorney is known, the agency "shall attempt to notify that attorney before it files a petition for emergency involuntary intervention."

- 4. If the older adult does not have legal representation at the time the emergency order is requested, the law requires the agency to inform the court of its efforts to notify the client's counsel. If the older adult is unable to provide for counsel, the court will appoint counsel as authorized by the Act at the time the emergency order is entered to ensure that legal representation will be provided at the time of the emergency protective services review hearing.
- c. Be very specific in the petition
 - A great amount of attention should be given to the detail of the petition to assure all requirements of law are met and that all actions and services required are considered and ordered.
 - ii. Petitions MUST contain the following information(6 Pa. Code § 15.72):
 - 1. The name, age and physical description of the older adult insofar as these facts have been ascertained.
 - 2. The address or other location where the older adult can be found.
 - 3. The name and relationship of a guardian, caregiver or other responsible party residing with the older adult, when applicable.
 - A clear detailed description of how the older adult is at imminent risk of DEATH OR SERIOUS PHYSICAL HARM.
 - 5. The physical and mental status of the older adult, to the extent known.
 - 6. The attempts made by the agency to obtain the informed consent of the older adult, or the older adult's court appointed guardian, when applicable, to the provision of protective services by the agency.
 - 7. The specific SHORT-TERM, LEAST RESTRICTIVE, involuntary protective services which the agency is petitioning the court for an order to provide.
 - 8. A description of how the proposed services would remedy the situation or condition, which presents an imminent risk of DEATH OR SERIOUS PHYSICAL HARM.
 - A statement showing why the proposed services are not overbroad in extent or duration and why LESS RESTRICTIVE ALTERNATIVES, as to their extent or duration, are not adequate.
 - 10. A statement that other voluntary protective services have been OFFERED, ATTEMPTED OR HAVE FAILED to remedy the situation.
 - 11. A statement that reasonable efforts have been made to communicate with the older adult in a language the older adult understands in the case of an older adult who is

- hearing impaired or who does not understand the English language.
- 12. Other relevant information deemed appropriate by the agency.
- iii. By assuring its initial petition is complete and specific, the agency will eliminate the need to file other petitions or become involved in additional hearings.
- d. Duration of the order:
 - The agency must request an emergency order of a specific duration, which may not exceed 72 hours from the time the order is granted.
 - ii. The agency must request the court of common pleas to hold a hearing when the initial emergency order expires to review the need for an additional emergency court order or other continued court and protective services both.
- e. Determine any assistance that may be needed to secure the safety of the older adult. This could include, but is not limited to the following:
 - i. Police assistance
 - ii. Assistance from an ambulance and EMT's
 - iii. Hospitalization
 - iv. Emergency medical care
 - v. Medical tests
 - vi. Psychiatric/psychological tests
 - vii. Emergency shelter
 - viii. Other emergency placement (i.e., nursing home or PCH)
 - ix. Completion of forms (i.e., M.A. applications)
 - x. Receipt of reports
 - xi. Provision of in-home services
- f. Use of other professionals to determine risk
 - Other professionals to help articulate the emergency, and the potential dangerous outcome, so it can be specifically stated in the petition.
 - ii. Some agencies use a standard form, completed by a physician, as an attachment to the petition for further documentation. The petition is to include, and the judge will be assessing, the agency's efforts to remedy the situation before requesting the court order.
- E. After the petition is granted
 - a. Remain actively involved and reassess the client's need for protective services until its resolution
 - i. The protective service worker's responsibility does not end when the petition for an Emergency Involuntary Intervention order has been granted. To the contrary, the worker's involvement and responsibility continue and may become even more intense.

- ii. Close contact must be maintained with the client, providers of service, legal counsel and the courts so the protective services worker can:
 - 1. Assure compliance with the court order
 - 2. Determine some type of measurable outcome of the court ordered services
 - 3. Ascertain the impact of those services to the overall reduction of risk
 - 4. Collect sufficient information to report back to the court when the order expires
 - 5. Make further recommendations on the need and necessary services to reduce additional risk
 - 6. Respond to the questions by the judge and client's attorney at the follow-up hearing
 - 7. Implement a care plan, if one is agreed upon, at the followup hearing
 - 8. Be prepared to terminate protective services if so ordered
 - 9. Determine when it may be appropriate to terminate protective services
 - 10. Maintain appropriate contacts and follow-up for any additional court orders
 - 11. Assure continuous legal representation, if appropriate.
- b. File and document ALL information that supports all actions. The agency shall document in the case record emergency intervention actions it takes (§ 15.76. Documentation).
 - i. Document all actions including unsuccessful efforts
 - 1. Effort and detail must be given to documenting all casework actions. This is especially important when demonstrating the alternatives suggested, and efforts made, to provide services that would reduce or eliminate the risk.
 - 2. Include all home visits, phone contacts, or other actions with or on behalf of the client.
 - Case narratives should be concise but include all <u>pertinent</u> data. They should be neat and professional in appearance, signed, dated and in chronological order.
 - Protective service workers should document every case file as if the file were to be reviewed by a judge. (See the Reporting and Documentation module in this study guide for information on how to document).
 - ii. Information may be obtained with consent of the client or through other avenues (court orders) available to the protective service worker. Note, that HIPPA regulations (Title 45 CFR 164.512,) allow a PS worker to obtain information without consent if an older adult is at risk of harm. (See Appendix of this study guide for the relative sections of the regulations). The PS worker may use the support of

the agency attorney/county solicitor to clarify the HIPPA regulations to the releasing agency. This information could include, but is not limited to:

- 1. Medical history
- Present medical condition including medications and therapies
- 3. Psychiatric/psychological evaluations
- 4. Current medical reports
- 5. Social history
- 6. Medical/mental health opinion of current condition
- 7. Client's ability to make an informed decision
- 8. Medical opinion on risk
- 9. Client's environment
- 10. Police reports
- 11. Other court documents
- c. Retain all court records and correspondence
 - The case file must include a copy of all court records (i.e. petitions and orders) and relevant correspondence (i.e. medical reports and letters to the client's attorney) to identify and support all casework actions.
 - ii. Keep records in chronological order so a logical progression of actions is documented.
- d. Document all consults including consults with
 - i. AAA Director
 - ii. Protective Services Supervisor
 - iii. Legal Counsel
 - iv. Physician Consultant
 - v. Nurse Consultant
 - vi. Others

Self-Evaluation Quiz

Answer the following questions.

<i>,</i> (1)	ower the following questions.
1.	The Court bears the responsibility for an incapacitated person who is a ward of the Court; the Guardian works for the Court to protect the well being of the incapacitated party.
2.	As part of his duties, a Guardian may admit the incapacitated person to an inpatient psychiatric facility or state center for the mentally retarded. T F
3.	A Power of Attorney enables the agent to manage all of the elder's affairs. T F
4.	By way of a Power of Attorney, the elder may grant the agent power to authorize his/her admission to a medical, nursing or residential facility, as well as his/her treatment there.
5.	List two reasons securing adequate mental health care for the incapacitated elderly can be challenging.
6.	The primary consideration a protective services worker must give before initiating an involuntary intervention is the older adult's right to self-determination. T F
7.	Before filing an Emergency Involuntary Intervention Order, the protective services worker, must evaluate as many alternative solutions as possible to remedy the situation.
8.	According to the statute, the agency may petition the court for an emergency order where there is evidence beyond a reasonable doubt that the person to be protected is at imminent risk of death or serious physical harm if protective services are not provided. T F
9.	The client has the right to be represented at all stages of the proceedings for an Emergency Involuntary Intervention Order. T F
10	List three things a protective services worker should do after the Emergency petition is granted.

Review your answers with the answer key at the end of this section.

Transfer of Learning Activities

- 1. Review a case record involving an involuntary intervention:
 - a. Identify where the risk of serious harm or death was documented
 - b. Identify attempts to use outside support system to reduce risk and prevent the need for emergency intervention.
- 2. Review a power of attorney and discuss the powers granted to the agent.
- 3. Review a file involving guardianship of an older adult:
 - a. Identify the behaviors that necessitated a petition for guardianship.
 - b. Identify any evaluations that were conducted to demonstrate the need for guardianship.

References

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Pennsylvania Department of Aging. *Guidelines for a Protective Services Emergency Involuntary Intervention*. Aging Technical Assistance Bulletin, ATAB # 94-12-01.

Pennsylvania Older Adult Protective Services Act.

ANSWER KEY Legal Interventions

- 1. The Court bears the responsibility for an incapacitated person who is a ward of the Court; the Guardian works for the Court to protect the well being of the incapacitated party. **True.** The Guardian is an agent of the Court, not of the elder and/or the elder's family.
- 2. As part of his duties, a Guardian may admit the incapacitated person to an inpatient psychiatric facility or state center for the mentally retarded. **False**. This act, along with relinquishing the incapacitated person's parental rights, are two duties that guardians are NOT granted the right to perform.
- 3. A Power of Attorney enables the agent to manage all of the elder's affairs. **False.**The Power of Attorney is limited to the expressed permission granted to him in the document by the elder.
- 4. By way of a Power of Attorney, the elder may grant the agent power to authorize his/her admission to a medical, nursing or residential facility, as well as his/her treatment there. **True**. See 20 PA.C.S.A. §5602 for a suggested list of powers that a principal may grant to the agent in a Power of Attorney.
- 5. List two reasons securing adequate mental health care for the incapacitated elderly can be challenging. Only the Court can authorize mental health procedures (not guardians or agents of a power of attorney); the Mental Health Procedures Act does not serve those who are "senile" as a primary diagnosis.
- 6. The primary consideration a protective services worker must give before initiating an involuntary intervention is the older adult's right to self-determination. **False.**Though self-determination is one consideration, the client's safety is always the primary consideration.
- 7. Before filing an Emergency Involuntary Intervention Order, the protective services worker, must evaluate as many alternative solutions as possible to remedy the situation. **True.** Though there is a certain immediacy in these situations, filing an Emergency Involuntary Intervention Order should be the last resort when all other attempts for a resolution have failed. In fact, the petition must contain a statement that other voluntary protective services have been offered, attempted or have failed to remedy the situation. (6 Pa. Code §15.72).
- 8. According to the statute, the agency may petition the court for an emergency order where there is evidence <u>beyond a reasonable doubt</u> that the person to be protected is at imminent risk of death or serious physical harm if protective services are not provided. **False.** The standard of proof for an Emergency Involuntary Intervention Order is "clear and convincing."

- 9. The client has the right to be represented at all stages of the proceedings for an Emergency Involuntary Intervention Order. **True.**
- 10. List three things a protective services worker should do after the Emergency petition is granted. Any of the following responses as well as those found in Section E. "After the Petition Granted" would be appropriate. Remain actively involved and reassess the client's need for protective services; File and document all information that supports all actions; Retain all court records and correspondence; and document all consultations.