**Section 270.260 Authority to Consent and Court Petitions**

a) The APS provider agency shall conduct an initial interview of the alleged victim to determine:

1) the level of risk to the alleged victim;

2) the need for early intervention services in order to assure safety and welfare or otherwise reduce risk to the alleged victim; and

3) the alleged victim's decisional capacity to consent to an assessment and/or services.

b) If it reasonably appears to the APS provider agency at the initial interview that the alleged victim has decisional capacity, the APS provider agency will conduct an assessment of the reported incident of suspected abuse, neglect, financial exploitation or self-neglect in accordance with Section 270.250, put Early Intervention Services in place as needed under Section 270.265, and provide other services as appropriate in completing case work, follow-up, referral to law enforcement, and case closure under Section 270.255.

1) *If* the alleged victim *consents to services being provided according to the case plan, such services shall be arranged to meet the adult's needs, based upon the availability of resources to provide such services.*

2) *If an adult withdraws his or her consent for an assessment of the reported incident or withdraws his or her consent for services and refuses to accept such services, the services shall not be provided.* [320 ILCS 20/9(a)]

c) *An* alleged victim *"lacks the capacity to consent" if qualified staff of an agency designated under* the *Act reasonably determine, that he or she appears either unable to receive and evaluate information related to the assessment or services or unable to communicate in any manner decisions related to the assessment of the reported incident or services.* [320 ILCS 20/9(d-5)]

d) If it reasonably appears to the APS provider agency at the initial interview that the alleged victim lacks decisional capacity, and there is no threat of ongoing harm or another emergency that exists, the APS provider agency will continue to intervene in order to determine if the alleged victim has a guardian or agent under an advance directive with authority to act on his or her behalf for consenting to an assessment and/or services.

1) Upon consent by the guardian or agent under an advance directive, services will be provided according to the case plan and shall be arranged to meet the alleged victim's needs, based upon the availability of resources to provide those services.

2) If the alleged victim either does not have a guardian or agent or the guardian or agent lacks authority to act, the APS provider agency shall have authority to:

A) contact an immediate family member, other relative, close personal friend of the alleged victim, or other person identified by the alleged victim as being involved with his or her care, to petition the court for that individual's appointment as a guardian in accordance with *Article XIa of the Probate Act of 1975* [755 ILCS 5/Art. XIa] *for the purpose of consenting to* an assessment of the reported incident and *services, together with an order for an evaluation of the* alleged victim's *decisional capacity and his or her physical, psychological, and medical condition*; or

B) seek the *appointment of a temporary guardian as provided in Article XIa of the Probate Act of 1975 for the purpose of consenting to an assessment of the reported incident and services, together with an order for an evaluation of the* alleged victim's *decisional capacity and his or her physical, psychological and medical condition.* [320 ILCS 20/9(b)]

3) If the APS provider agency seeks the appointment of a guardian pursuant to Article XIa of the Probate Act of 1975, the APS provider agency, through its attorney, shall notify the nearest relatives of the disabled person not less than 14 days prior to the scheduled hearing, as provided by Sections 11a-8 and 11a-10(f) of the Probate Act of 1975.

4) *If a guardian or agent is the suspected abuser and he or she withdraws consent for the assessment of the reported incident, or refuses to allow services to be provided to the* alleged victim*, the APS provider agency, or the Office of the Attorney General may request a court order seeking appropriate remedies, and may, in addition request removal of the guardian and appointment of a successor guardian or request removal of the agent and appointment of a guardian.* [320 ILCS 20/9(c)]

e) If it reasonably appears to the APS provider agency at the initial interview that the alleged victim lacks decisional capacity, and there is ongoing harm, a threat of ongoing harm or another *emergency* that *exists, the APS provider agency may:*

1) take appropriate action necessary to ameliorate the risk by consulting with any other appropriate professional and/or provider of services, through charitable and community assistance, disability agencies, private means, or public benefit programs, to meet identified needs, stabilize the abusive situation and reduce the risk of further harm, such as:

A) seeking assistance of law enforcement to gain access to the alleged victim;

B) obtaining emergency medical care;

C) petitioning for Orders of Protection, Restraining Orders, or orders freezing assets;

D) purchasing early intervention services under Section 270.265; and

E) applying for appointment of a representative payee; and/or

2) *request an ex parte order from the circuit court of the county in which the petitioner or respondent resides or in which the alleged abuse, neglect, financial exploitation or self-neglect occurred, authorizing an assessment of a report of alleged or suspected abuse, neglect, financial exploitation or self-neglect or the provision of necessary services, or both, including relief available under the Illinois Domestic Violence Act of 1986* [750 ILCS 60]. [320 ILCS 20/9(d)]

f) *Within 15 days after the entry of the ex parte emergency order, the order shall expire, or, if the need for assessment of the reported incident or services continues, the APS provider agency shall petition for the appointment of a guardian as provided in Article XIa of the Probate Act of 1975 for the purpose of consenting to such assessment or services or to protect the* alleged victim *from further harm.* [320 ILCS 20/9(e)]

g) In accordance with subsections (d) and (e), if *the APS provider agency has substantiated financial exploitation against an* alleged victim*, and has documented a reasonable belief that the* alleged victim *will be irreparably harmed as a result of the financial exploitation, the Office of the Attorney General or the APS provider agency may petition for an order freezing the assets of the* alleged victim*. The petition shall be filed in the county or counties in which the assets are located.* [320 ILCS 20/13(d)]

(Source: Amended at 39 Ill. Reg. 2156, effective January 23, 2015)