

Lifestyles for the Disabled

**PROGRAM PARTICIPANT
HANDBOOK**

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PROGRAM PARTICIPANT ELIGIBILITY

Policy Summary

Lifestyles for the Disabled shall maintain certain requirements for program participants to be eligible for day habilitation services. The following standards apply:

Procedure

A) To be eligible for participation in the HCBS waiver, the program participant shall be approved by OPWDD and in agreement with the forms and format approved by the Commissioner.

B) The required application for participation shall state that the program participant:

- 1) has a diagnosis of developmental disability;
- 2) is eligible for ICF/MR level of care;
- 3) is an enrolled Medicaid recipient or is eligible for enrollment;
- 4) has utilized freedom of choice between receipt of Waiver services or placement in an ICF/DD.

Effective: November 1994

Revised: November 2006

PROGRAM PARTICIPANT ENROLLMENT/ADMISSION

Admission Policy

The mission of Lifestyles for the Disabled is to provide quality learning experiences that will enable all persons regardless of their disabilities to become productive members of society and live their lives with dignity as independently as possible. Our program is dedicated to the continued pursuit of progress, productivity and the achievement of independence. We do not exclude any individual with developmental disabilities from our program, however, we do attempt to place individuals in our program who appear fit for the facilities and activities. All program participants must meet the criteria for OPWDD Determination of Eligibility. (As described in Program participant Eligibility)

Policy Summary

All preliminary documentation must be completed, processed, and approved for Level of Care prior to a program participant's admittance into the Lifestyles program.

All program participants will be accepted into the program on a 30 day trial basis. Upon completion of the trial period, the program participant will be notified in writing of Lifestyles' decision. The program participant and/or advocate can request a meeting for a review of the decision.

Effective: November 1994

Revised: April 2011

PROGRAM PARTICIPANT STIPEND

Policy Summary

All participants receive a stipend for each day they attend program. All monies used for the stipend program are generated through grants, private donations, fundraising and sales. Stipend distributions are reviewed on a biannual basis. The categories and criteria for determining the stipend amounts are listed below.

Category A = \$1.00 per day

All participants initially enrolling in the Lifestyles Day Habilitation Program will receive \$1.00 per day for attendance, effort and as a positive reinforcement for appropriate behavior.

Category B = \$1.25 - \$5.00 per day

Participants can begin earning additional monies through merit, staff recommendation, teamwork, the ability to follow directions and productivity. Participants may request to be considered for an increase in stipend.

Category C = \$5.00 – Minimum Wage

Participants in this category have achieved a level of independence and productivity. They still require daily supports, but can function without constant verbal prompting or continuous supervision.

Category D = Minimum Wage and Higher

Participants reaching this category have shown a level of independence requiring very little support and are considered “Employees in Training.”

Effective: April 2011

PROGRAM PARTICIPANT DISCHARGE

Policy Summary

Lifestyles for the Disabled's discharge policy is based upon determining what is in the program participant's best interest. If a program participant is unhappy in their program, Lifestyles will review and discuss the participant's record with the participant and their family for a possible placement in a more appropriate program. Lifestyles would recommend discharge for a program participant who could not function in the Lifestyles environment because of the following reasons:

- Extreme self-injurious behaviors – ongoing.
- Harmful and/or aggressive behaviors towards other program participants and/or staff – ongoing.
- All behaviors involving a criminal nature.
- Choosing to attend another program.

Effective: November 1994

Revised: April 2011

PROGRAM PARTICIPANT ILLNESS

Policy Summary

All participants are to notify Lifestyles if they will be late or will not be attending program due to an illness or a scheduled appointment.

The direct support professional will be familiar with any information noted under medical alerts in the program participants' ISP, annual medical and day habilitation plan, where seizures, allergies and other medical or health conditions are noted.

When there is a sudden illness or emergency, the direct support professional will:

- a) Direct Support Professional/Supervisor will make program participant comfortable.
- b) administer first aid, if necessary.
- c) call 911, if necessary. If hospitalized, the family/residence is expected to meet the program participant and a member of our staff at the hospital.
- d) contact the incident review director, and fill out the proper forms.
- e) the incident review director or program supervisor will call home or emergency contacts if necessary.

Effective: November 1994

Revised: March 2012

PROGRAM PARTICIPANT MEDICATION

Policy Summary

Parents/advocates are required to complete the "Medication Information Form." This form is mandatory for all participants and must list all medication, whether or not they take medication during program hours. If the participant does not take any medication, please indicate that on the form.

Lifestyles must be notified in writing if there is a change in the participant's medication as soon as the change is effective.

Effective: March 2012

PROGRAM PARTICIPANT BEHAVIORAL PLAN

Policy Summary

An individualized “Behavior Intervention Plan” will be developed in writing between Lifestyles for the Disabled, the parent/advocate and a psychologist in order to address the following behaviors by a program participant:

- Hitting another program participant, with force being a determining factor.
- Hitting, grabbing or using force against a staff person.
- Violent or aggressive behavior towards anyone – based on judgment of staff.
- Spitting on staff
- Non-compliant behavior with inability to be redirected through the course of a day.
- Excessive daily negative behaviors that affect others in program – program participants and staff.
- Deliberately leaving the program without informing staff.
- To protect a person’s health, safety or welfare or the health, safety, or welfare of others.
- Self injurious behavior

Every effort feasible shall be made to maintain the person in at least his or her current level of programming.

PROGRAM PARTICIPANT DRESS CODE

Policy Summary

Program participants are asked to dress appropriately for the weather conditions predicted for the day.

If the program participant is in the swimming program, we request they come into program with their bathing suit, a towel and anything else they may need on the days they go to the pool.

If the program participant is in the fitness program, we request they come to program with loose fitting clothing and sneakers on the days they go to the fitness center.

All participants should have a change of clothes at program, which will be kept in their individual locker.

Effective: June 2010

Revised: April 2011

PERSONAL STORAGE SPACE AT PROGRAM

Policy Summary

Each program participant will be given an assigned locker to store their personal items during program hours. The program participant is permitted to bring in a lock (padlock or key lock) to secure their personal items in the locker. The program participant is responsible for keeping the locker clean.

Lifestyles reserves the right to search lockers at any time.

Effective: June 2010

Revised: April 2011

PROGRAM PARTICIPANT LUNCH POLICY

Policy Summary

Program participants are required to bring their lunch or they may purchase lunch at Lifesytyles' Caffé located on the grounds. Program participants are given \$10 a month on a Caffé Card to make purchases in the Caffé. Once this money is exhausted, the program participant is responsible to pay for any additional food purchased in the Caffé. If the program participant cannot carry cash with them, additional money can be put on their Café card. Families should complete the "Caffé Card Authorization Form" and then contact the Caffé directly to make arrangements for the participants account.

Effective: June 2010
Revised: March 2012

PROGRAM PARTICIPANT SMOKING POLICY

Policy Summary

Smoking by program participants is permitted with the consent of the parent/guardian/residence. The program participant can only smoke at designated times and in the designated areas. Before going to smoke, the program participant must first notify their staff. Staff will then tell the participant where they can smoke.

Effective: June 2010

Revised: April 2011

PROGRAM PARTICIPANT DRUG POLICY

Policy Summary

It is Lifestyles' desire to provide a drug-free, healthful, and safe environment. In order to promote this goal, no participant may use, possess, distribute, sell, or be under the influence of alcohol or illegal drugs during program hours or while on Lifestyles' premises.

Violations of this policy may lead to disciplinary action, up to and including immediate discharge from the program.

Participants thought to be under the influence of alcohol or illegal drugs will be evaluated, and may be sent home or in extreme cases immediately sent to the hospital.

Effective: February 2012

PROGRAM PARTICIPANT WEAPONS POLICY

Policy Summary

Lifestyles participants are strictly forbidden from bringing any type of weapons, including knives, box cutters, razor blades or firearms to program.

Effective: April 2011

PROGRAM PARTICIPANT SNOW POLICY

Policy Summary

If New York City Public Schools are closed due to inclement weather, Lifestyles will also be closed.

Procedure

Morning:

On days when the weather is questionable, participants are to call the main telephone number to the Lifestyles office. The message on the answering machine will inform participants if we are open for the day, having a delayed opening, open for the day but without program transportation, or closed for the day. If program transportation is suspended and the program participant chooses to attend program that day, it will be the responsibility of the home/residence to provide transportation for the day.

Afternoon:

Lifestyles reserves the right to end the program day early in order for all the program participants to arrive home safely. As soon as the decision for early dismissal is made, a Lifestyles staff member will notify each program participant's home/residence informing them of the early dismissal. Lifestyles will provide transportation home for all program participants who normally receive it.

Effective: January 2010

Revised: April 2011

PROGRAM PARTICIPANT RECORDS

(See Complete HIPPA – Notice of Privacy Practices Attached)

Policy Summary

All program participant records will be maintained in a closed file cabinet. All HIPAA guidelines will be followed. All computers containing program participant information will be password protected. Information maintained by Lifestyles for the Disabled regarding program participants is considered confidential and will be released to outside parties only with a signed release of information by the program participant and/or his/her legal guardian.

Effective: September 2005

INDIVIDUAL RIGHTS AND RESPONSIBILITIES OF PROGRAM PARTICIPANTS RECEIVING SERVICES

(See Part 633.4 Attached)

Policy Summary

No program participant shall be deprived of civil or legal rights because of a developmental disability.

All program participants shall be given the respect and dignity that is extended to others regardless of race; religion; national origin; creed; age; gender; ethnic background; sexual orientation; developmental disability or other handicap; or health condition.

No program participant shall be denied:

- a safe and sanitary environment;
- freedom from physical or psychological abuse;
- freedom from corporal punishment;
- protection from commercial or other exploitation;
- confidentiality with regard to all personal information;
- a written individualized plan of services
- freedom to practice his/her religion freely;
- expression of concerns and suggestions without fear of reprisal;
- participation in the determination of their daily group activities.

Effective: November 1994

Revised: April 2011

FOLLOW- UP ACTIVITIES AFTER A REPORTED ALLEGATION OF ABUSE

(See Part 633.9 Attached)

Policy Summary

Each situation shall be evaluated immediately, evidence preserved when possible, and appropriate actions taken. Such actions shall cause as little disruption possible to the daily routine of the program participant(s) being served, yet provide for the ensuring of health and safety.

Depending on the situation, one or more of the following actions may be taken while an allegation of abuse is being investigated:

- Removal, relocation or suspension of the person when it is determined that there is a risk to the program participant if he/ she continues to remain in the program.
- Increasing the degree of supervision of the alleged abuser.
- Provision of counseling to the alleged abuser, the program participant and other persons, as appropriate.
- Increased training to the alleged abuser and staff pertaining to the abuse.
- Increasing supervision and providing additional support to restore a secure environment to the affected staff and persons in the facility.

When it appears that a crime may have been committed against a program participant by any party, including another program participant, suspected criminal activity shall be reported to local law enforcement. Such reporting shall be:

- the responsibility of the Executive Director or his designee;
- made as soon as possible, within three working days of the incident.

When an allegation of abuse is determined to be unfounded, immediate and appropriate action shall be taken to exonerate the party against whom the allegation was made.

Effective: January 1998

Revised: April 2011

CARE AND TREATMENT

(See Part 633.10 Attached)

Policy Summary

Lifestyles for the Disabled requires that each person shall receive care and treatment that is suited to his or her needs and skillfully, safely, and humanely administered with full respect to his or her dignity and personal integrity.

Lifestyles shall maintain a current record to include all information concerning or relating to the examination or treatment of the individual for whom the record is kept, and which includes a Day Habilitation plan and an Individualized Service plan. On no less than an annual basis Lifestyles shall ensure the following requirements are met to insure the protection of persons under its care and treatment:

- a) An assessment of functional capacity shall be on file;
- b) Review and evaluation of the person's written plan of services and his or her progress in relation to that plan done by a staff member designated as having the coordination responsibility for the person's plan of services.
- c) A parent, guardian, or correspondent shall be notified if a participant is suspected or diagnosed as having a health problem which requires emergency room services or admission to a hospital or infirmary, or which results in the person being unable to participate in scheduled activities for seven or more days.
- d) Lifestyles shall develop a plan for addressing the life threatening emergency needs of persons served. Such a plan shall address the availability of:
 - first aid,
 - CPR techniques and
 - access to emergency medical services.
- e) Staff shall be aware of the plan.
- f) Lifestyles will maintain a current record of staff training.

Effective: November 1994

Revised: April 2011

OBJECTION TO SERVICES PROCESS

(See Part 633.12 Attached)

Policy Summary

Objections may be raised regarding the following:

- Any service plan or changes to the service plan (including ISPs and Day Habilitation Plans)
- Any plans for placement
- A proposal by Lifestyles to discharge a program participant
- A proposal to reduce, suspend or discontinue HBCS waiver service(s)

Objections can be made by the following:

- The program participant receiving services
- Parents
- Guardians
- Correspondents
- Advocates

Procedure

Objection procedures are located in the attachment section of this handbook, and can be found under Part 633.12 of the New York State Codes, Rules and Regulations.

Attachments

HIPPA – Notice of Privacy Practices
Part 633.4 of NYS Codes, Rules and Regulations
Part 633.9 of NYS Codes, Rules and Regulations
Part 633.10 of NYS Codes, Rules and Regulations
Part 633.12 of NYS Codes, Rules and Regulations
Liability Notice for Persons Applying for Services

HIPPA - Notice of Privacy Practices

Effective April 14, 2003

THIS NOTICE DESCRIBES HOW PROTECTED HEALTH INFORMATION ABOUT PROGRAM PARTICIPANTS RECEIVING SERVICES FROM LIFESTYLES FOR THE DISABLED, INC. MAY BE USED AND DISCLOSED. IT ALSO DESCRIBES HOW OUR AGENCY'S PROGRAM PARTICIPANTS, AND/OR THEIR PERSONAL REPRESENTATIVES (PARENT/GUARDIAN/CORRESPONDENT) CAN GET ACCESS TO THIS INFORMATION.

The HIPAA Privacy Rule **DOES NOT CHANGE** the way you get services from Lifestyles for the Disabled, Inc., or the privacy rights you have always had under local, state or federal laws. The Privacy Rule adds some details about how you can exercise your rights.

Under the guidelines set forth in the Health Information Portability and Accountability Act (HIPAA), we have implemented policies and procedures to protect your information from unlawful use and disclosure, and guarantees all program participants retain certain rights in regard to their Protected Health Information (PHI).

A copy of our current notice can be obtained by accessing our website at www.lfdisi.org, by calling our office at (718) 983-5351, or by requesting one at the time of your next visit. If you have any questions about this notice, please contact our Privacy Officer, Elizabeth Fromkin, at 718 983-5351.

Note: Personal representatives should be aware that the word "you" in this notice refers to the program participant, not the personal representative. Please review it carefully.

Our Privacy Commitment to You:

Lifestyles for the Disabled views all information related to your PHI as personal and private. Your information will only be shared with those who need to know and who are permitted by law to receive this information. Every member of our staff who has access to your PHI is committed to safeguarding all documentation related to these areas.

Who will follow this notice?

All individuals who work for Lifestyles in our programs and in our administrative offices will follow this notice. This includes employees, contractors who are authorized to access your PHI or need to review your PHI to provide services, and volunteers and interns Lifestyles appoints to assist you.

What is PHI and what information is protected?

Protected Health Information (PHI) refers to individually identifiable health information relating to the past, present or future. This information deals with your physical health, mental health, any conditions you may have, or any information that identifies or may be used to identify you. This can be any information that is electronically maintained or transmitted, paper records, or oral communications. For example, your name, address, birth date, social security number, your medical information, your individualized service plan, and other information about your care in our programs, is protected.

Your Protected Health Information Rights:

We would like you to know that you have the following rights concerning your clinical information. These rights are important because they will help your PHI remain accurate. They may also control the way your information is used and shared with others, or the way we communicate your information with you.

- You have the right to inspect and obtain a copy of your PHI. Exceptions to this include: psychotherapy notes, occurrence and incident reports, and investigations.
- If we deny your request to see your PHI, you have a right to request a review of the denial. Professional staff chosen by Lifestyles, not involved in the request denial, will review the record and decide if you may have access to the information.
- You have the right to request a change or amend your PHI if you believe it is incorrect or incomplete. We may deny your request in some cases, for example, if after reviewing your request, we believe that the record is accurate and complete. If we approve all or part of your request for amendment, we will make the change and inform you of that action. We will also inform any other person(s), required by law, of the change.
- You have the right to request a list of the disclosures our agency has made of your PHI. We will not keep or provide you with a list of certain disclosures, for example, disclosures made for treatment, payment and health care operations, or disclosures made to you or made to others with your permission. The list of disclosures will also not include disclosures made for national security or intelligence purposes, to law enforcement officials or correctional institutions, or disclosures made before July 2006. We will respond to your written request for such a list within 60 days of receiving it.
- You have the right to ask that we limit how we disclose or use your PHI related to treatment, payment, operations, public relations/grants and disclosures to involved family. We will consider your request, but are not obligated to agree to the restriction. If we do agree to all are part on any restrictions to our use/disclosure of your PHI, we will put the agreement in writing and abide by it except in emergency situations. We cannot agree to limit uses/disclosures that are required by law.
- You have the right to request that our agency communicates with you in a way that will help keep your information confidential.
- You have the right to receive a paper copy of this notice. You may obtain a copy by accessing our website at www.lfdsi.org, by calling our office at (718) 983-5351, or by requesting one at the time of your next visit.
- To request access to your PHI or to request any of the rights listed here, you may contact:
Elizabeth Fromkin
Privacy Officer
930 Willowbrook Road, Building 12-G
Staten Island, NY 10314
Phone: 718-983-5351 x217
Fax: 718-983-5383

Lifestyles' Responsibilities for Your Protected Health Information:

- Maintain the privacy of your PHI in accordance with federal and state laws.
- Give you this notice of our legal duties and practices concerning your PHI.
- Follow the rules in this notice. Our agency will use or share information about you only with your expressed permission except for the reasons explained in this notice.
- We will inform you of changes to our privacy practices in the future. If significant changes are made, we will issue a copy of the new notice as well as post it on our website at www.lfdisi.org.

Confidentiality of Protected Health Information:

Lifestyles may use and disclose your PHI for the purposes described below. For each of the categories of uses and disclosures, we explain what we mean and offer an example. All the ways we will use or disclose information will fall within these categories.

- We will not disclose clinical information about you without your consent or written authorization, except for the following purposes:
 - When we are communicating with other developmental disabilities agencies that are currently providing services to you, or working with us to plan services for you, if this communication is about treatment, payment or agency operations
 - **Treatment:** Lifestyles for the Disabled will use your PHI to provide you with treatment and services. We may disclose your PHI to doctors, nurses, psychologists, social workers, direct support professionals, and other personnel, volunteers or interns who are involved in providing you care. For example, involved staff may discuss your PHI to develop and carry out services described in your Individualized Service Plan (ISP). We may also need to disclose your PHI to your service coordinator and other providers outside of our agency who are responsible for providing you with the services identified in your ISP or to obtain new services for you.
 - **Payment:** Lifestyles for the Disabled will use your PHI so that we can bill and collect payment from a third party, an insurance company, Medicare or Medicaid or other government agencies. For example, we may need to provide the NYS Department of Health (Medicaid) with information about the services you received in our facility or through one of our HCBS waiver programs so they will pay us for the services. In addition, we may disclose your PHI to receive prior approval for payment of services you may need. Also, we may disclose your PHI to the United States Social Security Administration, or the NYS Department of Health to determine your eligibility for coverage or your ability to pay for services.
 - **Operations:** means that we may use your PHI, or share it with others, in order to conduct our normal business operations. For example, we may use your PHI to evaluate the performance of our staff in providing services to you, or to educate our staff on how to improve the care they provide for you.

- **Public Relations/Grants:** Lifestyles for the Disabled may use your PHI in summary format to describe the scope of agency services for public relations and/or grant applications. For example, a grant application may ask for the organization to describe the nature of individuals served by a specific program. Such information would describe the general population served and not disclose individual information of a person. Any need to disclose individualized information for public relation funding or grant purposes would not be disclosed unless specific authorization from the person is obtained.
- To a personal representative who is authorized to make health care decisions on your behalf.
- To appropriate persons who are able to avert a serious and imminent threat to the health or safety to you or another person.
- To appropriate government authorities to locate a missing person or conduct a criminal investigation as permitted under Federal and State confidentiality laws.
- To other licensed agency emergency services as permitted under Federal and State confidentiality laws.
- To an attorney representing you in an involuntary hospitalization or medication proceeding. (We will not disclose your PHI to an attorney for any other reason without your authorization, unless we are ordered to do so by a court).
- To authorized government officials for the purpose of monitoring or evaluating the quality of care provided by the agency or its staff.
- If you are an inmate, to your correctional facility if they certify that the information is necessary in order to provide you with health care, or to protect the health or safety of you or any other persons at the correctional facility.
- In the event of your death, we may release this information to funeral directors as necessary to carry out their duties.
- To coroners and medical examiners to determine cause of death.
- To organizations that procure or store organs, eyes, and other tissues for donation or transplant if appropriate and possible under applicable laws.
- We may disclose your PHI if we have removed any information that might reveal who you are.
- **Emergencies or Public Need:** We may use or disclose clinical information about you in an emergency or for important public needs. For example, we may share your information with public health officials at the New York State or city health departments who are authorized to investigate and control the spread of diseases.
- **Victims of Abuse, Neglect or Domestic Violence:** We may release your PHI to a public health authority that is authorized to receive reports of abuse, neglect or domestic violence. For example, we may report your information to government officials if we reasonably believe that you have been a victim of abuse, neglect or domestic violence. We will make every effort to obtain your permission before releasing your information, but in some cases we may be required or authorized to act without your permission.

- National Security and Intelligence Activities or Protective Services: We may disclose your PHI to authorize federal officials for intelligence and other national security activities or to provide protective services to the President and other important officials.
 - As Required by Law: We may use or disclose your PHI if we are required to do so by law, or if a court orders us to do so. We will notify you of these disclosures if notice is required by law.
2. Lifestyles may disclose your PHI to the following person(s) if we tell you we are going to use or disclose it, and you agree or do not object:
- To your family member(s) and personal representative(s) who are involved in your care. Lifestyles will share your PHI only if it is relative to their involvement, and to notify them of your condition and location.
 - To disaster relief organizations that need to notify your family about your condition and location should a disaster occur.
3. Authorization is required for all other types of uses and disclosures not described in this Notice. We will use or disclose your PHI only with a written authorization signed by you or an authorized personal representative. The authorization must state who may receive the information, what information to share, the purpose of the use or disclosure, and expiration of the authorization. Written authorizations are always required for use and disclosure of psychotherapy notes and for marketing purposes.

Note: If you cannot give permission due to an emergency, we may release your PHI, if Lifestyles deems the release to be in your best interest. We must notify you as soon as possible after releasing the information.

You may revoke your authorization at any time. If you revoke your authorization in writing we will no longer use or disclose your PHI for the reasons stated in your authorization. We cannot, however, take back disclosures we made before you revoked your authorization and we must retain your PHI that indicates the services we have provided to you.

Changes to this Notice:

We reserve the right to change this notice. We reserve the right to make changes to the terms described in this notice and to make the new notice terms effective for all personal health information that Lifestyles for the Disabled, Inc. maintains. We will post the new notice with the effective date in our facilities. In addition, we will offer you a copy of the revised notice at your next scheduled service planning meeting.

Complaints:

All complaints and grievances must be submitted in writing. **You will not be penalized for filing a complaint.** If you believe your privacy rights have been violated you may:

- File a complaint with:
Elizabeth Fromkin
Lifestyles for the Disabled Privacy Officer
930 Willowbrook Road, Building 12-G
Staten Island, NY 10314
Phone: 718 983-5351 x217
Fax: 718-983-5383
- File a complaint with:
The Secretary of the U.S. Dept. of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201
Phone: 877 696-6775
- File a grievance with:
The Federal Office of Civil Rights, Region II
U.S. Dept. of Health and Human Services
Jacob Javits Federal Building
26 Federal Plaza, Suite 3312
New York, NY 10278
Phone: 212-246-3313
Fax: 212-246-3039
TDD: 212-246-2355

Part 633.4 of NYS Codes, Rules, and Regulations
Rights and responsibilities of persons receiving services

- (a) *Principles of compliance.*
- (1) No person shall be deprived of any civil or legal right solely because of a diagnosis of developmental disability (see glossary, section 633.99 of this Part).
 - (2) All persons shall be given the respect and dignity that is extended to others regardless of race; religion; national origin; creed; age; gender; ethnic background; sexual orientation; developmental disability or other handicap; or health condition, such as one tested for or diagnosed as having an HIV infection. In addition, there shall be no discrimination for these or any other reasons.
 - (3) The rights set forth in this section are intended to establish the living and/or program environment that protects individuals and contributes to providing an environment in keeping with the community at large, to the extent possible, given the degree of the disabilities of those individuals. Rights that are self-initiated or involve privacy or sexuality issues may need to be adapted to meet the needs of certain persons with the most severe handicaps and/or persons whose need for protection, safety and health care will justify such adaptation. It is the responsibility of the agency/facility or the sponsoring agency to ensure that rights are not arbitrarily denied. Limitations of client rights must be on an individual basis, for a specific period of time and for clinical purposes only.
 - (4) No person shall be denied:
 - (i) a safe and sanitary environment;
 - (ii) freedom from physical or psychological abuse;
 - (iii) freedom from corporal punishment (see glossary);
 - (iv) freedom from unnecessary use of mechanical restraining devices;
 - (v) freedom from unnecessary or excessive medication;
 - (vi) protection from commercial or other exploitation;
 - (vii) confidentiality with regard to all information contained in the person's record, and access to such information, subject to the provisions of article 33 of the Mental Hygiene Law and the commissioner's regulations. In addition, confidentiality with regard to HIV-related information shall be maintained in accordance with article 27-F of the Public Health Law, 10 NYCRR Part 63 and the provisions of section 633.19 of this Part;
 - (viii) a written individualized plan of services (see glossary) which has as its goal the maximization of a person's abilities to cope with his or her environment, fosters social competency (which includes meaningful recreation and community programs and contact with others who are nonhandicapped), and which enables him or her to live as independently as possible. Such right also includes:
 - (a) the opportunity to participate in the development and modification of an individualized plan of services, unless constrained by the person's ability to do so;
 - (b) the opportunity to object to any provision within an individualized plan of services, and the opportunity to appeal any decision with which the person disagrees, made in relation to his or her objection to the plan; and

- (c) the provision for meaningful and productive activities within the person's capacity through some risk may be involved, and which take into account his or her interests;
- (ix) services, including assistance and guidance, from staff who are trained to administer services adequately, skillfully, safely and humanely, with full respect for the individual's dignity and personal integrity;
- (x) appropriate and humane health care and the opportunity, to the extent possible, to have input either personally or through parent(s), or guardian(s), or correspondent to participate in the choice of physician and dentist; or the opportunity to obtain a second medical opinion;
- (xi) access to clinically sound instructions on the topic of sexuality and family planning services and information about the existence of these services, including access to medication or devices to regulate conception, when clinically indicated. This right includes:
 - (a) freedom to express sexuality as limited by one's consensual ability to do so, provided such expressions do not infringe on the rights of others;
 - (b) the right to make decisions regarding conception and pregnancy pursuant to the mandates of applicable State and Federal law.
 - (c) The right to facilities to reasonably limit the expression of sexuality, including time and location thereof, in accordance with a plan for the effective facility management;
- (xii) observances and participation in the religion of his or her choice, through the means of his or her choice, including the right of choice not to participate;
- (xiii) the opportunity to register and vote and the opportunity to participate in activities that educate him or her in civic responsibilities;
- (xiv) freedom from discrimination, abuse or any adverse action based on his or her status as one who is subject to and HIV-related test or who has been diagnosed as having HIV infection, AIDS or HIV-related illness;
- (xv) the receipt of information on or prior to admission, regarding the supplies and services that the facility will provide or for which additional charges will be made, and timely notification of any changes thereafter;
- (xvi) the use of his or her personal money and property, including regular notice of his or her financial status and the provision of assistance in the use of his or her resources, as appropriate;
- (xvii) a balanced and nutritious diet, served at appropriate times and in as normal a manner as possible, and which is not altered or totally denied for behavior management or disciplinary (punishment) purposes;
- (xviii) individually owned clothing which fits properly, is maintained properly, and is appropriate forage, season and activity; and the opportunity to be involved in the selection of that clothing;
- (xix) adequate, individually owned, grooming and personal hygiene supplies;
- (xx) a reasonable degree of privacy in sleeping, bathing and toileting areas;
- (xxi) a reasonable amount of safe, individual, accessible storage space for clothing and other personal belongings used on a day-to-day basis;

- (xxii) the opportunity to request and alternative residential setting, whether a new residence or change of room, and involvement in the decision regarding such changes;
 - (xxiii) the opportunity, either personally or through parent(s), guardian(s) or correspondent (see glossary), to express without fear of reprisal grievances, concerns and suggestions to the chief executive officer of the facility; the Commissioner of OPWDD; the Commission on Quality of Care and Advocacy for Persons with Disabilities; for people in the developmental centers, and in community on conditional release from a developmental center, the Mental Hygiene Legal Service and the board of visitors; and for people in developmental centers, the ombudsman;
 - (xxiv) the opportunity to receive visitors at reasonable times; to have privacy when visited, provided such visits avoid infringement on the rights of others, and to communicate freely with anyone within or outside the facility; or
 - (xxv) the opportunity to make, or have made on his or her behalf, and informed decision regarding cardiopulmonary resuscitation (see glossary), in accordance with the provisions of article 29-B of the Public Health Law, and any other applicable law or regulation. Each developmental center (see glossary) shall adopt policies/procedures to actualize this right.
 - (xxvi) the opportunity, if the person is residing in an OPWDD operated or certified facility, to create a health care proxy (see glossary) in accordance with 14 NYCRR 633.20.
- (5) Implementation of many of the above rights entails inherent risks. To the extent reasonable, foreseeable and appropriate under the circumstances, such risks shall be described to individuals and/or their parents, guardians or correspondents. However, these individuals assume responsibility for those risks typically associated with participation in normal activities, to the extent the person's abilities permit such participation.
- (6) Staff, volunteers, and family care providers shall be advised of the previously listed rights.
- (7) None of the forgoing rights shall be limited for the disciplinary (punishment) purposes, retribution or for the convenience of staff.
- (8) Each person, and his or her parent(s), guardian(s), or correspondent, prior to or upon admission to a facility and subsequent to any changes that occur thereafter, shall be notified of his or her rights at the facility and rules governing conduct, unless the person is a capable adult who objects to such notification to a parent or correspondent. Such information shall be conveyed in the person's and/or the parent's, guardian's, or correspondent's primary language if necessary to facilitate comprehension. There shall be agency/facility or sponsoring agency policies/procedures to implement this process as well as the process whereby individuals can be made aware of and understand, to the extent possible, the rights to which they are entitled, how such rights may be exercised and the obligations incurred upon admission to and participation in the programs offered by the facility. (*Note: Also see paragraph [b][4] of this section*)

- (9) An individual or his or her parent(s), guardian(s), or correspondent may object to the application, adaptation or denial of any of the previously stated rights made on his or her behalf in accordance with section 633.12 of this Part.
- (10) Pursuant to section 33.16 of the Mental Hygiene Law, and subject to the limitations contained therein, a person (see glossary, subdivision [bw]), or other qualified party (see glossary, subdivision 633.99[bs]), may make a written request for access to the person's clinical record.
- (i) If the facility denies such access in whole or in part, it shall notify the requestor of his or her right to obtain, without cost, a review of the denial by the OPWDD Clinical Record Access Review Committee.
 - (ii) The Clinical Record Access Review Committee shall consist of an OPWDD attorney, an OPWDD practitioner, and a representative of the voluntary agency provider community. The chairperson shall be the OPWDD attorney, and requests for review of denial of access shall be addressed to the office of Counsel for OPWDD.
 - (iii) The Clinical Record Access Review Committee shall conduct its deliberations and reach its determinations in accordance with section 33.16 of the Mental Hygiene Law. If the committee upholds the facility's decision to deny access to the clinical record, in whole or in part, the chairperson shall notify the requestor of his or her right to seek judicial review of the facility's determination pursuant to section 33.16 of the Mental Hygiene Law.
- (11) An agency/residential facility, and the sponsoring agency of a family care home, shall:
- (i) help ensure that each adult person who formulates a health care proxy while residing at the facility does so voluntarily and without duress; and
 - (ii) if provided with a person's duly executed health care proxy, ensure that the health care proxy or a copy thereof, becomes part of the medical portion of that person's clinical record; and
 - (iii) if, for any reason, is of the opinion or has brought to its attention, that there is a reason to believe that a person did not understand the nature and consequences of a health care proxy and/or did not execute a health care proxy willingly and free from duress, bring this to the attention of MHLs; or take action as set forth in section 633.20(a)(21) and (22) of this Part.
- (12) There shall be a means to advise individuals and/or their parents, guardians, or correspondents, on admission and as changes occur, of the availability of the following parties to receive complaints and concerns, with current addresses and telephone numbers.
- (i) The director of the B/DDSO.
 - (ii) The commissioner of the OPWDD.
 - (iii) The Commission on Quality of Care and Advocacy for Persons with Disabilities (see glossary).
 - (iv) The Mental Hygiene Legal Service (see glossary), for developmental center residents and persons in the community on conditional release from developmental centers only.
 - (v) The board of visitors, for developmental center residents and persons in the community on conditional release from developmental centers only.

- (vi) The commissioner or the commission may be contacted at the following locations:
 - (a) Commissioner
Office of Mental Retardation and Developmental Disabilities
44 Holland Avenue
Albany, NY 12229
(518) 473-1997
 - (b) Bureau of Quality Assurance
Commission on Quality of Care and Advocacy for Persons with Disabilities
401 State Street
Schenectady, NY 12305
(518) 473-4090
- (13) For those persons admitted to a facility prior to the implementation date of this Part, the facility shall ensure that such required information is shared with the person and/or, parents, guardians or correspondents within a reasonable time frame, if the facility has not already done so.
- (14) In developmental centers, a statement summarizing the rights, duties, and requirements regarding cardiopulmonary resuscitation is to be posted in a public place.
- (15) Meeting the communication needs of the non-English speaking persons seeking or receiving services.
 - (i) Section 13.09(e) of the Mental Hygiene Law requires the commissioner to promulgate regulations to address the communications needs of non-English speaking individuals seeking or receiving services in facilities operated, certified or funded by the Office of Mental Retardation and Developmental Disabilities. For the purposes of this paragraph, *non-English speaking* refers to persons who do not speak English well enough to be reasonably understood, persons who are deaf or hard-of-hearing, and persons without speech capacity who use alternative means of communication.
 - (a) No facility shall deny care and treatment to, or otherwise discriminate against, persons who are non-English speaking.
 - (b) Each facility shall facilitate access to services by persons who are non-English speaking when such persons seek, or are referred for services, and when such persons are in actual receipt of services.
 - (c) In addressing the communication needs of persons who are non-English speaking, each facility shall take reasonable steps to ensure that:
 - (1) the overall quality and level of services are equal to that made available to all other persons or referrals;
 - (2) necessary steps are taken to provide information in appropriate languages;
 - (3) interpreters are provided in a timely manner when necessary for effective communication; and
 - (4) parties serving as interpreters are sufficiently competent to ensure effective communication. Such

- (a) the director of the B/DDSO;
 - (b) the commissioner of the OPWDD;
 - (c) the Commission on Quality of Care and Advocacy for Persons with Disabilities;
 - (d) the Mental Hygiene Legal Services, for residents of developmental centers and persons in the community on conditional release from developmental centers only; and
 - (e) the board of visitors, for residents of developmental centers and persons in the community on conditional release from developmental centers only.
- (3) Such information as required in paragraph (2) of this subdivision has been provided to all appropriate parties as follows:
- (i) For persons admitted to the facility prior to implementation for this Part, OPWDD shall verify, at the first survey after implementation, that the information was provided to all appropriate parties.
 - (ii) For those persons admitted to the facility since the last survey, OPWDD shall verify that the information was provided to all appropriate parties.
 - (iii) When changes have been made, OPWDD shall verify that the information was provided to all appropriate parties.
- (4) OPWDD shall verify that staff are aware of the rights of a persons in the facility.
- (5) OPWDD shall verify that affirmative steps have been taken to make persons at the facility aware of their rights to the extent that the person is capable of understanding
- (6) For the person who has had limitations placed on any rights, there is documentation in the person's plan of services as the clinical justification and specific period of time the limitation is to remain in effect.

Historical Note

Sec. filed Dec. 1, 1987; amds. filed: June 20, 1989; March 20, 1990; Nov. 24, 1992; April 22, 1997; May 19, 1998; Jan. 24, 2006 eff. Feb. 8, 2006. Amended (a)(4), (12), (b)(2)

Part 633.9 of NYS Codes, Rules, and Regulations
**Follow-up activities subsequent to a reported allegation of abuse to
persons receiving services.**

- (a) *Principles of compliance.*
- (13) Each situation shall be evaluated immediately, evidence preserved, when possible, and appropriate actions taken, which may include the investigation by trained investigators. Such actions shall cause as little disruption as possible to the daily routine of the person(s) being served, yet provide for the ensuring of health and safety. Consistent with the demands of the situation, one or more of the following actions may be considered and implemented while an allegation of abuse is being investigated:
- (xxvii) Removal, reassignment, relocation or suspension of the alleged abuser consistent with appropriate collective bargaining agreements and applicable provision of the Civil Service Law or other applicable laws or regulations.
 - (xxviii) Increasing the degree of supervision of the alleged abuser and staff pertinent to the prevention and remediation of abuse.
 - (xxix) Provision of counseling to the alleged abuser.
 - (xxx) Provision of increased training to the alleged abuser and staff pertinent to the prevention and remediation of abuse.
 - (xxxi) Increasing supervision and providing additional support to restore a secure environment to the affected staff and persons in the facility.
 - (xxxii) Removal or relocation of the person, consistent with his or her developmental needs (or any court order applicable to the person) when it is determined that there is a risk to such individual if he or she continues to remain in the program.
 - (xxxiii) Provision of counseling to the individual and to other persons in the facility, as appropriate.
- (14) When an allegation of child client abuse has been accepted and designated as indicated” (see glossary, section 633.99 of this Part) by Statewide Central Register of Child Abuse and Maltreatment, the facility shall develop a corrective action plan in conformance with sections 16.29(c) and 29.29(d) of the Mental Hygiene Law.
- (15) After an allegation of child abuse that has been accepted and “indicated” by the Statewide Central Register of Child Abuse and Maltreatment, and investigation by the New York State Commission n Quality of Care and Advocacy for Persons with Disabilities, it may be determined that some credible evidence of abuse exists that may be attributable in whole or in part to noncompliance by the facility with this Part or any other regulations on the commissioner applicable to the residential facility under investigation. In such an instance, the facility or the sponsoring agency shall develop and implement a plan of prevention and remediation.
- (16) When it appears that a crime may have been committed against a person receiving services, regardless of who that party might be, and persons receiving services including another person receiving services, the suspected criminal

activity shall be reported to the district attorney or other local law enforcement official having jurisdiction. Such reporting shall be:

- (i) the responsibility of the chief executive officer (see glossary) or program administrator (see glossary);
- (ii) Made as soon as possible, or, in any event, within three working days; and
- (iii) In accordance with policies/procedures established by the agency/facility or the sponsoring agency. Every effort shall be made to develop such policies/procedures with input from the district attorney or other appropriate local law enforcement official(s).

(17) When an allegation of abuse is determined to be unfounded, immediate and appropriate action shall be taken to exonerate the person against whom the allegation was made.

(b) *Standards of certification.*

(1) A corrective action plan has been developed and implemented for all reports of child abuse accepted by and designated as "indicated" by the Statewide Central Register of Child Abuse and Maltreatment:

- (i) within 10 days of receipt of an "indicated" report;
- (ii) which includes the plan of action to be taken with respect to an individual employee or volunteer to assure the continued health and safety of children; and
- (iii) which includes the plan of action to provide for the prevention of future acts of abuse.

(2) In the event that after an investigation of child abuse by the New York State Commission on Quality of Care and Advocacy for Persons with Disabilities, the Statewide Central Register of Child Abuse and Maltreatment determines that some credible evidence of abuse exists and such abuse may be attributed in whole or in part to noncompliance by the facility with this Part or any other regulations of the commissioner applicable to the residential facility under investigation, the facility or the sponsoring agency developed a plan of prevention and remediation that was:

- (i) submitted to OPWDD within 10 working days of notification of the findings and need for such a plan;
- (ii) approved by OPWDD; and
- (iii) implemented within the time frames specified in the plan.

(3) OPWDD shall verify that the implementation of plans specified in paragraphs (1) and (2) of this subdivision are in conformance with the plans and any time frames specified therein.

Historical Note

Sec. filed Dec. 1, 1987; amds. filed: March 20, 1990; Jan. 24, 2006 eff. Feb. 8, 2006. Amended (a)(2)-(3), (b)(1)-(2).

Part 633.10 of NYS Codes, Rules, and Regulations
Care and treatment.

- (a) *Principles of compliance.*
- (18) Section 33.03 of the Mental Hygiene Law requires that each person shall receive care and treatment that is suited to his or her needs and skillfully, safely and humanely administered with full respect to his or her dignity and personal integrity.
 - (19) In accordance with the regulations for the class of facility, there shall be a current record (see glossary, section 633.99 of this Part) that includes all information concerning or relating to the examination or treatment of the person for whom the record is kept, and which includes a plan of services (by whatever name known). On no less than an annual basis, the agency/facility or the sponsoring agency shall ensure that the following requirements are met to ensure the protection of persons under their care and treatment:
 - (xxxiv) An assessment of functional capacity.
 - (xxxv) Review and evaluation of the person's written plan of services and his or her progress in relation to that plan done by at least that staff member designated as having the coordination responsibility for the person's plan of services, or by the person's program planning team (see glossary).
 - (xxxvi) For persons in a residential facility, at least a medical/dental evaluation by a physician or registered physician's assistant addressing the person's need for an examination or specific medical/dental services; or by a dentist for dental services. The determination of the basis for such evaluation (*e.g.*, appraisal of the person through records and previous contacts) shall be that of the qualified professional.
 - (20) Treatment or therapies which, by law or regulation, require the written order of a professional (see glossary) shall be delivered in accordance with the order of someone operating within the scope of his or her professional license. The order shall be based on an appropriate examination.
 - (21) Unless a capable adult person (see glossary) objects, his or her parent, guardian or correspondent shall be notified if he or she is suspected or diagnosed as having a health problem which requires emergency room services or admission to a hospital or infirmary, or which results in the person being unable to participate in scheduled activities for seven or more days.
 - (22) The agency/facility shall develop a plan for addressing the life threatening emergency needs of the persons served. Such a plan shall be based on the needs of the persons in the facility, and shall address the availability of first aid, cardiopulmonary resuscitation (CPR) techniques and access to emergency medical services. Where staff training is a part of the plan, there shall be provision to keep such training up to date. For family care homes, the relevant sponsoring agency shall be responsible for addressing this requirement.
 - (23) Facilities which have emergency medical equipment on hand shall ensure that such equipment is maintained in accordance with a written agency/facility plan. Such a plan shall incorporate maintenance requirements that are in accordance with manufacturer recommendations and which includes provisions for

- inspection/replenishment subsequent to each use. Facilities with such equipment shall ensure that there are staff appropriately qualified to use it.
- (24) Provisions relevant to implementation of the Health Care Decisions Act for Persons with Mental Retardation.
- (iv) Parties involved in decisions to withdraw or withhold life-sustaining treatment.
- (a) Pursuant to section 1750-b of the Surrogate's Court Procedure act (SCPA), in addition to parties specified by the statute, parties may seek the approval of the commissioner to be authorized to perform the following duties:
- (1) serve as the attending physician to confirm, with a reasonable degree of medical certainty, that the person with mental retardation lacks capacity to make health care decisions (if consultant lacks specified additional qualifications); or
 - (2) serve as a consulting physician or psychologist regarding confirmation, with a reasonable degree of medical certainty, that the person with mental retardation lacks capacity to make health care decisions (if attending physician lacks specified additional qualifications); or
 - (3) serve as the attending physician to determine that, to a reasonable degree of medical certainty, the person with mental retardation would suffer immediate and severe injury from notification regarding implementation of a decision to withdraw or withhold life-sustaining treatment from such person (if consultant lacks specified additional qualifications); or
 - (4) serve as a consulting physician or psychologist regarding a determination that, to a reasonable degree of medical certainty, the person with mental retardation would suffer immediate and severe injury from notification regarding implementation of a decision to withdraw or withhold life-sustaining treatment from such person (if attending physician lacks specified additional qualifications).
- (b) In order to obtain the approval of the commissioner, physicians and licensed psychologists shall either possess specialized training in the provision of services to persons with mental retardation or have at least three years experience in the provision of such services. The commissioner may disapprove physicians or psychologists whose qualifications do not include sufficient training or experience in the determination of capacity or incapacity of persons with mental retardation. The commissioner may also disapprove physicians who have been found guilty of medical misconduct by the Board for Professional Medical Conduct, and psychologists who have been found subject to a disciplinary action by the Board of Regents for professional misconduct. The commissioner may suspend

the approval process during the pendency of an investigation and proceedings related to alleged medical misconduct or professional misconduct, if he or she becomes aware of such investigation or proceedings.

- (v) Upon receipt of notification of a decision to withdraw or withhold life-sustaining treatment in accordance with section 1750-b(4)(e)(ii) of the Surrogate's Court Procedure Act (SCPA), the chief executive officer (See glossary, section 633.99 of this Part) of the agency (See glossary, section 633.99 of this Part) shall confirm that the person's condition meets all of the criteria set forth in SCPA section 1750-b(4)(a) and (b). In the event that the chief executive officer is not convinced that all of the necessary criteria are met, he or she may object to the decision and/or initiate a special proceeding to resolve such dispute in accordance with SCPA section 1750-b(5) and (6).
 - (vi) For purposes of communicating the notification required by section 1750-b(4)(e)(ii) of the Surrogate's Court Procedure Act (SCPA), the commissioner (see glossary, section 633.99 of this Part) designates the directors of each of the DDSOs (see glossary, section 633.99 of this Part) to receive such notification from an attending physician. In any such case, the DDSO director shall confirm that the person's condition meets all of the criteria set forth in SCPA section 1750-b(4)(a) and (b). In the event that the chief executive officer is not convinced that all of the necessary criteria are met, he or she may object to the decision and/or initiate a special proceeding to resolve such dispute in accordance with SCPA section 1750-b(5) and (6).
- (b) *Standards of certification.*
- (1) If a person was suspected or diagnosed as having a health problem which required emergency room services or admission to a hospital or infirmary, or was unable to participate in scheduled activities for seven or more days, there is documentation that his or her parent(s), guardian(s) or correspondent was notified, unless the person is a capable adult and objected to such notification to a parent or correspondent being made.
 - (2) There is a written plan specifying how the agency/facility will deal with life threatening emergencies. Such a plan shall address:
 - (i) First aid.
 - (ii) CPR.
 - (iii) Access to emergency medical services.
 - (3) OPWDD shall verify that staff have been made aware of their responsibilities in accordance with the agency/facility plan.
 - (4) OPWDD shall verify that where a facility has emergency medical equipment on hand, the recommended inspection and/or maintenance schedule has been maintained.

Historical Note

Sec. filed Dec. 1, 1987; amds. filed: March 20, 1990; March 14, 2003 as emergency measure, expired 90 days after filing; June 13, 2003 as emergency measure, expired 90 days after filing; Sept. 12, 2003 as emergency measure, expired 90 days after filing; Dec. 12, 2003 as emergency measure, expired 90 days after filing; March 12, 2004 as emergency measure; June 1, 2004 as emergency measure; Aug. 10, 2004 eff. Aug. 25, 2004. Added (a)(7).

Part 633.12 of NYS Codes, Rules, and Regulations
Objection to services process.

- (a) *Principles of compliance.*
- (25) Every agency/facility (see glossary, section 633.99 of this Part) and sponsoring agency (see glossary, section 633.99 of this Part) providing facilities (see glossary, section 633.99 of this Part) or home and community based (HCBS) waiver services (see glossary, section 633.99 of this Part) shall develop policies and procedures which establish mechanisms to resolve objections to services, in conformance with this section.
- (26) Objections, related to facilities or HCBS waiver services, may be initiated regarding:
- (i) Any plan of services, (including an individualized service plan [ISP] [see section 633.99 of this Part]), or part thereof and proposed changes thereto;
 - (ii) plans for placement (see section 633.99 of this Part);
 - (iii) A proposal initiated by the agency/facility to discharge (see section 633.99 of this Part); and
 - (iv) A proposal to reduce, suspend or discontinue HCBS waiver service(s).
- (27) Objections to major medical treatment, for which informed consent is necessary, are not governed by the objection process of this section. Rather, refer to section 633.11 of this Part.
- (28) The following parties may initiate an objection: adult persons receiving services; parents, guardians, correspondents, and advocates (see glossary, section 633.99 of this Part) of persons receiving services, and the Mental Hygiene Legal Service. Upon such objection, the person or party shall herein be referred to as the objecting party.
- (29) The person receiving services, and his or her parent, guardian, correspondent and advocate, as applicable, shall be advised of the mechanism to resolve and objection: upon admission to a facility or enrollment in HCBS waiver services, as changes occur, and upon any substantive amendment to this section. In addition, when an agency proposes to reduce, suspend, or discontinue a person's HCBS waiver service(s), the agency shall, in form and formant approved by the commissioner, advise the person, and his or her advocate and service coordinator (see section 633.99 of this Part) as applicable, of the proposed changes and of the mechanism for resolving an objection to the proposed changes.
- (30) A capable adult person receiving services may refuse the initiation of an objection or subsequent appeal on his or her behalf.
- (31) A person, with his or her parent, guardian, correspondent and advocate as applicable, may select a representative of his or her choice to provide assistance and/or representation, including legal counsel.
- (32) The following processes shall be available to resolve an objection:
- (i) In facilities and HCBS waiver services, unless the objection concerns a proposal to reduce, suspend or discontinue HCBS waiver service(s):
 - (a) There shall be a mechanism available at the agency/ facility or the sponsoring agency for informal resolution between the objecting party and relevant staff of the agency, including the

chief executive officer or his or her designee. Such process shall include the person's service coordinator and advocate, as applicable.

- (b) Written confirmation of resolution or inability to reach a resolution shall be sent to the objecting party by the chief executive officer.
 - (c) If, through this informal mechanism, a resolution cannot be reached, the objecting party shall be given the opportunity to submit a formal written objection requesting a hearing to the appropriate DDSO director. Within five days (see section 633.99 of this Part) of receipt of a formal written objection, a hearing shall be scheduled, to take place before a hearing officer appointed by the DDSO Director, with no less than 10 days notice to the involved parties. A written decision by the hearing officer shall be sent to the involved parties within 14 days of that hearing.
 - (d) If any party to the proceeding is not satisfied with the decision, it may be appealed within 10 days to the commissioner, who will issue a final written decision to all parties within 14 days of receipt of the appeal. The commissioner may, at his or her discretion, send the matter back to the hearing officer for further review.
 - (e) During the period that an objection is undergoing administrative review:
 - (1) a person shall participate in programming mutually agreeable to the objecting party, the agency, the person, and his or her parent, guardian, correspondent or advocate;
 - (2) every effort feasible shall be made to maintain the person in at least his or her current level of programming; and
 - (3) in order to protect a person's health, safety, or welfare or the health, safety, or welfare of others, nothing herein shall preclude a change in programming for, or the relocation or discharge of a person, However, while an objection to placement or discharge is undergoing administrative review, relocation or discharge shall only take place with the commissioner's approval.
- (ii) Related to the reduction, suspension or discontinuance of HCBS waiver services:
- (a) The agency shall have a process available for informal resolution between the objecting party and relevant staff of the agency, including the chief executive officer or his or her designee. Such process shall include the person's services coordinator and advocate, as applicable. The agency shall include documentation of the result of the process in the person's record.

- (b) Written notice of the parties' inability to resolve the objection shall be sent to the objecting party by the chief executive officer. Such notice shall be in a form and format approved by the commissioner, and shall be sent by certified mail, return receipt requested, or such other means so that the time of receipt of the information can be documented. The objecting party may submit a written objection to the DDSP director requesting administrative review of the reduction, suspension or discontinuance, within 14 days after the receipt of the notice. The agency shall not reduce, suspend or discontinue the HCBS waiver service(s) at issue during such 14 day period, unless otherwise agreed to by the parties.
- (c) Upon receipt of a written objection requesting an administrative review, the DDSP director or his or her designee shall contact the objecting party and the agency providing the service(s) to mediate resolution of the objection. If there is no resolution within 14 days of receipt of the objection, a hearing shall be scheduled, with no less than 10 days notice to the involved parties. The hearing shall be conducted by a hearing officer appointed by the DDSO Director. The objecting party and the agency may mutually agree to extend the time periods noted in this clause.
- (d) The hearing officer shall issue a written decision to the objecting party and the agency within 14 days after the conclusion of the hearing. Either party may appeal the decision to the commissioner and submit a written reply to the decision within 14 days of its receipt. The commissioner will issue a final written decision to all parties within 14 days of the last date to appeal. The commissioner may, in his or her discretion, send the matter back to the hearing officer for further review.
- (e) During the period that an objection is undergoing administrative review (including an expedited review), the agency shall not reduce, suspend or discontinue the HCBS waiver services(s) at issue, unless otherwise agreed to by both parties.
- (f) Notwithstanding the provisions of clauses (b), (c) and (d) of this subparagraph, when an agency proposes to reduce, suspend or discontinue the provision of a HCBS waiver service(s) to prevent immediate risk to the health or safety of the person or others: the agency shall make reasonable efforts to alleviate the health and safety risks at issue, and the agency or the objecting party may request an expedited hearing by the following process:
- (1) A written request for the hearing shall be sent to the agency or objecting party to the commissioner. An agency shall also immediately notify the person, parent, guardian, correspondent and advocate, as applicable, of such request
 - (2) If the commissioner determines that an expedited hearing is warranted, the appropriate DDSO director will schedule a hearing within seven days of the commissioner's determination. The hearing will be held before a hearing officer appointed by the DDSP director. Absent good cause,

the parties involved in the objection will receive at least three day notice of the hearing.

- (3) The hearing officer's recommendation shall be sent to the parties and sent to the commissioner within five days of the conclusion of the hearing. The hearing officer shall advise the parties of their opportunity to send a written reply to the recommendation directly to the commissioner. The commissioner will issue a final written decision as soon as practicable thereafter.
 - (33) No person or objecting party or a representative of either, shall be denied the opportunity to participate in any hearings pursuant to this section. Te person or objecting party or a representative may offer information and ask relevant questions of any parties participating in any such hearing.
 - (34) During the period that the objection is undergoing administrative review, there shall be no communication between either the agency or the objecting party and either the hearing officer or the commissioner, concerning the objection, except on notice and opportunity for all involved parties to participate.
 - (35) The commissioner's decision is the final administrative remedy available and may be appealed in accordance with the provisions of article 78 of the Civil Practice Law and Rules.
 - (36) Treatment may be given, other than treatment for which informed consent is required by applicable regulation, to a person, despite objection, in a situation where the treatment is deemed necessary to avoid serious harm to life or limb of that person or others, at the discretion of the chief executive officer and in accordance with agency/facility or the sponsoring agency policy/procedures.
- (b) *Standards of certification.*
- (1) OPWDD shall verify that the agency/facility or the sponsoring agency has advised a person and his or her parent, guardian, correspondent and advocate, as applicable, of relevant objection processes.
 - (2) For persons admitted to a facility or enrolled in HCBS waiver services since the last survey, OPWDD shall verify that each person and his or her parent, guardian, correspondent and advocate, as applicable, have been advised on admission, enrollment, or as changes occurred of relevant objection processes.

Historical Note

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Amended sec. title, (a)-(b).