



Occupancy Agreement

PURPOSE OF THIS AGREEMENT: As of March 2023, providers of Home and Community Based Services (HCBS) in residential settings are required by federal regulation to have legally enforceable occupancy agreements with people receiving these services. This agreement complies with those federal regulations. It identifies the rights that you, the Resident, already have under New York State Office for People with Developmental Disabilities (“OPWDD”) regulations while living in a certified residence. You have these rights and process as soon as you begin or began living in a residence. By signing this Agreement, you are not giving up or losing any legal rights that you have as a Resident including under applicable local, state, or federal laws and regulations, or court order. This agreement also does not give The Arc Jefferson-St. Lawrence any additional powers or rights that it does not already have.

Contact Information for Resident:

Name:

Name of representative, if any, and relationship to Resident:

Residence (if different from above):

Telephone Number:

Email Address:

Agency Contact Information (Executive Director or Director Designee):

Name: Christine Lauzon

Title: Director of Residential and Day Habilitation Services

Address: 6 Commerce Lane Canton, NY 13617

Telephone Number: 315-379-0701 (office) or 315-836-6193 (cell)

Email Address: cllauzon@thearcjslc.org

This Agreement between me, _____, and The Arc Jefferson-St. Lawrence, outlines each of our responsibilities while I am living at the following address:

_____ as of ____/____/____.

I understand that I will be charged \$1,117.00 monthly for each full calendar month. I will be charged a portion of this amount based on the days of placement for anytime less than a full month at the location. This amount is the Provider Payment and is established by the Office of Persons with Developmental Disabilities and can only be changed by OPWDD.

I understand that if I qualify, I will be eligible to receive the Congregate Care Level II of SSI which is currently \$1,319.00- \$1,329.00 and by OPWDD regulations, I will receive my personal allowance payment first and that the balance of my SSI check will be applied toward paying the provider payment (room and board). I understand that all other income I receive will be reported to the Social Security Administration and that these amounts will be used in accordance with Social

Security regulations to adjust my SSI amount. These other incomes could include VA, Social Security Disability, Railroad Pensions, Trusts and gross earned income.

I understand that if my earned income causes my SSI to be reduced that I will be responsible for paying this amount from my conserved earned income.

For the Room and Board paid to Arc Jefferson-St. Lawrence (635.91), according to federal regulation governing Home and Community Based Services, (HCBS), I am entitled to:

1. Three well balanced meals or equivalent and an appropriate number of snacks and any special foods required to meet the nutritional needs of persons in the facility. The resident may purchase other snacks and foods of their choosing at their cost if desired. Access to food at any time unless contraindicated by clinical orders.
2. A facility that is well maintained and that improvements or repairs are made in a timely manner.
3. All utilities to include heat, light, power, water and sewer.
4. Phone Service is provided for local calls; long distance calls are the responsibility of the resident. The resident may also request their own phone at their expense.
5. Access to cable or satellite television in common areas of the home; I may choose to have cable or satellite television in my bedroom, which may incur an additional monthly charge;
6. Special equipment necessary to meet a person's developmental needs.
7. Items required to meet the special, clinically determined and individual needs of persons where such items are costly and/or are used on an ongoing basis (adult depends) and are not covered by Medicaid, Medicare or other health insurance.
8. Basic bedding and towels.
9. Purchase, operation and maintenance of all laundry equipment and supplies, as well as laundromat and laundry services
10. Hygiene supplies and services
11. Appropriate and individualized living accommodations including furniture if needed.
12. Whenever possible a choice of roommates.
13. Supervision and support as needed in all aspects of daily living.
14. My rights will be reviewed initially and annually thereafter and I will receive a copy of any change. This will include the due process procedure.

For residential habilitation services, I am entitled to:

1. Qualified staff per agency job descriptions and requirements as well as meeting the regulatory requirements as set forth by OPWDD. Training is provided initially in a two-week training period and additionally in our 90 days, less than one year and more than one year trainings. In addition to this additional supports and training is provided during the first 90 days for Direct Support Professionals at the site and in a classroom setting. We follow the annual OPWDD training requirements.
2. Staff who are cleared to safely work with people with disabilities. The Arc Jefferson-St. Lawrence does finger printing, background checks and drug testing on all new employees and random drug testing thereafter. We also test for TB.
3. The opportunity to plan and participate in team meetings as a member of the team to assist in determining what services will be provided, what outcomes will be developed, how services will be delivered, frequency and duration, as well as review alternatives available at the agency and in the community for services.

4. Residential Habilitation services provided in the frequency and duration determined by assessment and the needs and desires of the resident and family and listed in the Life Plan.
5. Documentation on progress is maintained in Therap, an electronic record, along with emergency information and other personal information. I and/or my advocate may request access to that record.
6. Personal choice and person-centered planning will be used as well as the discussion of choice vs. risk in regards to capability to take part in considered activities. The resident's team will work with the resident to facilitate growth and independence and balance it with assigned risk to ensure protective oversight.
7. Progress on programming will be reviewed monthly by a Qualified Intellectual Developmental Disabilities Professional and at the semi and annual reviews by the team. Changes in outcomes will take place as recommended by the resident, family and other members of the team.
8. Any questions related to the Residential Program can be answered by calling the Director of Residential Services at 315-836-6193 Monday through Friday 7:30 AM to 4:00 PM and after 4:00 PM the Administrator on Duty can be called at 315-836-5123.
9. The opportunity to assist in interviewing and hiring direct care professionals at the residence.
10. Involvement in community activities on a regular basis with natural supports being accessed as much as possible. Activities will include interaction with services, vendors and individuals in the community to foster social and personal relationships as well as become involved in services and varied activities.
11. Transportation to medical appointments and other activities.
12. The opportunity to attend a church or worship service of choice within the parameters of staffing, schedules and weather. Efforts will be made to coordinate with other residences when possible.
13. The opportunity for privacy in an environment that is safe and secure.
14. The opportunity to request alternative placement in the agency or with another provider.
15. The opportunity for due process if I object to a service, plan or team decision. (Due process procedure is attached)
16. The opportunity for increased self-determination and personal control and enhanced quality of life as defined by the person.
17. The opportunity to try new experiences both in the residential setting and in the community to facilitate informed choices.
18. Encouragement and support to freely choose and control their own schedules and activities (when to eat, watch TV, go to bed, etc.)
19. Protection from coercion and rights restrictions, restraints, restrictive interventions and related interventions that are not clinically necessary.
20. I have rights under federal, state, and local laws and regulations. Any modifications to my rights must be in my Life Plan and will only be in place as long as needed for health and safety reasons; all rights modifications will be reviewed by Human Rights.
21. Information on how to report complaints and to whom.
22. Ensure satisfaction with activities, supports and services and address areas of dissatisfaction or concern.
23. Input on food items and access to foods, meals and storage of food unless there are clinically developed restrictions.
24. Right to have visitors and freedom of association. You may have visitors at any time.
25. Access to the house and outside areas; use of household appliances based on my needs such as microwave, stove, washer/dryer, and refrigerator including access to food at any time.

26. Right to privacy and personal space. I will be provided a bedroom with a locking door where you have a reasonable expectation of privacy; however, staff must retain a set of keys to be used in case of emergency;
27. I may freely decorate and personalize my bedroom as long as it will not cause hazard, damage, or alteration to the home. (i.e. fire, security, structure).
28. Access to my money for personal spending.

As individual residing in an Arc Jefferson-St. Lawrence Residential site, I understand that I have incurred some obligations. I agree to abide by the following:

1. To pay the rent in full and on time monthly;
2. To provide Arc Jefferson-St. Lawrence with a 30-day written notice if I decide to leave the residential program.
3. To not engage in any illegal activities while living in Arc Jefferson- St. Lawrence residence;
4. To pay all debts incurred while residing at the agency if not paid before my discharge.
5. I understand that the residence will receive certain inspections to ensure health and safety. This may include inspections of fire alarms, sprinkler systems, and pest control;
6. To notify the Arc Jefferson-St. Lawrence if any information regarding my benefits, earned income or of any funds I become entitled to or receive as soon as I am aware of them.
7. To participate in the development of a Life Plan (Person-Centered Plan) with my Care Manager and Support Team;
8. In the case of illness or injury requiring medical attention, that I or my parent, advocate or correspondent provides authorization to the Arc Jefferson-St. Lawrence to obtain appropriate medical services.
9. That pets of any kind, for any amount of time, are not allowed without written consent of The Arc Jefferson- St. Lawrence. I may be asked to sign an agreement regarding pet care.
10. If the Arc Jefferson- St. Lawrence is no longer able to provide services to me at my residence, including when the health, welfare or safety of me or others is in jeopardy, I may be asked to move out and find another place to live. If the Arc Jefferson-St Lawrence does ask me to move, I am protected by the procedures in 14 NYCRR 633.12. If I do not want to move, I or my representative may object to the move under 633.12. While my objection is being reviewed, I may only be moved or discharged with the Commissioner's approval. Every reasonable effort will be made to maintain my services at my residence during this review. I may also request assistance from my Care Manager who will work with me and the Arc Jefferson-St Lawrence to develop a safe discharge plan.
11. I understand that I may be temporarily moved to another residence or bedroom for health, welfare, and safety reasons ("emergency moves"). These moves may happen over my objection, but I will be given the opportunity to object to my new residence if I remain there more than 60 days.

During the time I am a resident, I understand that my personal allowance money can be used for me with my choice for the following:

1. Personal clothing other than the 2x a year personal clothing allowance that I receive from NYS.
2. Any luxury or entertainment expenses to include but not limited to equipment such as stereos, televisions, DVD player, etc. and venues in the community.

3. Any specialized grooming or personal hygiene items I wish to purchase if I choose not to use those provided by the program.
4. Long Distance phone calls.
5. Cable services for my own television or a portion of the service above basic cable for the house television if they choose it and watch television regularly.
6. Internet service is not provided by the Arc Jefferson- St. Lawrence, I may purchase internet service; however, I will need to abide by the Arc Jefferson- St. Lawrence's Computer Use Policy to protect the rights of others in the home.
7. Recreational expenses or admission fees to events I choose to attend.
8. Meals outside of the residence in the community or any special foods I wish to purchase and bring into the site.
9. Cost of public or private transportation unless part of programming.
10. Any other items I choose to purchase on my own or with the support of my family. A personal expenditure plan will be developed each year by the team and me.
11. Choice of a medical provider that does not take Medicaid such as a dentist will be the responsibility of the family as long as there is a choice of a Medicaid provider.

This Agreement remains in effect as long as I live at this residence. If I move to another residence operated by the Arc Jefferson-St Lawrence, this Agreement will continue until there is a new agreement. I understand that I will need to sign a new agreement if I move to a new residence, and I agree to sign that agreement as soon as possible after I move.

I understand that I do not need to sign a new agreement every time there is a change in my income, even if it means my rent changes. The Arc Jefferson St. Lawrence must give me written notice of the new amount of rent that I owe and how it was calculated.

I have received a copy of this Agreement and I understand it. Upon request, my representative or guardian may also receive a copy of this Agreement. By signing this Agreement, I am not giving up any legal right guaranteed to me in this residence, including under applicable local, state, or federal laws and regulations, or court order.

If I or my representative have any questions about this Agreement, free legal advice may be available from the Mental Hygiene Legal Service (MHLS) (315) 605-3949); or Disability Rights New York (DRNY) (<http://www.drny.org> (518) 432-7861 or (800) 993-8982).

I understand that I will be advised at least annually of my financial status, but know I have the right to ask any questions regarding my finances at any time.

Date: _____ Resident: _____
 Date: _____ Guardian/Advocate: _____

 The Arc Jefferson-St. Lawrence representative Date: _____

At this time the individual is receiving the following income: SSI SSA VA Other please describe below:

Attached are the following:
 Agency Vision, Mission and Values Statement
 Rights packet
 Grievance and Appeal Process - Due Process

The Arc Jefferson-St. Lawrence New York POLICY AND PROCEDURE	POLICY #: 109	REVISION #/DATE: No. 9 6/19, 1/22, 1/23
BOARD APPROVAL DATE: N/A	DATE ISSUED: 07/00,03/01,10/01,8/04,5/10, 09/14, 03/16	EFFECTIVE DATE: 07/00
TITLE: Grievance Appeal Process (Due Process)		PAGE: Page 1 of 6

Information regarding the procedure up to and including copies of the procedure) may be requested by a Person We Support and/or their personal representative for the expression of complaints, concerns, or to appeal a decision made during the support team process. An expression of complaint/objection may involve: services/treatments, plans for placement, plans for discharge, limitations or restrictions to their human rights, and/or a proposal to reduce/suspend/discontinue HCBS waiver services (objections in this last category follow a slightly different process – see below).

When must the Grievance Appeal (Due Process) Procedure be made available?

- When a Person We Support is admitted to The Arc Jefferson-St. Lawrence.
- When changes are made to the policy.
- At the request of the involved party.
- Upon a Person We Support’s discharge from The Arc Jefferson-St. Lawrence to another certified site.
 - While not mandatory: the procedure may also be made available when a Person We Support moves between program sites (residential or day programs) within The Arc Jefferson-St. Lawrence.

Distribution of the information/procedure will serve as notice to the Person We Support and/or their personal representative of the mechanism for resolving an objection.

General Principles:

- **The preferences, wishes, and desires of the Person We Support will be of primary consideration when any issues are being addressed.**
- In keeping with 633.12 regulatory guidance, objections may be initiated by any adult Person We Support, parents, guardians, personal correspondents, or advocates. Objection may also be initiated by the Mental Hygiene Legal Services (MHLS).
- At any time, an adult Person We Support may object to information being shared with other parties, including personal representatives.
- An Adult Person We Support may refuse initiation of an objection or any subsequent appeal made on their behalf.
- A Person We Support and/or their personal representative may select a representative of their choice to provide assistance and/or representation, up to and including legal counsel.
- **Objections for major medical treatment, for which informed consent is required, are not covered by this procedure.**
- Treatment that is deemed necessary to avoid serious harm to life or limb of a Person We Support or others may still be given (unless such treatment requires informed consent by regulation), despite objection. This would be done at the discretion of the Chief Executive Officer, and in accordance with agency policies/procedures.
- If the issue/concern is under formal Administrative review (by the DDRO Hearing Officer and/or Commissioner of OPWDD), there will be no communication between either The Arc Jefferson-St. Lawrence or the objecting party, and either the hearing officer or the commissioner regarding the objection except upon notice and opportunity for all involved parties to participate.
- Regardless of the reason/type of formal Administrative Review (including Expedited Review), while the matter is undergoing review, the Support Team for the Person Supported will ensure:
 - a. The Person Supported shall participate in programming that is mutually agreeable to the objecting party, the agency, the Person We Support and/or their personal representative.

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- b. Every effort feasible shall be made to maintain the Person We Support in at least his/her current level of programming.
- c. In order to protect the health, safety, or welfare of the Person We Support, 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 We Support. However, while an objection to placement or discharge is undergoing Administrative Review, relocation or discharge shall only take place with the approval of the Commissioner of OPWDD.
- A decision rendered by the Commissioner of OPWDD is the final administrative remedy available and may only be appealed in accordance with the provisions of Article 78 of the Civil Practice Law and Rules.

Due Process for Objections to services/treatments, plans for placement, plans for discharge, limitation or restrictions to human rights, etc.:

	Responsibility	Procedure
1.	Support Team for the Person We Support	A. Will determine the capacity of the Person We Support to give consent for each issue requiring such consent.
2.	Person We Support and/or their personal representative (including Mental Hygiene Legal Services – MHLS)	A. May contact any Support Staff with an expression of a complaint/concern. (see Policy #806: Service and Program Concerns Procedure)
3.	Any Support Staff	A. Will forward the concern to the Person We Support’s appropriate support team member – Care Manager, Qualified Intellectual Disabilities Professional (QIDP), Vocational Coordinator, Vocational Services Supervisor, Program Coordinator, etc.
4.	QIDP, Vocational Coordinator, Vocational Services Supervisor, Program Coordinator	A. Will be empowered to resolve the matter informally, ensuring documentation of the process and results are maintained. B. Will advise the Person We Support and/or their personal representative of their right to select a representative of their choice, up to and including legal counsel.
5.	Person We Support and/or their personal representative	A. May request that the Support Team convene to address the issue. B. During the time that a decision is being appealed, the Support Team will devise a mutually acceptable plan. C. During the hearing/appeal process, there will be no suspension/discontinuation or reduction of any waiver services unless mutually agreed upon. D. No movement to another residence or program can take place until resolved.
6.	Program Coordinator/Program Administrator	A. If the matter is not able to be resolved by the Support Team, it will be referred (in writing) to the appropriate program coordinator or program administrator. B. Will have ten (10) working days to review the matter, meet as appropriate, and render a decision (in writing).
7.	Person We Support and/or their personal representative	A. Will accept the decision from the program coordinator or program administrator, OR B. Will ask (in writing) the program administrator to present the issue to the Chief Executive Officer if not satisfied with the decision.

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8.	Chief Executive Officer, or Designee	<p>A. Will have ten (10) working days to resolve the issue in a mutually satisfactory manner.</p> <p>B. May assign this issue to the Quality Services Department or Compliance Department, as a neutral entity, to gather background information concerning the issues. This will be entitled a Special Assignment.</p> <p>C. Will advise the objecting party in writing of the resolution agreed upon or the inability to reach a resolution.</p>
9.	Person We Support and/or their personal representative	<p>A. If resolution is not achieved/accepted, may request resolution from The Arc Jefferson-St. Lawrence Board of Directors.</p>
10.	The Arc Jefferson-St. Lawrence Board of Directors	<p>A. The President of the Board of Directors, or designee, will review the request within ten (10) working days, meet as necessary, and provide a written decision to all involved parties.</p>
11.	Person We Support and/or their personal representative	<p>A. Will be able to access these additional parties (listed below) if not satisfied with the decision of The Arc Jefferson-St. Lawrence Board of Directors.</p> <p>B. Objections must be presented in writing.</p> <p>C. Director Region 2/DDRO Sunmount Development Center 2445 State Route 30 Tupper Lake, NY 12986 Ph: (518) 359-3311</p> <p>D. Mental Hygiene Legal Services</p> <ul style="list-style-type: none"> • For Jefferson County: MHLS Fourth District The Syracuse Office 224 Harrison St., Suite 502 Syracuse, NY 13202-3066 Ph: (315) 401-3350 • For St. Lawrence County: MHLS Third District The Ogdensburg Regional Office c/o St. Lawrence Psychiatric Center 1 Chimney Point Drive Ogdensburg, NY 13669-2291 <p>E. NYS Center for Protection of People with Special Needs (Justice Center) 161 Delaware Avenue Delmar, NY 12054 Ph: (518) 549-0200</p> <p>F. Disability Rights New York 725 Broadway, Suite 450 Albany, NY 12207 Ph: (518) 993-8982 Email: mail@DRNY.org</p>
12.	Director Region 2/DDRO	<p>A. Will appoint a hearing officer within five (5) days.</p> <p>B. Within ten (10) days will schedule a formal hearing.</p> <p>C. A written decision will be rendered within fourteen (14) days of the hearing.</p>
13.	Person We Support and/or their personal representative; The Arc	<p>A. Will have ten (10) days to appeal to the Commissioner of OPWDD</p>

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	Jefferson-St. Lawrence	B. Commissioner of OPWDD 44 Holland Avenue Albany, NY 12229 Ph: (866) 946-9733
14.	Commissioner of OPWDD	A. Will respond in writing within fourteen (14) days of receipt of the appeal.
15.	Support Team for the Person We Support	A. Will document all results in the confidential file of the Person We Support.
16.	Program Coordinator/ Program Administrator	A. Will follow up on the final resolution and ensure all parties are informed of the outcome.

Due Process for Objections to proposed reduction/suspension/discontinuation of HCBS Waiver Services:

	Responsibility	Procedure
1.	Person We Support and/or their personal representative; The Arc Jefferson-St. Lawrence	A. Will follow the Due Process Procedure as outlined above through Step #10 to attempt to resolve any objections to reduction/suspension/discontinuation of HSBC Waiver services through the above described agency process. B. If the issue remains unresolved after presentation to The Arc Jefferson-St. Lawrence Board of Directors (Step #10 described above), formal objection proceedings may be implemented as outlined below.
2.	Chief Executive Officer, or designee	A. Submit written notice of inability to reach resolution (in the form/format approved by the Commissioner of OPWDD) to the objecting party. B. This written notice shall be sent via certified mail, return receipt requested. This will allow for accurate tracking as to the time information is received. Return receipts will be maintained in appropriate records.
3.	Person We Support and/or their personal representative; The Arc Jefferson-St. Lawrence	A. Within fourteen (14) days of receiving this notice, will request (in writing) an administrative review by the DDRO Director. B. During this review process, the agency may not reduce, suspend or discontinue HCBS Waiver services at issue within this 14 day period, unless otherwise agreed to by all parties. C. Director Region 2/DDRO Sunmount Developmental Center 2445 State Route 30 Tupper Lake, NY 12986 Ph: (518) 359-3311
4.	DDRO Director, or designee	A. Shall contact the objecting party, and the agency providing the service to mediate a resolution to the issue. B. If there is no resolution within fourteen (14) days of receipt of the objection, a hearing will be scheduled. C. If a hearing is to be scheduled, DDRO Director will appoint a DDRO Hearing Officer.
5.	DDRO Hearing Officer	A. Shall schedule a hearing, with no less than ten (10) days' notice B. Will issue a written decision to all parties within fourteen (14) days of the conclusion of the hearing.
6.	Person We Support and/or their	A. May appeal (in writing) the decision to the Commissioner of

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	personal representative; The Arc Jefferson-St. Lawrence	OPWDD within fourteen (14) days of receiving the decision from the DDRO Hearing Officer.
7.	Commissioner of OPWDD	A. Will issue a final written decision to all parties within fourteen (14) days of the last date of appeal. B. At his/her discretion, may send the matter back to the DDRO Hearing Officer for further review.
8.	Support Team for the Person We Support	A. Will document all results in the confidential file of the Person We Support.
9.	Program Coordinator/ Program Administrator	A. Will follow up on the final resolution and ensure all parties are informed of the outcome.

Expedited Hearing Process

Should The Arc Jefferson-St. Lawrence proposed to reduce, suspend or discontinue HCBS Waiver Services to prevent immediate risk to the health or safety of a Person We Support, the agency will take reasonable efforts to alleviate the risks.

	Responsibility	Procedure
1.	Program Coordinator/Program Administrator	A. Communicate concerns regarding immediate risks that require reduction, suspension, or discontinuation of HCBS Waiver services to the Person We Support and/or their personal representative B. Advise the Person We Support and/or their personal representative, in writing, of the expedited hearing process. C. Inform the Chief Executive Officer of the concern.
2.	The Arc Jefferson-St. Lawrence OR the Person We Support and/or their personal representative	A. Submit written request for an expedited hearing to the Commissioner of OPWDD. B. If the request is made by the agency, the Program Administrator must notify the Person We Support and/or their personal representative, in writing.
3.	Commissioner of OPWDD	A. Decide if an expedited hearing is warranted. B. If yes, communicate this to the DDRO Director
4.	DDRO Director	A. Schedule a hearing within seven (7) days. B. Appoint a hearing officer. C. Absent good cause, all involved parties will receive at least three (3) days' notice of the hearing.
5.	DDRO Hearing Officer	A. Will forward recommendations to the involved parties and the Commissioner of OPWDD within five (5) days after the hearing. B. Will advise the parties of the opportunity to send a written response to the recommendations directly to the Commissioner of OPWDD.
6.	Commissioner of OPWDD	A. Upon receipt of any submitted written response(s) to recommendations from the DDRO Hearing Officer, will render a written decision as expediently as possible.
7.	The Arc Jefferson-St. Lawrence Administrators/Directors	A. Will ensure that all written notices provided by the agency are sent via certified mail with return receipts requested. This will allow for accurate tracking as to the time information is received. Return receipts will be maintained in appropriate

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		records.
8.	Support Team for the Person We Support	A. Will document all results in the confidential file of the Person We Support.
9.	Program Coordinator/ Program Administrator	A. Will follow up on the final resolution and ensure all parties are informed of the outcome.

Also Refer to Policy and Procedure No. 806 – Service and Program Concerns Procedure

The Arc Jefferson – St. Lawrence New York

MISSION

We enhance the quality of life and maximize the potential of people we support based on choice in the most integrated setting possible.

VISION

Be the premier provider of innovative, individualized services for people with diverse needs.

VALUES

Person centered

We will provide unlimited opportunities and experiences to encourage individual growth and development in an environment that embraces choice, independence, and maximum potential.

Responsiveness

We will adapt to new, different and changing needs of those we serve by being flexible and receptive to change.

Invovement

All persons will be involved in the community where they live, thereby enhancing their independence through work, belonging, and service to others.

Dignity

All persons will be treated with dignity and their human rights will be respected in a nurturing, safe, and healthy environment.

Excellence

We will continually challenge ourselves to improve the quality of our organization and service delivery by achieving excellence in standards, service, and technology.



Official Compilation of Codes, Rules and Regulations of the State Of New York
Title 14. Department of Mental Hygiene
Chapter XIV. Office for People With Developmental Disabilities
Part 633. Protection of Individuals Receiving Services in Facilities Operated and/or Certified By
OPWDD

Section 633.4 Rights and Responsibilities of Persons Receiving Services¹

Current through July 15, 2012

(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 need 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. Rights limitations must be documented and 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 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 although 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 of facilities to reasonably limit the expression of sexuality, including time and location thereof, in accordance with a plan for effective facility management;

(xii) observance 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 the subject of an 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. This right shall provide that:

(a) meals are served at appropriate times and in as normal a manner as possible; and

(b) altering the composition or timing of regularly served meals for disciplinary or punishment purposes, for the convenience of staff, or for behavior modification shall be prohibited;

(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 an alternative residential setting, whether a new residence or change of room, and involvement in the decisions 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 OMRDD; the Commission on Quality of Care and Advocacy for Persons with Disabilities; for people in developmental centers, and in the 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, an 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 OMRDD 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 foregoing rights shall be limited for 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 individuals 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 OMRDD Clinical Record Access Review Committee.

(ii) The Clinical Record Access Review Committee shall consist of an OMRDD attorney, an OMRDD practitioner, and a representative of the voluntary agency provider community. The chairperson shall be the OMRDD attorney, and requests for review of denial of access shall be addressed to the Office of Counsel for OMRDD.

(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 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 and 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 OMRDD.

(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 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 interpreters may include, but are not limited to, facility staff, community volunteers or contractors. In no event shall service recipients or their families be charged for the use of interpreter services.



(d) The clinical record for persons who are non-English speaking, shall identify any significant related effect on such persons' functioning and treatment, and identify associated recommendations for treatment including any reasonable accommodations.

(e) The non-English speaking person's adult family member, significant other, correspondent, or advocate may serve as an interpreter for the person if he/she and his/her family member, significant other, correspondent or advocate agree to the arrangement, the arrangement is deemed clinically appropriate, and the parties have been informed of the option of using an alternative interpreter identified by the provider. Providers shall not condition service delivery on the use of family members or significant others as interpreters.

(ii) Effective communication with non-English speaking persons shall be provided in accordance with Title VI of the Civil Rights Act of 1964 (42 USC 2000d). Said law is published by the West Publishing Company, St. Paul, Minnesota and is available for review at:

(a) the Department of State, Office of Information Services, 41 State Street, Albany, NY 12231; and

(b) the Office of Mental Retardation and Developmental Disabilities, Office of Counsel, 44 Holland Avenue, Albany, NY 12229.

(iii) Effective communication with persons who are deaf or hard-of-hearing shall be provided in accordance with the Americans with Disabilities Act of 1990 (Public Law 101-336). Said law is published by the West Publishing Company, St. Paul, Minnesota and is available for review at:

(a) the Department of State, Office of Information Services, 41 State Street, Albany, NY 12231; and

(b) the Office of Mental Retardation and Developmental Disabilities, Office of Counsel, 44 Holland Avenue, Albany, NY 12229.

(b) Standards of certification.

(1) There are written policies/procedures on notifying individuals and/or their parents, guardians or correspondents of the person's rights:

(i) on (or prior to) admission; and

(ii) as changes are made.

(2) OMRDD shall verify (see glossary) that the following information was provided to each individual and/or his or her parents, guardians or correspondents (unless the person is a capable adult and objects to such information being provided to a parent or correspondent):

(i) rights and responsibilities;

(ii) the availability of a process for resolving objections, problems or grievances relative to the person's rights and responsibilities;

(iii) the availability of the following parties to receive complaints and concerns:

(a) the director of the B/DDSO;

(b) the commissioner of OMRDD;



- (c) the Commission on Quality of Care and Advocacy for Persons with Disabilities;
 - (d) the Mental Hygiene Legal Service, 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 of this Part, OMRDD 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, OMRDD shall verify that the information was provided to all appropriate parties.
 - (iii) When changes have been made, OMRDD shall verify that the information was provided to all appropriate parties.
- (4) OMRDD shall verify that staff are aware of the rights of persons in the facility.
- (5) OMRDD 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 them.
- (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.

ⁱ Text of the New York Codes, Rules and Regulations (NYCRR) may be found at this link: <http://www.dos.ny.gov/info/nycrr.html>. To view NYCRR text electronically, click the "**VIEW THE UNOFFICIAL NYCRR ONLINE HERE**" link at the top of the page. You will be directed to a webpage that lists titles for different sectors of government. Click on the link "Title 14. Department of Mental Hygiene." Afterwards, click on Chapter XIV for OPWDD regulations. OPWDD Regulations are listed as Office for Mental Retardation and Developmental Disabilities. This is because the regulations were passed prior to the name change of the agency.