



ADVOCATES INCORPORATED
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OPWDD INDIVIDUAL RIGHTS

No person shall be deprived of any civil or legal right solely because of a diagnosis of developmental disability.

All persons shall be given the respect and dignity that is extended to others regardless of race, religion, national origin, creed, age, sex assigned at birth, gender identity or expression, ethnic background, primary language, sexual orientation (including perceived sexual orientation), developmental or other disability or health condition such as one tested for or diagnosed with HIV infection.

In addition, there shall be no discrimination for these or any other reasons.

Specific rights of the individuals we serve include, but are not limited to:

1. The right to a safe and sanitary environment.
2. The right to freedom from physical and psychological abuse.
3. The right to freedom from corporal punishment
4. The right to freedom from unnecessary use of mechanical restraining devices.
5. The right to freedom from unnecessary or excessive medications.
6. The right of protection from commercial or other exploitation.
7. The right to confidentiality in regard to all information contained in the individual's record and access to such information, pursuant to section 33.16 of the Mental Hygiene Law and the commissioner's regulations.
8. The right to a written individualized plan of services (LIFEPLAN) that maximizes the person's abilities, fosters meaningful social relationships, opportunities for community integration/interaction and enables independence to the greatest degree possible.
9. The right to participate in the development and modification of an individualized plan of service, including the right to object to any provisions within an individualized plan of service, and the opportunity to appeal any decision with which the individual disagrees.
10. The right to choose their services and supports and who provides them.

11. The right to engage in all meaningful, productive, and appropriate activities consistent with the person's needs, interests, and capabilities.
12. The right of access to meaningful recreation and community programs and the right to participate in such activities.
13. The right to receive assistance and guidance from staff, with full respect for the individual's dignity and personal integrity.
14. The right to appropriate medical and dental care and the right, either personally or through parents, guardians, or correspondents to participate in the choice of physician and dentist, or to obtain a second opinion.
15. The right to participate in the religion of their choice, through the means of their choice, including the right not to participate.
16. The right to vote and the opportunity to participate in activities that educate them in civic responsibilities.
17. The right to respect for their cultural identity.
18. The right to be informed regularly of their financial status and to be provided assistance in the use of their resources, as appropriate.
19. The right to the use of their personal money and property.
20. The right to individually owned clothing which fits properly, is maintained properly and is appropriate for age, season and activity, and the right to be involved in the selection.
21. The right to have access to food at any time and a balanced and nutritious diet.
22. The right to adequate, individually owned grooming and personal hygiene supplies.
23. The right to a reasonable degree of privacy within the individual's residence and a reasonable amount of safe, individual, storage space for clothing and other personal belongings.
24. The right to request an alternative residential setting, either a new residence or change in roommate, and to be involved in decisions regarding such changes.
25. The right to receive visitors and to visit others at reasonable times; provided such visits do not infringe on the rights of others; such right includes the right of privacy during such visits.
26. The right to receive and send communications privately and freely.
27. The right of the receipt of information on or prior to admission, regarding the supplies and services that the facility will provide for or for which additional charges may be made.

28. The right to express their gender identity and self-expression.
29. The right to education related to gender identity, sexual orientation, sexuality and family planning.
30. The right of freedom to express sexuality provided such expressions do not infringe on the rights of others.
31. The right of facilities to reasonably limit the expression of sexuality, including time and location, in accordance with a plan for effective facility management and respect for the rights of others.
32. The right to have the opportunity to carry a pregnancy to term or secure an abortion, as recommended through a medical professional.
33. The right of individuals, their parents, guardians, or correspondents to object, express grievances, concerns and make suggestions without fear of reprisal.
34. The right to confidentiality with regard to HIV related information in accordance with article 27-F of Public Health Law, 10 NYCRR Part 63.
35. The right to freedom from discrimination, abuse or any adverse action based on their HIV 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.
36. The right to make an informed decision regarding CPR and Do Not Resuscitate orders.
37. The right to create a health care proxy.
38. The right of non-English speaking persons to receive effective communication in their primary language in accordance with Title VI of the Civil Rights Act of 1964. The non-English speaking individual's adult family member, significant other, correspondent or advocate may serve as an interpreter for the person if they and their 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 will not require family members, significant others, correspondents, or advocates to act as interpreters.
39. the right of persons who are deaf or hard-of-hearing to receive effective communication in accordance with the Americans with Disabilities Act of 1990.
40. The above rights may not be arbitrarily denied. Any limitations to the above rights must be on an individual basis, for a specific period of time for clinical purposes only.
41. The right of the individual, their parents/guardians, or correspondents to be informed of the individual's rights under law and regulations, and the guarantee that such rights will not be abridged. A statement of the rights included in this section and any others established by agency policy shall be

maintained in each person's individual service record and transmitted to each individual, parent, guardian and/or correspondent unless the individual is a capable adult who objects to such notification of a parent, guardian or correspondent.

NOTIFICATION OF THE RIGHT TO A PERSON-CENTERED PLANNING PROCESS

This NOTICE is for people who receive OPWDD funded Home and Community Based Services (HCBS) or OPWDD funded care coordination services.

1) You have a right to participate in a Person-Centered Planning Process

Person-centered planning is a process that can help you to learn more about what personal goals are important to you. This includes information about how and where you want to live and how you want to participate in your community. Person Centered Planning also helps you and others determine what supports and services are needed to help you move toward your goals. This information will help you work with your service coordinator and others to develop an Individualized Plan of Services (LIFEPLAN) that is specific to your needs and goals.

This means that

- the person-centered planning process is all about you;
- you are in charge of the planning process;
- you choose who works with you to develop your person-centered LIFEPLAN and you can choose who you want to assist you in making decisions; and
- you will be supported to make informed choices about what supports and services you want and need. This support may come from family, friends, staff, or someone who has legal decision-making authority in your life.
- If you have someone who has legal decision-making authority, he or she may choose to be a part of the process and may choose to make decisions on your behalf.

It also means that the person-centered planning process

- takes place at times and places that are convenient for you; and
- will share information with you in a way that you can understand it, for example, people speak to you or materials are provided to you in the same language that you speak or using other ways of communication that work for you.
- If there is conflict or disagreement when you are planning your services and supports, there are ways to resolve them and you will be told about them.

2) You have a right to a Person-Centered Plan of Services

Usually this will be your Individualized Plan of Services (LIFEPLAN) and it will include

- your goals and desired outcomes;
- your strengths and preferences;
- your needs based on an assessment;
- the services and supports you need and who you have chosen to provide them;
- the services that you choose to self-direct;
- where you live and that you chose to live there or that you choose to move;

- the things that might cause a risk of harm to you and what will be done to make the risk smaller, including having a plan about what to do if something goes wrong; and
- the name of the person or agency you have chosen to watch over your plan to make sure that everything in the plan happens as it should.

Your person-centered plan/LIFEPLAN must be clear to you and your circle of support. It must be written so that you understand it.

You must sign your person-centered plan/LIFEPLAN to show that you agree with what the plan says. The person or agency you have chosen to watch over your plan to make sure that everything in the plan happens will also sign the plan. You will get a copy of the plan.

You will review the plan with your service coordinator at least twice a year, when something changes or when you want to change something in your plan.

3) **You have a right to object to your Plan of Services**

If you are 18 years old or older, **you may object to your plan of services**, including your person-centered service plan/LIFEPLAN. In addition, the following people may object on your behalf: someone you choose, your legal guardian, someone you have given a power-of-attorney to make decisions for you, or the Consumer Advisory Board if they represent you. If you are capable of making your own decisions and you do not have a legal guardian, you may refuse to let someone else object on your behalf.

If you are under 18 years old, your parent(s) may also object to any plan of services for you. If you don't agree with them, you may choose someone to represent you, including legal counsel, to help you resolve the objection.

You must tell your care manager or your service provider that you object to something about the plan. Providers must have policies and procedures to resolve your objection and must tell you what they are and let you follow those policies and procedures. If you are unable to resolve your objection with the provider you can request a hearing with OPWDD.

PERSON CENTERED PLANNING INFORMATION FOR INDIVIDUALS AND FAMILIES

How to Request an additional Person-Centered Service Plan Review Meeting:

Additional reviews of the person-centered service plan may take place at any time at the person's request. If you wish to schedule an additional person-centered service plan meeting, contact your Care Manager (CM), Community Habilitation Coordinator (CHC) or Broker. The CM, CHC or Broker will schedule a meeting at a mutually convenient time as soon as possible.

Conflict of Interest and Conflict Resolution in the Person-Centered Planning Process:

- If there is a Conflict of Interest between the preference/best interest of the person and the preference/best interest of a member(s) of the Circle of Support, the member(s) of the Circle of Support will be asked to excuse themselves from that part of the person-centered planning process that presents the conflict. For example a member of the Circle of Support is the

Community Habilitation Coordinator for Advocates and the person wishes to change their Community Habilitation service provider from Advocates to a different provider. The Community Habilitation Coordinator should excuse themselves from this part of the person-centered planning process.

- In the event that a conflict arises between the person and a member(s) of their Circle of Support during the person-centered planning process the following steps will be taken to resolve the conflict:
 - CM, CHC, Broker and/or service supervisor will meet individually with opposing parties to:
 - Identify common ground.
 - Identify choices and options.
 - Facilitate compromise.
 - If there is no ability to reach agreement, Advocates will defer to and support the choice of the person unless there is imminent danger to the person's health and safety.

Objecting to the Person-Centered Services Plan:

In the event that a person wishes to object to their person-centered services plan, the person should follow the steps outlined in **The Right to Object to Services: Notification and Process** section of this document.

THE RIGHT TO OBJECT TO SERVICES: NOTIFICATION AND PROCESS

An individual or their parent(s), guardian(s), Circle of Support designee or correspondent may object to and appeal any plan of service, proposed changes to that plan, other care or treatment, plans for placement, discharge and/or proposed reduction, suspension or discontinuation of HCBS Waiver Service. A capable adult person receiving services may refuse the initiation of an objection or subsequent appeal on their behalf. An individual with their parent, guardian, Circle of Support designee or correspondent as applicable, may select a representative of their choice to provide assistance and/or representation, including legal counsel. This objection and appeal process does not apply to professional medical treatment for which informed consent is required.

To object to and/or appeal any plan of service, proposed changes to that plan, other care or treatment, plans for placement, discharge and/or proposed reduction, suspension or discontinuation of HCBS Waiver Service an individual receiving services from Advocates, Inc. and their parent(s), guardian(s), Circle of Support designee or correspondent should follow the processes below.

Informal Objection/Resolution Process:

- Contact the applicable Advocates, Inc. services directors/supervisors listed below to arrange a meeting to discuss the situation and attempt to resolve the matter. In addition to the Advocates, Inc. services directors/supervisors, the discussion should include the Advocates, Inc. Executive Director or their designee, the individual, Care Manager, parent, guardian, Circle of Support designee and/or correspondent, as applicable. Written confirmation of resolution or the inability to reach a resolution shall be sent to the objecting party by the Executive Director or their designee. If the parties are unable to resolve the matter this communication shall be sent to the objecting party by

certified mail, return receipt requested, or such other means so that the time of receipt of the information can be documented. A copy of this written communication shall be included in the individual's record. If the involved parties are unable to reach a resolution, the objecting party may follow the steps below to initiate a formal objection.

Executive Director:

Amy Dugliss: 315-469-9931 ext. 214

Associate Executive Director:

Beth Henderson: 315-469-9931 ext. 243

Director of Independent Broker Services:

Joanne Reid: 315-469-9931 ext. 217

Director of Fiscal Intermediary Services:

Kristin Kukula: 315-469-9931 ext. 238

Director of Agency Broker Services:

Justin Sheer: 315-469-9931 ext. 218

Director of Agency Supported Community Habilitation:

Nicole Miller: 315-469-9931 ext. 224

Director of Compliance, Quality and Incident Management (Corporate Compliance Officer):

Carol Gentry: 315-469-9931 ext. 204

Formal Objection/Appeal Process:

In facilities and HCBS waiver services, unless the objection concerns a proposal to reduce, suspend or discontinue HCBS waiver service(s):

- the objecting party may submit a formal written objection requesting a hearing to the DDRO Region II 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 DDRO Region II 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.
- 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 their discretion, send the matter back to the hearing officer for further review.
- During the period that an objection is undergoing administrative review:
 - a person shall participate in programming mutually agreeable to the objecting party, the agency, the person, and their parent, guardian, correspondent or advocate;
 - every effort feasible shall be made to maintain the person in at least their current level of programming; and
 - 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.

Related to the reduction, suspension or discontinuance of HCBS waiver services:

- The objecting party may submit a written objection to the DDRO Region II Director requesting administrative review of the reduction, suspension or discontinuance of services, within 14 days after the receipt of the notice from the agency of the agency's intention to reduce, suspend or discontinue services. 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.
- Upon receipt of a written objection requesting an administrative review, the DDRO Region II Director or their 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 DDRO Region II Director. The objecting party and the agency may mutually agree to extend the time periods noted in this clause.
- 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 their discretion, send the matter back to the hearing officer for further review.
- 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 service(s) at issue, unless otherwise agreed to by both parties.
- Notwithstanding the provisions previously stated, 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:
 - A written request for the hearing shall be sent by 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.
 - If the commissioner determines that an expedited hearing is warranted, the DDRO Region II 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 DDRO Region II Director. Absent good cause, the parties involved in the objection will receive at least three days notice of the hearing.
 - 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.
- No person or objecting party or a representative of either, shall be denied the opportunity to participate in any hearings pursuant to this section. The person or objecting party or a representative may offer information and ask relevant questions of any parties participating in any such hearing.
- 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.

- 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.
- 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 policies/procedures.

Director, DDRO – Region II

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(315) 473-6978 Fax: (315) 473-5053

Commissioner of OPWDD

44 Holland Avenue
Albany, NY 12229
1-(866)-946-9733; 1- (866) 933-4889
Commissioners.Correspondence.Unit@opwdd.ny.gov

The Commission on Quality of Care and Advocacy for People with Disabilities

401 State Street
Schenectady, NY 12305
1 800-624-4143

Mental Hygiene Legal Service

224 Harrison Street – Suite 502
Syracuse, New York 13202
(315) 473-9495