

Rights & Responsibilities of Persons Receiving Services

With respect to the services provided by Cradle Beach, the rights of those receiving services include, but are not limited to, the following:

- 1) A safe and sanitary environment;
- 2) Freedom from physical or psychological abuse;
- 3) Freedom from corporal punishment;
- 4) Freedom from unnecessary use of mechanical restraining devices;
- 5) Freedom from unnecessary or excessive medication;
- 6) Protection from commercial or other exploitation;
- 7) Confidentiality with regard to all information contained in the person's record, and access to such information, including HIV-related information.
- 8) A written individualized plan of services which has as its goal the maximization of a person's abilities to cope with his or her environment, fosters social competency, 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;
- 9) 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;
- 10) 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;
- 11) Access to clinically sound instructions on the topic of sexuality and family planning services and information about the existence of these services. 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;
- 12) 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;
- 13) The opportunity to register and vote and the opportunity to participate in activities that educate him or her in civic responsibilities;
- 14) 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;
- 15) 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;
- 16) 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;
- 17) 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;

- 18) 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;
- 19) Adequate, individually owned, grooming and personal hygiene supplies;
- 20) A reasonable degree of privacy in sleeping, bathing and toileting areas;
- 21) A reasonable amount of safe, individual, accessible storage space for clothing and other personal belongings used on a day-to-day basis;
- 22) The opportunity to request an alternative residential setting, whether a new residence or change of room, and involvement in the decisions regarding such changes;
- 23) 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 Justice Center for the Protection of People with Special Needs (Justice Center); 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;
- 24) 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
- 25) The opportunity to make, or have made on his or her behalf, an informed decision regarding cardiopulmonary resuscitation, 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.
- 26) The opportunity, if the person is residing in an OPWDD operated or certified facility, to create a health care proxy in accordance with 14 NYCRR 633.20.

Objection and Appeal of Care and Treatment

Cradle Beach encourages each person receiving services, his or her parent, guardian, correspondent, or advocate to exercise his or her rights as specified in the Statement of Rights and Responsibilities of Persons Receiving Services.

Adult persons receiving services, parents, guardians, correspondents, and advocates of persons receiving services, and the Mental Hygiene Legal Service may initiate objections to services. Upon such objection, the person or party shall herein be referred to as the objecting party. Objections, related to facilities or HCBS waiver services, may be initiated regarding; any plan of services, or part thereof and proposed changes thereto; plans for placement; a proposal initiated by the agency/facility to discharge, and a proposal to reduce, suspend, or discontinue HCBS waiver service(s). This does not apply to objections to major medical treatment for which informed consent is necessary, as there is a separate objection process.

A capable adult person receiving services may refuse the initiation of an objection or subsequent appeal on his or her behalf.

Cradle Beach will ensure that the person receiving services, his or her parent, guardian, correspondent, and/or advocate, as applicable, shall be advised of the mechanism to resolve an objection: upon admission to a facility or enrollment in HCBS waiver services or as changes occur.

A person, his or her parent, guardian, correspondent, or advocate, as applicable, may select a representative of his or her choice to provide assistance and/or representation, including legal counsel.

No person or objecting party, or a representative of either, shall be denied the opportunity to participate in any hearings pursuant to this section.

During the period that an objection is undergoing administrative review, a person shall participate in programming mutually agreeable to the objection party, the agency, the person, and his or her parent, guardian, correspondent, or advocate. Additionally, every effort feasible shall be made to maintain the person in at least his or her current level or programming. 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. While an objection to placement or discharge is undergoing administrative review, relocation or discharge shall only take place with the commissioner's approval.

Treatment may be given, other than treatment of 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 and procedures.

The Commissioner of OPWDD's decision is the final administrative remedy available and may be appealed in accordance with the provision of article 78 of the Civil Practice Law and Rules.

Objection Process

Informal Objections

There shall be a mechanism available Cradle Beach 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. Written confirmation of resolution or inability to reach a resolution shall be sent to the objecting party by the chief executive officer.

If related to the reduction, suspension, or discontinuance of HCBS waiver services, the agency shall include documentation of the result of the process in the person's record.

Formal Objections

Those objections not related to the reduction, suspension, or discontinuance of HCBS waiver services:

- 1) 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 (5) days 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.
- 2) 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.

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

- 1) 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 DDSO director requesting administrative review of the reduction, suspension or discontinuance, within 14 days after the receipt of the notice.
- 2) The DDSO 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.

- 3) 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.

Ideally, all objections should be resolved at the agency; however, other parties may be contacted anytime to receive complaints/concerns:

Region 1 DDRO Director
WNY DDRO Deputy Director

Maria Torgalski
Kelly O'Connor
1200 E and West Rd
West Seneca, NY 14224
(800) 487-6310

Commissioner of OPWDD

Commissioner
Office for People with Developmental Disabilities
44 Holland Avenue
Albany, NY 12229
(518) 473-1997

Justice Center for the Protection of People with Special Needs

161 Delaware Avenue
Delmar, NY 12054
(518) 549-0200

Mental Hygiene Legal Service
(for developmental center residents & persons in the community on conditional release from developmental centers only)

Keith Fehrer, Principal Attorney in Charge
438 Main Street, Suite 400
Buffalo, New York 14202-3211
(716) 845-3650

The Board of Visitors
(for developmental center residents & persons in the community on conditional release from developmental centers only)

Board of Visitors, President
1200 E and West Rd
West Seneca, NY 14224
(800) 487-6310

New York Commission on Quality of Care & Advocacy for Persons with Disabilities (CQCAPD)

401 State Street
Schenectady, NY, 12305
(518) 388-2892

For more detailed information, please refer to the following New York State documents:

- NYCRR – Title 14 Department of Mental Hygiene – Chapter XIV – Part 633.4 Rights and responsibilities of persons receiving services.
- NYCRR – Title 14 Department of Mental Hygiene – Chapter XIV – Part 633.12 Objection to services process