



## **Tri-County Care's Individual's Rights Handbook**

The below information is a **summary** of your individual rights that you are entitled to as a recipient of OPWDD services. For more information about specific rights, regulations, and/or concerns, please contact your care manager directly.

### **Your Care Manager and TCC will support you and your advocates in:**

1. Advocating your rights to be supported, fulfilled, and respected.
2. Providing education on your rights.
3. Encourage and support any self-advocacy.

### **It is your right as a person:**

1. To manage your own money.
2. To make your own schedule.
3. To decide what to do with your day.
4. To have privacy in your home.
5. To take part in your community.
6. To keep yourself safe.
7. To make your own friends.
8. To choose your own relationships.
9. To practice your own religion/beliefs.
10. To vote for your candidates.
11. To make your own goals.
12. To exercise your independence.
13. To make your own choices.
14. To be free of coercion.
15. To advocate for yourself.
16. To object to services and/or your service plans.

### **If you are under HCBS Medicaid Waiver services and you have residential services, you have rights to:**

1. You have the right to privacy of your sleeping and/or living arrangement.
2. You have the right to have your sleeping and/or arrangement unit that is lockable by you; and only appropriate staff members have keys and/or codes for those doors
3. You have the right to a choice of roommates, if applicable.
4. You have the right to furnish and decorate your sleeping and/or living unit within the lease or other agreement.



5. You have the right to be supported and control your own schedule, activities, and food at any time.
6. You have the right for visitors of your choosing at any time.
7. You have the right to have a lease or written occupancy that provides eviction protections, due process/appeals, and specifies the circumstances when you could be required to relocate.
8. You have the right to have, and be protected by, a lease or other written occupancy agreement that provides eviction protections and due process/appeals and specifies the circumstances when he/she could be required to relocate.
9. You have the right to due process/appeals to include:
  - a. Under what conditions you could be required to relocate
  - b. How to request a change in living arrangement, home or roommate
10. The right to informed consent and a person-centered planning process if safety needs dictate any modification of these rights. Such modification meets the eight requirements as dictated in ADM 2014-04 regarding rights modifications to HCBS rights.

**Your rights under the Americans with Disabilities Act (ADA, 1990) and the Americans with Disabilities Act Amendments Act (ADAAA, 2008):**

1. The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the public.
2. The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else.
3. The ADA gives civil rights protections to individuals with disabilities like those provided to individuals based on their race, color, sex, national origin, age, and religion.
4. The ADA guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications.
5. For more information about the ADA, please refer to:
  - <https://adata.org/learn-about-ada> - ADA National Network
  - <https://www.ada.gov/> - ADA regulations

**How to obtain reasonable accommodations listed in your life plan:**

1. It is your right to have the life plan meeting in a place and time of your choosing, if the collective IDT can accommodate the meeting time and location.
2. It is your right to choose who is a part of your IDT.
3. It is your right to inquire about your current services and future services (such as self-direction and employment).



4. It is your right to obtain a copy of your life plan and any other supporting documents pertaining to your services.
5. It is your right to discuss anything outlined in your life plan and any other supporting documents pertaining to your services.
6. If you need any documents translated/explained to you or your advocates, your care manager can assist you with that request.

#### **How to obtain a copy of your records with TCC:**

1. TCC is required to provide a copy of the individual's records to them or their advocates/family members upon request. Typically, these records are copies of life plans, case notes, assessments, and evaluations on file.
2. These requests must be made in writing to your care manager and the care manager or to TCC's Compliance Department at [compliance@tricountycare.org](mailto:compliance@tricountycare.org). It may take up to 30 days for these records to be returned to you.
3. If these documents are for a legal purpose, your attorney or representation may request these documents on your behalf. However, they must send the request to the care manager in writing along with a copy of a HIPAA release authorizing this party to obtain these records.

#### **Accessing TCC's Incident Management Policies:**

1. TCC's policies and procedures are available on our website and can be downloaded at any time.
2. You may request TCC to send you a copy of the policies and procedures in paper format at [compliance@tricountycare.org](mailto:compliance@tricountycare.org).
3. The Part 624 & 625 Handbook on Incidents can be accessed at: [https://opwdd.ny.gov/system/files/documents/2023/02/final-part-624-handbook-updated-with-memo-2\\_16\\_23.pdf](https://opwdd.ny.gov/system/files/documents/2023/02/final-part-624-handbook-updated-with-memo-2_16_23.pdf)
4. A copy of OPWDD's Guide to Incidents is attached for you within this Handbook.

#### **How to file a grievance, complaint or concern:**

1. What to know before filing a grievance, complaint, or concern:
  - It is your right to file any of these anonymously and without fear of repercussions. TCC has an anonymous Quality Assurance complaint line on our main business number.
  - TCC will work on addressing each grievance, complaint or concern you have promptly.



2. You can always contact your Care Manager’s supervisor or Regional Director to resolve any grievance, complaint, or concern. The supervisor will address and resolve these items in a timely manner.
3. If you do not wish to speak with that supervisor, you may contact the TCC Customer Service team or the TCC Quality Assurance Team to file a formal grievance, complaint or concern.
  - These calls are taken by TCC’s customer service and/or TCC’s Quality Assurance department.
  - These calls are resolved in a timely and responsive manner.
  - TCC’s Customer Service and Quality Assurance team can be reached at: 844-504-8400 and follow the instructions.

### **Copy of Title 14 of New York Code, Rules and Regulations:**

14 CRR-NY 633.4  
NY-CRR  
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

14 CRR-NY 633.4

#### **633.4 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 need of certain persons with the most severe disabilities 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. (Note: See section 636-1.4 of this Title for documentation requirements specific to the person-centered service plan and section 633.16 of this Part for documentation requirements concerning person-centered behavioral intervention.)

**(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;
- (ix)** 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 do not have disabilities), 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;
- (x)** 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;
- (xi)** 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;
- (xii)** 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;
- (xiii)** 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;



- (xiv) the opportunity to register and vote and the opportunity to participate in activities that educate him or her in civic responsibilities;
  - (xv) 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;
  - (xvi) 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;
  - (xvii) 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;
  - (xviii) a balanced and nutritious diet. This right shall provide that:
    - (a) meals are served at appropriate times and in as normal as 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;
  - (xix) 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;
  - (xx) adequate, individually owned, grooming and personal hygiene supplies;
  - (xxi) a reasonable degree of privacy in sleeping, bathing and toileting areas;
  - (xxii) a reasonable amount of safe, individual, accessible storage space for clothing and other personal belongings used on a day-to-day basis;
  - (xxiii) the opportunity to request an alternative residential setting, whether a new residence or change of room, and involvement in the decisions regarding such changes;
  - (xxiv) 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) (see glossary, section 633.99 of this Part); 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;
  - (xxv) 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; except that in settings where Medicaid Home and Community Based Services (HCBS) are delivered, rights regarding visitors shall be governed by Subparts 636-1 and 636-2 of this Title; or
  - (xxvi) 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.
  - (xxvii) 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 foregoing rights shall be limited for the convenience of staff, as a threat, as a means of retribution, for disciplinary purposes or as a substitute for treatment or supervision.
- (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.) 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.
- (9)** 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.
- (10)** 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.
- (11)** 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 OPWDD.
  - (iii)** The Justice Center for the Protection of People with Special Needs (see glossary, section 633.99 of this Part).



- (iv) The Mental Hygiene Legal Service (see glossary, section 633.99 of this Part), 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 Justice Center may be contacted at the following locations:
    - (a) Commissioner
      1. Office for People With Developmental Disabilities
      2. 44 Holland Avenue Albany, NY 12229
      3. (518) 473-1997;
    - (b) Justice Center for the Protection of People with Special Needs
      4. 161 Delaware Avenue
      5. Delmar, NY 12054
      6. (518) 549-0200
- (12) 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.
- (13) In developmental centers, a statement summarizing the rights, duties, and requirements regarding cardiopulmonary resuscitation is to be posted in a public place.
- (14) 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 for People With 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 for People With 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 for People With Developmental Disabilities, Office of Counsel, 44 Holland Avenue, Albany, NY 12229.
  - (c) 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) OPWDD 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 OPWDD;
        - (c) the Justice Center for the Protection of People with Special Needs;
        - (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, 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 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 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. (Note: see section 636-1.4 of this Title for documentation requirements specific to the person-centered service plan and section.)
- (7) 633.16 of this Part for documentation requirements concerning person-centered behavioral intervention.)

**Link to the regulations:**

[https://govt.westlaw.com/nycrr/Document/I50390972cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Document/I50390972cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

If you have any questions or concerns, please feel free to reach out to your care manager or TCC's customer service department!



**Tri-County Care’s Individual’s Rights Handbook Acknowledgement of Receipt**

By signing this acknowledgement, I can confirm:

1. I have received a copy and/or reviewed a copy of TCC’s Individual’s Rights Handbook.
2. My Care Management Team and I reviewed:
  - a. The contents of TCC’s Individual’s Rights Handbook, which include an overview of all my rights as an individual and my notice of person-centered planning.
  - b. My rights under the Americans with Disabilities Act (ADA).
  - c. How to obtain reasonable accommodations.
  - d. How to file a grievance or appeal with TCC.
  - e. How to access your records within TCC.
  - f. A copy of OPWDD’s Learning About Incidents and how to access Incident Management policies.
  - g. A comprehensive review of my supporting assessments and annual required documentation.
  - h. For Willowbrook Class Members only – a review of the Willowbrook Notice of Rights (within the handbook) and the Willowbrook Permanent Injunction.

<b>Signatures:</b>	
<i>(Signatures can be completed with either wet-ink signatures, electronic signatures/approvals, or verbal approvals)</i>	
<b>Individual’s Name:</b>	
<b>Date:</b>	
<b>Signature:</b> (if done verbally, indicate the date & time of the review of the handbook)	
If the individual needs or requires representation, the advocate can sign here instead:	
<b>Advocate’s Name:</b>	
<b>Relationship to the Individual:</b>	
<b>Date:</b>	
<b>Signature:</b> (if done verbally, indicate the date & time of the review of the handbook)	

If you have any questions or concerns, please feel free to reach out to your Care Management Team or TCC’s Customer Service Department!



## **Person-Centered Planning**

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 care manager and others to develop a life plan 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 life plan 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 life plan 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 life plan 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 life plan 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 Care Manager 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 life plan. 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.



## Individual Rights Overview

Individuals with Intellectual or Developmental Disabilities have rights when receiving services. This guide provides a summary of those rights.

If you have any questions about your rights, please contact us at 844-504-8400

<p style="text-align: center;"><b>Safety</b></p> <p>You have the right:</p> <ul style="list-style-type: none"> <li>• To live in a safe, clean environment</li> <li>• To be free from physical and psychological abuse</li> <li>• To be free from being taken advantage of</li> </ul>	<p style="text-align: center;"><b>Confidentiality</b></p> <p>You have the right to confidentiality regarding:</p> <ul style="list-style-type: none"> <li>• Information and accessing your own records</li> <li>• HIV related information</li> <li>• Privacy within a residential setting</li> </ul>
<p style="text-align: center;"><b>Communication</b></p> <p>You have the right:</p> <ul style="list-style-type: none"> <li>• To advocate for your self</li> <li>• To request and receive visitors</li> <li>• To send and receive communications privately</li> <li>• To express grievances, complaints, and concerns</li> <li>• To access translation services or deaf/hard of hearing support</li> </ul>	<p style="text-align: center;"><b>Assistance</b></p> <p>You have the right to assistance with:</p> <ul style="list-style-type: none"> <li>• Understanding the services and supports available to you</li> <li>• Accessing medical and dental care</li> <li>• Obtaining individually owned clothing</li> <li>• Obtaining a balanced and nutritious diet</li> <li>• Obtaining personally owned hygiene supplies</li> </ul>
<p style="text-align: center;"><b>Financial</b></p> <p>You have the right to:</p> <ul style="list-style-type: none"> <li>• Understanding and receiving support with your own money</li> <li>• Use of personal money and property</li> <li>• Receipt of information regarding the supplies and services that a provider would provide you</li> </ul>	<p style="text-align: center;"><b>Participation</b></p> <p>You have the right to:</p> <ul style="list-style-type: none"> <li>• Participate in a person-centered Life Plan that is based on your wants and needs</li> <li>• Engage in meaningful recreational and community services</li> <li>• Vote and receive assistance and training with voting</li> <li>• Make medical decision, including the choice of a health care proxy</li> </ul>
<p style="text-align: center;"><b>Freedom</b></p> <p>You have the right:</p> <ul style="list-style-type: none"> <li>• To be free from unnecessary use of mechanical or chemical restraints</li> <li>• To be free from discrimination regarding HIV status or other diagnoses</li> <li>• To express cultural identity and religion of choice</li> <li>• To choose where you want to live</li> <li>• To choose your friends</li> <li>• To choose your own goals</li> <li>• To object to services or your service plan</li> </ul>	



**DO NOT REMOVE**

**NOTICE OF RIGHTS**

\_\_\_\_\_ is a member of the Willowbrook class and as such is entitled to certain rights and services which are guaranteed by a permanent injunction. This injunction was issued by the United States District Court for the Eastern District of New York on March 11, 1993 in the case of New York State Association for Retarded Children, et al., v. Cuomo, et al., 72 Civ. 356, 357.

A Notice of Rights must be placed in the consumer's files maintained by all providers of residential and habilitative services.

The consumer is represented by New York Civil Liberties Union (NYCLU) located at 125 Broad Street, 19<sup>th</sup> Floor, New York, 10004. The telephone number of the NYCLU is 212-607-3300. The consumer is also represented by New York Lawyers for Public Interest (NYLPI) located at 151 W. 30th St., 11th Floor, New York, New York 10001-4007. The telephone number of the NYLPI is 212-244-4664. The consumer may also be entitled to be or is represented by the Consumer Advisory Board (CAB), an advocacy group, located at 1050 Forest Hill Rd., Staten Island, New York 10314. The CAB's phone number is 718-477-8800. In addition to this special representation by the NYCLU, NYLPI and the CAB, the consumer may also be entitled to representation, like all other consumers, by the local office of the Mental Hygiene Legal Service (MHLS). If any problems arise concerning the consumer's rights under the permanent injunction, the NYCLU, NYLPI, CAB, and MHLS should be notified.

The following is a summary of the consumer's rights under the permanent injunction:

1. If the consumer is a resident of the Richmond Complex on Staten Island, the consumer has the right to high quality and appropriate medical and habilitative services, shelter, food and clothing which at a minimum conforms to state and federal regulations. Consumers at the Richmond Complex also have the right to be prepared for placement in a small community residence of 10 beds or less. The NYCLU will be notified of placement plans for consumers residing at the Richmond Complex by February 26, 1995.
2. If the consumer is not a resident of the Richmond Complex and is awaiting placement on February 26, 1993, the consumer is entitled to be placed pursuant to the approved placement plan by August 31, 1993. The placement will be monitored by the independent evaluator, pursuant to the permanent injunction.
3. Consumers who reside in community residential facilities on February 26, 1993 have the right to be maintained in that facility or another facility of equal or smaller residential capacity. The consumer can only be moved to a larger facility if a) medical or treatment needs require it, or b) if the consumer requests such a move, or c) the consumer is endangering other residents at the facility or is substantially interfering with the operation of the facility, or d) in the event of an emergency as defined in the permanent injunction.
4. If the consumer does not have an active family member or friend to act as a correspondent, the consumer is entitled to be represented by the Consumer Advisory Board.
5. The consumer is entitled to case management services from a case manager who has a case load of no more than 20 consumers.
6. The NYCLU, NYLPI, CAB, and MHLS to the extent they represent the consumer, have access to the consumer, his or her records, and all facilities where the consumer receives residential or habilitative services.
7. The consumer has the right to a meaningful, full day habilitative program and services appropriate to his or her individual needs week days and meaningful, appropriate recreation and community integration weekday evenings and weekends. These habilitative services and recreation shall meet applicable regulatory standards. Consumers with capacity have the right to refuse such services and recreation.
8. The consumer's developmental plan shall be reviewed at least annually by the consumer's program planning team. More frequent reviews may be requested where appropriate. The consumer, if he or she has

**DO NOT REMOVE**

capacity, the consumer's correspondent or CAB representative, and the MHLS to the extent it represents the consumer, shall be invited to attend such reviews. Current professional assessments of the consumer's needs shall be maintained in the consumer's files.

9. The consumer is entitled to be protected from harm and is also entitled to a safe, clean, and appropriate physical environment.

10. The consumer is entitled to have sufficient staff members present to provide protection from harm and the habilitative and recreational services required by the permanent injunction.

11. Aversive conditioning, behavioral research, or experimentation may only be conducted after approval by a three person special committee.

12. Except in emergencies, the consumer, the CAB, the Willowbrook attorney pursuant to OPWDD training instructions, and the MHLS to the extent it represents the consumer, shall be given 30 days notice of any proposed transfer from the consumer's present residence. In addition, the consumer has the right to a hearing before an independent fact finder. These rights are the same as are afforded to all consumers on February 26, 1993. However, these rights must be afforded to this consumer for life regardless of changes that may be made that affect other consumers not subject to the permanent injunction.

13. The consumer is entitled to continued residential, habilitative, and programming services that are reasonably unrestrictive and appropriate to his or her individual needs.

If anyone has any questions concerning this notice or the permanent injunction, please contact the attorneys for the plaintiffs or defendants:

Willowbrook Attorney Phone: 212-607-3300  
NY Civil Liberties Union Fax: 212-607-3318  
125 Broad Street 19th Floor  
New York, NY 10004

Willowbrook Attorney Phone: 212-244-4664  
NY Lawyers for the Public Interest Fax: 212-244-4570  
151 W. 30th Street, 11th Floor  
New York, NY 10001-4007

OPWDD Counsel Phone: 518-474-7700  
NYS Office for People With Fax: 518-474-7392  
Developmental Disabilities  
44 Holland Avenue  
Albany, NY 12229

Revised 1/2012



Office for People With Developmental Disabilities

44 Holland Avenue  
Albany, NY 12229-0001



Office for People With Developmental Disabilities



## Learning About Incidents

OPWDD's commitment to protection from harm



[www.opwdd.ny.gov](http://www.opwdd.ny.gov)



## OPWDD's commitment to protection from harm

OPWDD's mission is to help people with developmental disabilities live richer lives. OPWDD, in coordination with the Justice Center for the Protection of People with Special Needs (Justice Center), has established requirements and oversight procedures to protect people receiving services from harm.

In order to support this mission, OPWDD and its provider agencies adhere to Title14 of New York Codes, Rules and Regulations Part 624 (14NYCRR Part 624), a regulation designed to protect people receiving OPWDD services. This regulation identifies steps to be taken when a person receiving services experiences an incident, as described on page 2. Types of incidents. This regulation requires all providers of services to do the following:

- Ensure that staff report untoward events, called "Reportable Incidents" and "Notable Occurrences," that affect the well-being of people receiving services;
- Provide immediate care and protect the health, safety, and dignity of people with developmental disabilities involved in, or affected by, an incident;
- Investigate why incidents, including abuse and injuries, happen and take steps to prevent similar incidents from happening again;
- Establish an Incident Review Committee to review specific incidents and examine trends; and
- Develop procedures and provide staff training and oversight, as needed, to prevent similar incidents in the future.

This brochure provides an overview of OPWDD's expectations regarding incidents and explains the roles of qualified persons and other involved parties in advocating on behalf of the people we serve. Please refer to 14NYCRR Part 624 regulations for the complete requirements.

[http://www.opwdd.ny.gov/regulations\\_guidance/opwdd\\_regulations](http://www.opwdd.ny.gov/regulations_guidance/opwdd_regulations)

## Who is able to receive notice and ask about an incident

Jonathan's Law requires that qualified parties are to be notified of certain events involving parties receiving services. Part 624 regulations, which include Jonathan's Law notifications, require that qualified parties are notified of all incidents.

Qualified parties include an individual receiving services, his or her legal guardian, or an involved parent, spouse, adult child, or adult sibling who has authority to provide consent for care and treatment. Part 624 regulations also require that a person who does not meet the definition of a qualified party, but who serves as an advocate or correspondent for a person receiving services, is to be notified of incidents. Qualified parties, advocates, and correspondents may request information about incidents.

There are additional OPWDD directives on notifications involving Willowbrook class members.



## How do agencies handle incident reports?

Incidents must be reported, investigated, recorded, and reviewed by an Incident Review Committee, and acted upon to safeguard the wellbeing of people receiving services.

Every provider must have a process for reporting the following incidents to OPWDD:

- Reportable Incidents of Abuse and Neglect
- Reportable Significant Incidents
- Serious Notable Occurrences

Providers must also have systems to manage Minor Notable Occurrences and other potentially harmful situations that do not rise to the level of a Reportable Incident or Occurrence.

In addition, some incidents must be reported to the Justice Center. The Justice Center was created for the protection of people receiving services from facilities and programs that are certified or operated by some State agencies, including OPWDD. Reportable Incidents that happen in programs and services certified or operated by OPWDD are reported to the Justice Center as well as OPWDD.

## Types of incidents...

**Reportable Incidents of Abuse and Neglect** include but are not limited to physical, sexual, and psychological abuse, as well as other prohibited conduct such as deliberate inappropriate use of restraint, and neglect.

**Reportable Significant Incidents** include but are not limited to medication errors that result in adverse effects, use of seclusion, mistreatment, missing person, and choking events.

**Serious Notable Occurrences** include sensitive situations and deaths of people receiving services.

**Minor Notable Occurrences** include injuries that require treatment beyond first aid and theft and financial exploitation (involving \$15 to \$100).

When sharing the OPWDD 147 Form, OPWDD 148 Form and other records/documents pertaining to allegations of abuse, providers are required by law to "redact" or edit to delete the names and identifying information regarding other individuals receiving services and employees.

## How is an investigation conducted?

- Every incident must be thoroughly investigated.
- The investigator will gather information from a variety of sources and prepare a report that includes a summary of evidence, conclusions, and recommendations. In the case of a report of Abuse or Neglect, the report will also include a finding of "substantiated" or "unsubstantiated."

- The investigative report is submitted to the agency's Incident Review Committee for review. The Committee is required to review and monitor investigatory procedures (except when the case is investigated by the Justice Center or the Central Office of OPWDD) and may in some cases, recommend further investigation.

## How and when is the information available?

- Qualified parties, advocates, and correspondents will receive telephone notice as soon as reasonably possible following a report of an incident. They will also be provided with an offer to meet with the director of the agency (or his or her designee) to discuss the incident.
- Qualified parties, advocates and correspondents who receive notice of an incident will automatically receive a Report on Actions Taken (OPWDD Form 148) within 10 days of completion of the report.

- Qualified parties, advocates and correspondents who receive notice of an incident may submit a written request for a copy of the incident report and should receive a redacted copy of the requested report within 10 days after the request is made.

- Qualified parties (called "eligible requestors" in Part 624 regulations) may also request additional information on reportable incidents, such as investigative reports. These reports, which must be redacted, are provided to requestors within 21 days after the closure of an incident or within 21 days following the request if the incident is already closed.
- Written request for records or documents from that investigation should be directed to the agency that reported the incident.

- Requests may be made for information on incidents that occurred in the past. Part 624 regulations include requirements regarding time frames applicable to these requests.

## How to advocate and protect individuals from harm

The qualified party or advocate and service provider should work together to ensure that the person is well served and safe. The partnership can begin at a team meeting, where the person's individualized plan of services and supports is reviewed; at that time, the team, including the qualified party or advocate, can discuss safeguards or interventions that may be required. Such safeguards often need to be individualized and specific to the person.

Particularly when unexplained injuries recur, the qualified party or advocate might ask what steps are being taken to protect the person from being exposed to the same or similar circumstances. While it is not always possible to anticipate the steps required, as they may be specific to the incident, some possible areas for discussion include:

- changes in the person's behavior or demeanor;
- the rhythm of the person's day and week;
- use of possible need for or change in adaptive equipment;
- any physical care, health or hygiene problems needing attention;
- clinical/medical evaluation and/or intervention that may be helpful;
- level of supervision;
- staff training and re-training efforts; and/or
- conditions in the living or service environment.

Team meetings provide an invaluable forum for the qualified party or advocate and other members to advocate for protection from injuries, especially those that are unexplained and recurring.

For clarification on the information contained in this brochure, please contact: OPWDD's Statewide Committee on Incident Review.  
opwdd.scir@opwdd.ny.gov

**New York State Office for People With Developmental Disabilities Statewide Committee on Incident Review**  
**44 Holland Avenue Albany, NY 12229**

- By law, all requested records and documents pertaining to incidents must be redacted (edited) so names and identifying information about people involved in incidents are not available to those who request incident information.

## Who can an advocate (including a "qualified party" or correspondent) speak to for followup?

An advocate should feel free to ask questions when he or she receives notice of an incident and may ask to speak with a supervisor for more information. The advocate may also accept the offer to meet with the agency director or designee.

If not satisfied, the advocate may direct questions or concerns to the director of the agency or other high level administrators.

For reports of Abuse or Neglect in a certified program, the Mental Hygiene Legal Services (MHLS) may also be a resource.

The OPWDD Incident Management Unit may also help resolve outstanding issues.

There is an administrative appeal process for advocates who have been denied incident records requested from an agency providing services.

Contact the OPWDD Incident Records Appeals Officer at 44 Holland Avenue, Albany, NY 12229 for more information.

If you are a member of the public who wants to report abuse of an individual who receives services in the OPWDD system, there are several ways to do so:

- If you are aware of the name of the agency providing services to the individual, you may contact the provider agency directly to report abuse.

- If information on the service provider of an individual is unknown, you may report abuse to OPWDD. You can contact your local Incident Compliance Officer at 518-473-7032 during regular business hours, Monday through Friday. The Incident Management Unit also has an off-hours contact number at 1-888-479-6763.

- The Justice Center operates a 24 hour hotline for the reporting of Abuse, Neglect and Significant incidents for facilities and programs certified or operated by OPWDD at 1-855-373-2122.