



Office for People With Developmental Disabilities

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TO: DDSOO Directors
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DDRO Directors

FROM: Leslie Fuld, Deputy Commissioner
Division of Quality Improvement

SUBJECT: Due Process and Inappropriate Discharge
from Residential Programs and Services

DATE: September 9, 2020

Individuals receiving services certified or operated by OPWDD, including individuals residing in certified residential facilities, must be afforded the due process required by OPWDD regulations at 14 NYCRR 633.12: Objection to Services Process, as well as OPWDD's Community Placement Procedures. These rights apply whenever a provider proposes to modify the provision of services, to discharge an individual from their residential or nonresidential facility, program or service, to reduce, suspend or terminate an HCBS waiver service, and/or to initiate changes to an individualized service plan including Life Plans.

Providers must implement internal procedures to resolve objections to services and, in the event these procedures cannot effectuate resolution, actions must be taken which comport the requirements of 14 NYCRR 633.12. These actions include compliance with the regulatory procedures required to discharge an individual from their certified residence or program by, among other requirements, providing notice of the provider's intended action and notifying the individual of their right to object and to have a hearing. Frequently noted examples of inappropriate discharges include, but are not limited to, the following agency actions when such actions are taken without following the process set forth in 14 NYCRR 633.12:

- Agency refusal to allow an individual receiving services to return to his certified residence or day program following a period of hospitalization;
- Agency refusal to allow an individual receiving services to return to his certified residence or day program following a home visit or other extended absence, including those instances where individuals engage in a prolonged home visit for personal or medical reasons, including those related to the current COVID-19 public health emergency;
- Agency refusal to allow an individual receiving services to return to his certified residence or day program because the Agency feels it can no longer provide appropriate care to that individual.

Regardless of the purported reason, a provider's refusal to allow an individual to return to his or her residence or other service program is considered a discharge. Therefore, providers must adhere to the procedures outlined in 14 NYCRR 633.12 and the corresponding OPWDD Community Placement Procedures. This process requires that the individual or the representative of the individual be given the opportunity to object to the discharge and, ultimately, be afforded the opportunity to have a hearing scheduled by OPWDD. Please remember that, if the individual or their advocate objects to the proposed discharge or other proposed change to a service, placement and/or services should remain in place pending conclusion of the 633.12 process.

A provider's attempt to inappropriately discharge an individual is a violation of 14 NYCRR 633.12, as well as Article 16 of the NYS Mental Hygiene Law. In accordance with the OPWDD Accountability Initiative, OPWDD will impose appropriate fines for any such violations and may take additional adverse certification actions as needed. Questions regarding the objection and hearing processes can be directed to the appropriate Regional Office.

cc: Deputy Commissioners
Associate Deputy Commissioners
Provider Associations

*OPWDD Community Placement Procedures are available online at:

https://opwdd.ny.gov/system/files/documents/2020/01/community_placement_procedures-green-book.pdf