

POLICY & PROCEDURE ON GRIEVANCE PROCEDURE

Objection to and Appeal of Care and Treatment

POLICY NO OPWDD – 18 | BY SUSAN J. HOGER, CSW

Reference: 14 NYCRR Part 633.1 | Applicability: All Resource Center for Accessible Living, Inc. (RCAL) staff

1. This agency, in compliance with part 633.1, establishes this procedure addressing the process for objecting to any plan of services or part thereof, other care or treatment, plans for placement or a proposal initiated by the agency/facility to discharge.
2. Participants, parents, guardians or advocates, and the Mental Hygiene Legal Services may object to and appeal any plan of services or part thereof, and proposed changes thereto, other care or treatment with which they disagree, plans for placement, or a proposal initiated by the agency/facility to discharge.
3. The facility will ensure that this information is provided to each participant, parent, guardian or advocate upon admission and as changes occur.
4. A capable adult person may refuse the initiation of a former objection or subsequent appeal on his or her behalf.
5. A person and/or his or her parent, guardian or advocate may select a representative of his or her choice to provide assistance and/or representation, including legal counsel.
6. To resolve an objection:
 - a. Information Mechanism – Objection and Appeal can be done informally between the objecting party and the staff person with the coordination responsibility for the person’s plan of services, the program administrator and/or chief executive officer (or designee). Objections or appeals may be made either verbally or in writing to the parties listed above, in the order in which those parties are listed. [All efforts will be made to resolve objections and appeals within parameters of the team process.] Written confirmation of resolution or inability to reach a resolution shall be sent to the objecting party by the chief executive officer.
 - b. If resolution cannot be reached on an informal basis, the objecting party shall be given the opportunity to submit a formal, written objection requesting a hearing to the chief executive officer (or designee). Within five working days of receipt of a formal written objection, a conference shall be scheduled before the chief executive officer (or designee) with no less than ten (10) days notice. Written confirmation of resolution or inability to reach a resolution shall be sent to the objecting party by the chief executive officer (or designee), within ten (10) working days of that conference.
 - c. If, through the 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, or hearing, to take place before a hearing officer, shall be scheduled with no less than ten (10) days notice to the involved parties. A written decision by the hearing officer shall be sent to the involved parties within fourteen (14) days of that hearing.

- d. If any party to the proceeding is not satisfied with the decision, it may be appealed within ten (10) days to the commissioner of OPWDD who will issue a final written decision to all parties within fourteen (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.
 - e. 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 Laws and Rules.
6. No person shall be denied the opportunity to participate in any hearings related to the objection of any plan or part thereof or proposed changes thereto, other care and treatment, plans for placement, or a proposed initiated by the agency/facility to discharge.
 7. During the period that an objection is undergoing administrative review, a person shall participate in programming mutually agreeable to the objecting party, the service provider, the person, and his or her parent, guardian, advocate or correspondent. Every effort feasible shall be made to maintain the person in at least his or her current level of programming. However, to protect a person's health, safety, or welfare or the health, safety, or welfare of other, 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.
 8. Treatment may be given, other than treatment for which informed consent is required by Section 633.111 or Section 633.13 of this Part and Section 681.13 or 14 NYCRR, 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.

RCAL, Inc., Executive Director
 727 Ulster Avenue, Kingston, NY 12401
 845-331-0541

Taconic DDSO, Director
 25 Center Circle, Wassaic, NY 12592
 845-877-6821

OPWDD, Commissioner
 44 Holland Avenue, Albany, NY 12229
 518-473-9689

Chair Person, Commission on Quality of Care and Advocacy for persons with Disabilities
 401 State Street, Schenectady, NY 12305-2397
 1-800-624-4143

**Third Judicial Department
 Mental Hygiene Legal Services**
 521 Boices Lane, Kingston, NY 12401
 845-382-1899

Reviewed by:

Program Participant	Date
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Staff	Date
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Copy sent to Consumer/Advocate by:

Staff	Date
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