

**Rights and Responsibilities of Persons Receiving Services
Amendments to 14 NYCRR Section 633.4**

PROPOSED REGULATIONS

- **Paragraphs 633.4(a)(2) and (3) are amended as follows:**
 - (2) 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 identify or expression; ethnic background; sexual orientation (including perceived sexual orientation); developmental or other 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] individuals whose need for protection, safety and health care [will] must justify such adaptation. It is the responsibility of the agency/facility or the sponsoring agency to ensure that individuals' 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.)
- **Subparagraphs 633.4(a)(4)(viii), (xii)-(xiv), (xvi), and (xxiv)-(xxvii) are amended as follows:**
 - (viii) 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]their 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]them to live as independently as possible. Such right also includes:

[Bracketed] text in deleted and underlined text is new.

Proposed Regulations: Rights and Responsibilities of Persons Receiving Services

- (xii) observance and participation in the religion of [his or her]their choice, through the means of [his or her]their choice, including the right of choice not to participate;
- (xiii) the opportunity to register and vote and the opportunity to participate in activities that educate [him or her]them in civic responsibilities;
- (xiv) freedom from discrimination, abuse or any adverse action based on [his or her]their 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 use of [his or her]their personal money and property, including regular notice of [his or her]their financial status and the provision of assistance in the use of [his or her]their resources, as appropriate;
- (xxiv) 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]
- (xxv) the opportunity to make, or have made on [his or her]their 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[.];
- (xxvi) the opportunity, if the [person]individual is residing in an OPWDD operated or certified facility, to create a health care proxy (see glossary) in accordance with 14 NYCRR 633.20[.]; or
- (xxvii) the right to express their gender and self-expression.

- **Paragraphs 633.4(a)(8), (9), and (10) are amended as follows:**

- (8) Each [person]individual, and [his or her]their 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]their rights at the facility and rules governing conduct, unless the [person]individual is a capable adult who objects to such notification to a parent or correspondent. Such information shall be conveyed in the [person's]individual'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.)

- (9) An individual[s] or [his or her]their 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]their behalf in accordance with section 633.12 of this Part.
- (10) 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]individual's clinical record.
 - (i) If the facility denies such access in whole or in part, it shall notify the requestor of [his or her]their 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]their right to seek judicial review of the facility's determination pursuant to section 33.16 of the Mental Hygiene Law.

- **Subclause 633.4(a)(15)(i)(e) is amended as follows:**

- (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]they and [his/her]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 shall not condition service delivery on the use of family members or significant others as interpreters.

- **Paragraph 633.4(b)(2) is amended as follows:**

- (2) OPWDD shall verify (see glossary) that the following information was provided to each individual and/or [his or her]their parents, guardians or correspondents (unless the [person]individual is a capable adult and objects to such information being provided to a parent or correspondent):