Catholic Charities Disabilities Services	
Agency Standard and Procedure	
Standard Category	Administration
Standard Title	Objection to Services
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Approved by: Paula Warika, Executive Director	Paula Warika

Standard:

At Catholic Charities Disabilities Services we strive to offer quality services with integrity, compassion, and respect to meet the needs of the individuals we support. However, if an individual, parent, guardian, advocate, correspondent or Mental Hygiene Legal Service objects to a service provided by CCDS they are encouraged to express their concerns or grievances and we have a responsibility to respond to their concern or objection.

1. Any adult persons receiving services from Catholic Charities Disabilities Services, their parents, guardians, correspondents and advocates; and the Mental Hygiene Legal Service may object to services provided by CCDS. The person raising the objection is considered the "objecting party."

2. 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 CCDS to discharge a person from residential services; and a proposal to reduce, suspend or discontinue HCBS waiver service(s).

3. Objections to major medical treatment, for which informed consent is necessary, are not governed by this Standard.

4. The person receiving services, and their parent, guardian, correspondent and advocate, as applicable, shall be advised of the mechanism to resolve an objection upon admission to a CCDS residence or enrollment in CCDS HCBS waiver services, as changes occur, and upon any substantive amendment to this Standard. In addition, if CCDS proposes to reduce, suspend, or discontinue a person's HCBS waiver service(s), CCDS shall, in a form/format approved by the Office for People with Developmental Disabilities (OPWDD), advise the person, and their advocate and care manager, as applicable, of the proposed changes and of the mechanism for resolving an objection to the proposed changes.

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

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

Procedure:

1. When an objection is raised in regards to any HCBS waiver service, unless the objection concerns a proposal to reduce, suspend or discontinue HCBS waiver service(s), a plan for placement, or a proposal initiated by CCDS to discharge a person from residential services, the following process will be utilized:
    a) CCDS will provide an opportunity for informal resolution between the objecting party and relevant staff of CCDS, including the Executive Director, or designee. Such process shall include the person's care manager and advocate, as applicable.
    b) Written confirmation of resolution or inability to reach a resolution shall be sent to the objecting party by the Executive Director, or designee.
    c) 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 OPWDD Regional Director. A hearing will be conducted by OPWDD in accordance with procedures established by OPWDD. A written decision shall be sent to the involved parties following that hearing.
    d) If any party to the proceeding is not satisfied with the decision, it may be appealed, in accordance with procedures established by OPWDD, to the Commissioner of OPWDD, who will issue a final written decision to all parties.
    e) During the period that an objection is undergoing administrative review:
        i. A person shall participate in programming mutually agreeable to the objecting party, CCDS, the person, and their parent, guardian, correspondent or advocate;
        ii. Every effort feasible shall be made to maintain the person in at least their current services; and
        iii. 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 services for, or the relocation or discharge of a person. However, while an objection to placement or discharge is undergoing administrative review, relocation or discharge shall only take place with the approval of the commissioner of OPWDD.

2. When an objection is raised with regard to the reduction, suspension or discontinuance of HCBS waiver services, a plan for placement, or a proposal initiated by CCDS to discharge a person from residential services, the following process will be utilized:
    a) CCDS will provide an opportunity for informal resolution between the objecting party and relevant staff of CCDS, including the Executive Director, or designee. Such process shall include the person's care manager and advocate, as applicable. CCDS will include documentation of the result of the process in the person's record.
    b) Written notice of the parties' inability to resolve the objection shall be sent to the objecting party by the executive director. Such notice shall be in a form and format approved by OPWDD, 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 OPWDD regional director requesting administrative review of the reduction, suspension or discontinuance, in accordance with procedures established by OPWDD, within 14 days after the receipt of the notice. CCDS will not reduce, suspend or discontinue the HCBS waiver service(s) at issue during such 14 day period, unless otherwise agreed to by the parties.
    c) Upon receipt of a written objection requesting an administrative review, the OPWDD regional director, or designee shall contact the objecting party and CCDS to mediate a resolution of the objection. If there is no resolution within 14 days of receipt of the

objection, a hearing shall be scheduled, in accordance with procedures established by OPWDD.

d) A written decision shall be submitted to the objecting party and the agency after the conclusion of the hearing. Either party may appeal the decision to the commissioner of OPWDD in accordance with procedures established by OPWDD. The commissioner of OPWDD will issue a final written decision to all parties.

e) During the period that an objection is undergoing administrative review (including an expedited review), CCDS will not reduce, suspend or discontinue the HCBS waiver service(s) at issue, unless otherwise agreed to by both parties.

f) Notwithstanding the provisions of clauses (b), (c) and (d) of this subparagraph, when CCDS proposes to reduce, suspend or discontinue the provision of a HCBS waiver service(s), to prevent immediate risk to the health or safety of the person or others, CCDS will make reasonable efforts to alleviate the health and safety risks at issue, and CCDS or the objecting party may request an expedited hearing by OPWDD in accordance with procedures established by OPWDD.

   i. A written request for the hearing shall be sent by the agency or objecting party to the commissioner. An agency shall also immediately notify the person, parent, guardian, correspondent and advocate, as applicable, of such request.

   ii. If the commissioner determines that an expedited hearing is warranted, the appropriate regional OPWDD director will schedule a hearing to be held before a hearing officer appointed by the regional OPWDD director.

   iii. The hearing officer's recommendation shall be sent to the parties and sent to the commissioner. The hearing officer shall advise the parties of their opportunity to send a written reply to the recommendation directly to the commissioner of OPWDD The commissioner of OPWDD will issue a final written decision as soon as practicable thereafter.

g) No person or objecting party, or their representative, shall be denied the opportunity by CCDS to participate in any hearings pursuant to this Standard. The person or objecting party or a representative may offer information and ask relevant questions of any parties participating in any such hearing.

h) During the period that the objection is undergoing administrative review, there will be no communication between either CCDS or the objecting party and either the hearing officer or the commissioner of OPWDD, concerning the objection, except on notice and opportunity for all involved parties to participate.

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

j) Treatment may be given, other than treatment for 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 CCDS Executive Director and in accordance with CCDS and OPWDD policies/procedures.

3. At the discretion of the Executive Director, or designee, they will inform CCDA Legal Counsel at any time they deem appropriate.

COMMUNITY
PLACEMENT PROCEDURES

PUBLISHED: JANUARY 1992
(REVISED 2/95)

NEW YORK STATE
OFFICE OF MENTAL RETARDATION AND
DEVELOPMENTAL DISABILITIES

DEFINITIONS

Capable Adult - A person (see definition below) who is 18 years of age or older who is able to understand the nature and implication of various issues such as program planning, treatment, or placement. The assessment of capability in relation to each issue as it arises will be made by the person's Program Planning Team (PPT). This will be done with notice to the Mental Hygiene Legal Service. Capability, as stipulated by the definition, does not mean legal competency; nor does it necessarily relate to a person's capacity to independently handle his or her own financial affairs; nor does it relate to the person's capacity to understand appropriate disclosures regarding proposed professional medical treatment, which must be evaluated independently. Thus a person may be capable of participation in planning for his or her services and programs but still require assistance in the management of financial or other matters. Whenever there is doubt on the part of any other party interested in the welfare of the person as to that person's ability to make decisions, as ascertained by the Program Planning Team, a determination of capability is to be made by an external capability review board designated by the Commissioner. A capable adult person cannot override the authority of a guardian appointed in accordance with the Surrogate Court Procedure Act, or of a conservator, or of a committee.

Community Residential Facility - A particular site, certified by OMRDD, as a place of residence, which is located in the community. A community residential facility may be either State or voluntary agency operated.

Correspondent - Someone (not on the staff of the facility) who assists a person in obtaining necessary services, participates in the person's program planning process as a member of the person's program planning team, and who receives notification of certain significant events in the life of that person. The fact that a correspondent is providing advocacy for a person as a correspondent does not endow that party with any legal authority over the person's affairs.

1. In the first instance, a correspondent would be the parent, legal guardian or committee listed in the person's Individual Program Plan. If parents are deceased or their whereabouts cannot, with due diligence be ascertained, or they have failed to designate an appropriate representative, and there is no guardian or committee, then, for other than Willowbrook Class members, the correspondent may be defined as the relative or other party, if any, in closest relationship with the person who has, at least once within the previous year, manifested interest in the person by communication with the facility regarding the person, or by visiting that person.

2. If none of the above can be located, of if such party or parties refuse to participate in the program planning process for the person, the chief executive officer is to designate another party to be the person's correspondent, unless the person is a Willowbrook Class Member. For Willowbrook Class Members, regardless of present location, the correspondent in this instance will be a member of the Consumer Advisory Board established by the Willowbrook Consent Judgement.

Mental Hygiene Legal Service (MHLS) - An agency of the appellate division of the State Supreme Court established pursuant to Article 47 of the Mental Hygiene Law, and which provides protective legal services, advice, and assistance to persons with developmental disabilities.

Non-Correspondent Status - There is no correspondent acting on behalf of a person as established by an annual determination. Additionally, for a Willowbrook Class member, non-correspondent status shall mean that the correspondent has failed to respond to a notice of proposed placement forwarded pursuant to procedures; or that the correspondent has indicated that he or she does not wish to participate in placement planning. Members of the Willowbrook Class who are considered to be on non-correspondent status will be represented by the Consumer Advisory Board for the Willowbrook Class members.

Person/Persons - For the purposes of this and other policies related to placement, a child or adult with a diagnosis of developmental disability, who is being served by a state, private, or voluntary facility operated/certified by OMRDD.

Placement - The relocation (change of address) of a person from an OMRDD operated or certified residential location to another residential setting as planned and proposed by the person's program planning team (e.g., to an OMRDD operated or certified ICF/DD, community residence, or family care home; to a nursing home; to an independent living situation; to live with family); or relocation to another OMRDD operated or certified residential location as requested by a capable adult or someone acting on behalf of a person.

- "Placement," as used in this and other policies related to placement, does not include the **admission** of someone residing in a non-OMRDD operated or certified residential setting **to** a community residential facility (e.g., someone is admitted to a residential facility from the parent's home).

- Nor does it include the termination of services to a person when the person will no longer be receiving residential services in an OMRDD operated or certified facility (e.g., when the person or the person's correspondent chooses to terminate such services; the person will reside out-of-state; the person chooses to live independently; a determination is made by the facility that it will no longer provide services). In such instances, the person shall be discharged in accordance with the facility's discharge policies/procedures. However, when the facility has made the determination to terminate services, the person has the right to object to and appeal such a determination in conformance with Community Policy CP-10, **Procedures When There are Objections to an Individual Program Plan (IPP), Proposed Changes Thereto, or Facility Initiated Discharge.**

- **Time limited moves** are not placements (see Community Policy CP-9, **Emergency and Transitional Moves; Time-Limited Services Elsewhere).**

- Hospital stays, vacations at camps, and visits with families are neither time-limited moves or placements and are to be handled in a routine manner.

- For **statistical reporting purposes** this definition of placement has no bearing.

Willowbrook Permanent Injunction - A court order, agreed to on March 11, 1993, that replaced the Willowbrook Consent Judgement/Decree in NYSARC and Parisi v. Carey as related to the Willowbrook Developmental Center and any subsequent amendments.

POLICY

As a rule, the placement of a person is not a precipitous event--rather, it is the culmination of planning that takes place during program planning team meetings over a period of time. When a person's program planning team recognizes that the person is ready to move out of the community residential facility, the team should begin discussions relative to placement, and the agency/facility should ensure involvement of the person (and the recognition of his or her preferences, if any), the correspondent, and other interested parties (such as MHLS or, for Willowbrook Class members, the and the plaintiffs' attorney, and others designated by the Willowbrook Permanent Injunction) to the maximum extent practicable.

Discussions to plan placement should ideally coincide with, and be held as part of, regularly scheduled program planning team meetings to which the person and the correspondent have been invited, unless a capable adult objects to the correspondent's participation. A person's ability to understand the issues involved in placement is to be discussed at this time. Any objection to the determination of the program planning team with relation to this issue is to be taken up at this time, pursuant to Policy CP-5, **Review Board to Assess Capability of Persons with Developmental Disabilities.** All meetings are to be scheduled at least ten (10) days after the mailing date of the notice of the meeting to enable other parties to make arrangements to attend. If, at any time, the person or a correspondent who desires to participate in the placement planning process cannot attend a meeting, an appropriate staff member (e.g., the coordinator of the person's program plan) should, subsequent to that meeting, contact and/or meet with them to discuss the placement plans and answer any questions.

Concurrence for placement should occur among all interested parties during the team meeting to plan placement. The involvement of other interested parties, outside of the program planning team, concerned with the placement should take place prior to the time that the placement notification letter is sent to the person or correspondent. When and where practicable, the person and the person's correspondent should be invited to inspect the proposed placement location prior to sending the placement notification.

Placement is to provide a person with opportunities to lead a life more closely approximating that of others who do not have disabilities but are of the same age and sex and meet the psycho-social, medical, vocational, and educational needs of the person. The placement of a person is based on the following goals to the extent practicable:

1. Providing better services to the person.

2. Providing an opportunity for personal development.

3. Providing a more suitable living environment than is available in the person's present setting.

4. Providing the least restrictive and most normal setting available and appropriate to the person's needs.

5. Locating the person closer to family and relatives; or friends, in lieu of family.

This policy applies when a person's program planning team recognizes that the person is ready to move and begins discussion relative to the placement of the person who is residing in a community residential facility to any other living arrangement, whether in the same or another service area; or when such a person or someone acting on his or her behalf requests a change to another OMRDD operated or certified residential setting (also see Community Policy CP-7, **Request to Move to Another OMRDD Setting or to be Discharged**).

In planning for placement, consideration is to be given to the following, and is to be documented in a person's record:

Living Arrangements - Describe the type of residential setting best suited for the person. If the person has a physical disability which must be considered in making a placement, include information regarding the type of structural requirements that must be available. For example, entrance access by ramp, hand-rail, elevator, etc.

Health Services - Describe those health services which will need to be provided to the person on a routine or specialized basis.

Educational/Vocational - Describe the type of educational, habilitative, pre-vocational or vocational programming best suited for the person. Be as descriptive or specific as possible. If special problems or requirements of any kind exist, specify (e.g., problems with vision, hearing, speech, equipment needs). If appropriate, indicate the type of work opportunities best suited for that person, as well as information regarding vocational skills and proficiency.

Family Resources - Provide a description of family support to be expected when the person is placed. Indicate location of involved family members that could influence placement plans. Include the date of the last substantial contact.

Other topics to be considered are:

Recreational Service - Describe the types of recreational activities, both organized and on one's own, in which the person is capable of participating in and enjoys.

Transportation - Describe the type of transportation and/or services which the person requires to attend a day program or work, take advantage of recreational activities, and have access to the community.

Evacuation Capacity - Include a description of the person's currently assessed capacity for evacuation; identify expectations for improvement and note where training emphasis needs to be focused (e.g., decrease use of physical prompts, increase speed, etc.).

Time-Limited Services - This is a projection of the person's possible need for short-term intensive programming (on or off site, as appropriate). Include reasons why such service(s) may be needed.

Legal Services, Including Guardianship - Describe any type of service which may be required by this person (e.g., services concerning financial matters or legal advocacy in terms of rights). Include information regarding needs and/or problems relating to guardianship.

Family Planning - Describe the types of family planning services which should be provided (e.g., sex education, counseling regarding and/or provision of birth control supplies).

Religion - Provide information pertinent to religious preference or background which needs to be considered for appropriate placement. For example, it should be noted, based on knowledge of the person and/or the person's family, if he or she attends church regularly, observes religious dietary practices, etc.

For Willowbrook Class members, there is to be documentation that the availability of Willowbrook entitlements have been considered.

To facilitate the planning process, Form IPP 70, **Living Arrangement Referral** (see Page 6), or equivalent, may be used. However, the considerations made and the documentation of such in the person's record should not be done so far in advance of the actual placement planning to be ineffectual and/or no longer pertinent when a placement is proposed.

Once a determination has been made as to the most appropriate placement, an IPP 71, **Community Services Plan, or equivalent**, is to be developed (see Page 7 and Community Policy CP-3, **Community Services Plan (IPP 71)**. The completion of a **Community Services Plan** means that the placement process is far enough along for the actual planning for a move to take place, and notifications need to be made to interested parties (see Community Policy CP-2, **Notification of Residential Placement**).

When a capable adult or someone acting on behalf of a person has requested a change to another OMRDD operated or certified residential setting, the program planning team is to meet as expediently as possible to discuss the request, and if it concurs, proceed in conformance with this and other placement policies. However, if the program planning team determines that such placement is not in the best interest of the person, the capable adult or the party acting on behalf of the person is to be notified of the program planning team's determination and of the fact that he or she can object to the program planning team's determination in conformance with Community Policy CP-6, **Procedures When There Is An Objection to Placement.**

NAME (LAST) (FIRST) (MI)	C-NUMBER/DDIS NUMBER	DATE OF BIRTH	GENDER

1. INDICATE CURRENT 'LEVEL OF FUNCTIONING'

☐ DDIS ABILITY PROFILE ATTACHED
☐ DDIS SERVICES PROFILE ATTACHED

2. LIVING ARRANGEMENTS REQUIRED (Specify type and include access/barrier requirements)

3. HEALTH SERVICES (Routine or specialized; include sex education, dietary, etc.)

4. EDUCATION/VOCATION

5. FAMILY RESOURCES (Includes referral supports)

Date of last contact

6. OTHER (Includes transportation, recreation, etc.)

7. ACTIONS/OBJECTIVES

Expected date for completion of living arrangement change

Date of Referral | Name | Signature/Title

FACILITY/AGENCY

NYS OMRDD

IPP 70

LIVING ARRANGEMENT REFERRALS

3-81

NAME (LAST) (FIRST) (MI)	C-NUMBER/DDSO NUMBER	DATE OF BIRTH	GENDER

DATE OF PLAN	SOCIAL SECURITY NO.	OTHER IDENTIFICATION NUMBERS

REFERRED BY:	CASE MANAGER (Person to be contacted when there are problems)
AGENCY	NAME
LIAISON	ADDRESS
PHONE	PHONE

SERVICE/ACTIVITY	PROVIDER (NAME/ADDRESS/PHONE)
1. LIVING ARRANGEMENTS	
2. MEALS	
3. PERSONAL	
4. DAY PROGRAMS	
5. SOCIAL/RECREATION	

	NYS OMRDD IPP 71
FACILITY/AGENCY	**COMMUNITY SERVICES PLAN**
	3-81

6. FAMILY	
7. TRANSPORTATION	
8. OTHER	
9. OTHER	
10. OTHER	

STATEMENTS OF PARTICIPATION IN PLAN PROCESS

A. Statement of individual or other person on behalf of individual:

"I have participated in the development of this plan; I am aware of its contents and it meets my approval."

_____ Individual Advocate's Signature

_____ Date

B. Statement of staff and agency representatives:

"We, the undersigned, have participated in the development of this Community Service Plan and approve its objectives."

Signature Agency Representative	Name and Address of Agency	Telephone	Date

DEFINITIONS

Capable Adult - A person (see definition below) who is 18 years of age or older who is able to understand the nature and implication of various issues such as program planning, treatment, or placement. The assessment of capability in relation to each issue as it arises will be made by the person's Program Planning Team (PPT). This will be done with notice to the Mental Hygiene Legal Service. Capability, as stipulated by the definition, does not mean legal competency; nor does it necessarily relate to a person's capacity to independently handle his or her own financial affairs; nor does it relate to the person's capacity to understand appropriate disclosures regarding proposed professional medical treatment, which must be evaluated independently. Thus a person may be capable of participation in planning for his or her services and programs but still require assistance in the management of financial or other matters. Whenever there is doubt on the part of any other party interested in the welfare of the person as to that person's ability to make decisions, as ascertained by the Program Planning Team, a determination of capability is to be made by an external capability review board designated by the Commissioner. A capable adult person cannot override the authority of a guardian appointed in accordance with the Surrogate Court Procedure Act, or of a conservator, or of a committee.

Community Residential Facility - A particular site, certified by OMRDD, as a place of residence, which is located in the community. A community residential facility may be either State or voluntary agency operated.

Consumer Advisory Board Willowbrook Class (CAB) - A seven member board established in conformance with the requirements of the Consent Judgement and composed of parents or relatives of persons with developmental disabilities admitted to OMRDD operated or certified facilities, community leaders, and those with developmental disabilities currently or formerly admitted to OMRDD operated or certified facilities. Its responsibilities include acting **in loco parentis** for members of the Willowbrook Class who have been designated as being without a correspondent (non-correspondent).

Days - Calendar Days. In computing "days" as used in this policy, the day that the notice is received is to be included. If the last day of a designated period ends on a Saturday, Sunday or legal holiday, the next business day shall be identified as the last day of the period. For purposes of this policy, legal holidays are as follows:

1. New Year's Day
2. Martin Luther King's Birthday
3. Washington's Birthday
4. Memorial Day
5. Independence Day
6. Labor Day
7. Columbus Day
8. Veteran's Day
9. Thanksgiving Day
10. Christmas Day

Mental Hygiene Legal Service (MHLS) - An agency of the appellate division of the State Supreme Court established pursuant to Article 47 of the Mental Hygiene Law, and which provides protective legal services, advice, and assistance to developmentally disabled persons.

Non-Correspondent Status - There is no correspondent acting on behalf of a person (see definition below) as established by an annual determination. Additionally, for a Willowbrook Class member, for purposes of this

and other related placement policies, non-correspondent status shall mean that the correspondent has failed to respond to a notice of proposed placement forwarded pursuant to procedures; or that the correspondent has indicated that he or she does not wish to participate in placement planning. Members of the Willowbrook Class who are considered to be on non-correspondent status will be represented by the Consumer Advisory Board for the Willowbrook Class.

Person/Persons - For the purposes of this and other policies related to placement, a child or adult with a diagnosis of developmental disability, who is being served by a state, private, or voluntary facility operated/certified by OMRDD.

Placement - The relocation (change of address) of a person from an OMRDD operated or certified residential location to another residential setting as proposed and planned by the person's program planning team (e.g., to an OMRDD operated or certified ICF/DD, community residence, or family care home; to a nursing home; to an independent living situation; to live with family); or relocation to another OMRDD operated or certified residential location as requested by a capable adult or someone acting on behalf of a person.

- "Placement," as used in this and other policies related to placement, does not include the admission of someone residing in a non-OMRDD operated or certified residential setting to a community residential facility (e.g., someone is admitted to a residential facility from the parent's home).

- Nor does it include the termination of services to a person when the person will no longer be receiving residential services in an OMRDD operated or certified facility (e.g., when the person or the person's correspondent chooses to terminate such services; the person will reside out-of-state; the person chooses to live independently; a determination is made by the facility that it will no longer provide services). In such instances, the person shall be discharged in accordance with the facility's discharge policies/procedures. However, when the facility has made the determination to terminate services, the person has the right to object to and appeal such a determination in conformance with Community Policy CP-10, **Procedures When There are Objections to an Individual Program Plan (IPP), Proposed Changes Thereto, or Facility Initiated Discharge.**

- **Time limited moves** are not placements (see Community Policy CP-9, **Emergency and Transitional Moves; Time-Limited Services Elsewhere).**

- Hospital stays, vacations at camps, and visits with families are neither time-limited moves or placements and are to be handled in a routine manner.

- For statistical reporting purposes this definition of placement has no bearing.

Willowbrook Class Members - All persons who had been admitted to the Willowbrook Developmental Center and who were on resident or leave status as of March 17, 1972.

Willowbrook Permanent Injunction - A court order, agreed to on March 11, 1993, that replaced the Willowbrook Consent Judgement/Decree in NYSARC and Parisi v. Carey as related to the Willowbrook Developmental Center and any subsequent amendments.

POLICY

Prior to the proposed placement of a person residing in a community residential facility, it is the responsibility of designated staff at the person's place of residence to provide written notice (see Pages 6 and 8) of the pending placement to various interested parties . At a minimum, these parties include: the person whose placement is being considered and that person's correspondent (unless the person is a capable adult and objects to such notice being made), MHLS, and, for the Willowbrook Class only, the plaintiffs' attorney and others designated by the Willowbrook Permanent Injunction.

The purpose of the notice is to provide the person or the correspondent with sufficient information about the proposed placement, including the expected date of the move (which is to be as realistic as possible, given the circumstances at the time the notice is sent) and a known location, thereby allowing him or her to express agreement or lack of agreement with the planned move. It is necessary that the person or correspondent **receive** the notice so as to allow him or her adequate time from the date of receipt to provide the sending facility with his or her opinion relative to the move. A form to facilitate this should be included with the notice (see Page 10, **Proposed Placement Response** form). The response must be received by the sending facility within 30 days after the person or correspondent received the notice of proposed placement.

Such notice must be based on a realistic projection of bed availability or opening of a residential site. Notification procedures must be repeated when a planned move does not take place and a new location is identified; or the move to the originally specified location is to take place, but more than six months have elapsed since the notification of placement was made, even if there were no objections.

If the person is a capable adult, the notification to his or her correspondent, MHLS, and the Willowbrook plaintiffs' attorney, and others designated by the Willowbrook Permanent Injunction may be in the form of a copy of the notification letter sent to that person.

If the person is not a capable adult, the notification to the person, MHLS, and the Willowbrook plaintiff's attorney, and others designated by the Willowbrook Permanent Injunction may be in the form of a copy of the notification letter sent to the correspondent. In such situations, all parties receiving notification can object to the proposed placement.

If a **Community Services Plan** (IPP 71), or equivalent, is not included with the proposed placement notification letter because it has not been prepared, every effort is to be made to make it available within the notification period. When the **Community Services Plan** is provided after the notification letter, the reviewer is to be provided an additional five (5) days to review the document and respond to the proposed placement.

If, within the 30 day response period, a formal written request for additional data is received from a notification recipient, the time within which a response to the proposed placement is to be made is extended for a maximum of ten (10) days following the reply to the request by the residential facility. All good faith efforts should be made to comply with the request. However, unresolved disputes between the parties relative to a request for additional data can be dealt with at a subsequent hearing before a hearing officer.

In addition to the notification, any person for whom placement is proposed must be personally afforded an appropriate explanation of the proposed placement and his or her right to object to such a placement, and to request a hearing, if so desired. It is, therefore, necessary to make such a presentation to the person in terms and in a manner that will most easily facilitate understanding by that person (e.g., a language other than English, Braille, communications board, computer assisted technology, sign language).

The notification to the designated correspondent of a Willowbrook Class member must include a statement that failure on the correspondent's part to respond to the proposed placement within 30 days of the receipt of the notice will result in the designation of the Consumer Advisory Board as the advocate for the person. The CAB will then review the proposed placement and make recommendations. The Consumer Advisory Board is to be advised that it has fifteen (15) days in which to respond; it also is to be advised that the previously designated correspondent was notified and in that notification told that there was a 30 day time period for responding, and that no response was received.

When a capable adult agrees to the proposed placement, placement may be effected prior to the end of the 30 day notification period. The following parties are to be advised of the agreement to the placement and the expected date of the move: the correspondent and MHLS (as long as that capable adult does not object); in the case of a Willowbrook Class member only, the plaintiffs attorney, the CAB, and others designated by the permanent injunction.

Documentation, with dates, of all notifications sent and responses received is to be kept in the person's record. The placement notification letter to a correspondent, MHLS, and the Consumer Advisory Board must be sent by certified mail, return receipt requested.

The facility is responsible for developing its own placement policies and procedures, which, at a minimum, comply with those of OMRDD, to ensure implementation of the notification process. Those policies and procedures are to designate the staff responsible for ensuring that appropriate correspondence and documents are sent to the required parties. The person's coordinator or the social worker on the person's program planning team are considered to be the preferable designees. The policies and procedures must also identify a mechanism whereby the local Reimbursement Agent is notified of the proposed placement (which may be a copy of the placement notification letter), and that the required OMRDD forms, or equivalent, are completed.

When, due to an emergency placement (see Community Policy CP-9, **Emergency and Transitional Moves; Time-Limited Services Elsewhere**) the notification process cannot be completed in advance, it must be done retroactively.

At a minimum, the notification of residential placement is to include:

1. Advice to the person or correspondent that a response must be received within 30 days of the date he or she received the notice.

2. The nature and location of the proposed placement, including certified bed capacity of both the sending and receiving facility.

3. The date on which placement is scheduled or expected to take effect.

4. Specific information (details) on how the placement offers the person:

   a. Opportunities for personal development.
   b. The least restrictive environment available and appropriate to his or her needs.
   c. A more suitable living environment than the sending facility.
   d. Better services.

5. Additional information, if any, as to why the proposed placement is in the best interest of the person. For Willowbrook Class members only, when a placement is to be made in a facility with a larger capacity then the current living environment, there must be a justification for this move.

6. The name, business address and telephone number of a staff contact at both the sending and receiving facilities and at the day program(s).

7. Advice that arrangement will be made, upon request, to visit the site of the proposed placement or day program and to meet the staff or other appropriate parties.

8. Advice that the procedures to be followed if the recipient disagrees with the proposed placement are enclosed.

9. Advice that either a **Community Services Plan** (IPP 71, or equivalent) is enclosed, or can be made available on request.

Any policies/procedures addressing placement that are developed by an agency/facility are to reflect compliance with this and other OMRDD placement related policies.

SAMPLE - PLACEMENT NOTIFICATION LETTER TO CAPABLE ADULT RESIDENT

This letter is to be adapted to suite the recipient and the situation
but it must include all the information herein.

Date _____

Dear ***(Person for whom placement is proposed)*** :

As was discussed by you and your program planning team, you will be moving from _____ _____(with a certified bed capacity of ____) to a ***(specify: ICF/DD, DC, CR, FC or any certified location)*** operated by _____ and located at _____ (with a certified bed capacity of _____) on or about _____. [When a person is to receive either waiver or other non-certified services at the specified location, include the following sentence: As a resident at this location _____ will receive the following services ***(specify res hab, day hab, environmental modifications, etc.)***]

The move has been planned because it has been determined that the proposed placement will offer you better services, opportunities for personal development and a more suitable living environment.

We have considered whether the proposed placement complies with statutory, regulatory and other legal requirements and whether it is the least restrictive and most normal setting available and appropriate to your needs. Since we believe this proposed move meets these conditions and is in your best interest, and as you understand the implications and nature of the proposed placement, we are proceeding with plans for you to make the move.

If you have not already done so, you are invited to visit both the residential placement site and proposed day program site. If you wish to do so, please contact me so I can make arrangements.

Please indicate whether you agree or disagree with the plan for placement by signing the attached form. If you have any questions about the move or how to fill out this form, please discuss them with me. If, for any reason, you have reconsidered the move and object to it, you have 30 days from the receipt of this notice in which to make this objection. You also have the right to present your objection at a hearing (see attached "Summary of Procedures for Responding to Placement Proposals"). If we do not hear from you within 30 days of your receipt of this notice, we will proceed to make the placement.

If you have any questions, including how to complete the attached "Proposed Placement Response" form, please contact me at ***(Phone number)***.

Sincerely yours,

Attachments: Proposed Placement Agreement Response Form
Summary of Procedures for Objecting to Placement Proposals
Notice of Rights (for Willowbrook Class members only)
Community Services Plan (IPP-70 or equivalent)

cc: Mental Hygiene Legal Service (MHLS)
Plaintiffs' Attorney (for Willowbrook Class members only)
Consumer Advisory Board
Receiving Facility (send to staff member named as contact)
Day Program (send to staff member named as contact)
DDSO

SAMPLE - PLACEMENT NOTIFICATION LETTER TO CORRESPONDENT

This letter is to be adapted to suite the recipient and the situation
but it must include all the information herein.

Date _____

Dear ***(Correspondent)*** :

We are planning to move _____ from _____(with a certified bed capacity of _____) to a ***(specify: ICF/DD, DC, or CR, FC or any certified location*** operated by _____ and located at _____ (with a certified bed capacity of _____) on or about _____. [When a person is to receive either waiver or other non-certified services at the specified location, include the following sentence: As a resident at this location _____ will receive the fol lowing services ***(specify res hab, day hab, environmental modifications, etc.)***]

This move has been planned because it has been determined that the proposed placement will offer him/her better services, a greater opportunity for personal development and a more suitable living environment.

The staff of this facility/agency have considered whether the proposed placement complies with statutory, regulatory and other legal requirements and whether it is the least restrictive and most normal setting available and appropriate to _____'s need. Since we believe this proposed move meets these conditions and is in _____'s best interest, we are requesting your agreement. Although we are including a copy of the Community Service Plan, you are invited to inspect the complete record on which the proposed placement is based.

You are also invited to visit both the residential placement site and proposed day program site. If you wish to do so, please contact me so I can make the arrangements, or you may contact the following parties directly:

(Name of Residential Program Contact	***(Name of Day Program Contact***
Address	***Address***
Telephone Number)	***Telephone Number)***

Please indicate, on the enclosed form, as to whether you agree or disagree with the proposed placement. If you do not agree, you have the right to request a hearing at which you may present your objections (see attached "Summary of Procedures for Responding to Placement Proposals").

If you, as correspondent, do not complete and return the enclosed "Proposed Placement Response" form within 30 days of receipt of this notice, and no other timely objection is received, we will proceed to make the placement. ***(Or, use the following for a Willowbrook class member: "If you, as correspondent, do not complete and return the enclosed "Proposed Placement Response" form within 30 days of receipt of this notice, the Consumer Advisory Board for the Willowbrook Class will be designated to advocate for the Class member, to review the proposed placement, and to make recommendations.)***

If you have any questions, including how to complete the attached "Proposed Placement Response" form, please contact me at ____(Phone number)____.

Attachments: Proposed Placement Response Form
Summary of Procedures for Responding to Placement Proposals
Notice of Rights (for Willowbrook Class members only)
Community Services Plan (IPP-70 or equivalent)

cc: Person for whom placement is proposed
Mental Hygiene Legal Service (MHLS)
Plaintiffs' Attorney (for Willowbrook Class members only)
Consumer Advisory Board
Receiving Facility (send to staff member named as contact)
Day Program (send to staff member named as contact)
DDSO

(SAMPLE)

PROPOSED PLACEMENT RESPONSE

(To be returned within 30 days of receipt)

Re: _____

(Person's Name)

Proposed Placement Location:

(Provide Name and Address of Proposed Placement)

Please check the appropriate box below:

__ **I agree** to the placement of the above named person at the above stated placement location.

__ **I do not agree** to the placement of the above named person and request that a hearing be scheduled.

__ **I do not agree to the placement at this time and I would like to discuss the placement further.** Please contact me.

Name _____

Address _____

_____

Telephone _____

Signature _____

Date _____

SUMMARY OF PROCEDURES FOR RESPONDING TO PLACEMENT PROPOSALS

Before you received notice of placement, you should have been invited to participate in one or more program planning team meetings to discuss, among other things, possible community placement or other placement alternatives. You should have been included in all planning leading to the proposed placement. The only exception to this requirement would occur when a person who is residing in an OMRDD operated or certified facility, who is at least 18 years of age and is considered to be capable of making a decision related to his or her placement, specifically requests that a correspondent not be involved in such meetings or plans. A person's program planning team makes the determination as to whether or not he or she is capable of making such a determination; however, at that time you do have the right to object to and appeal this determination.

If you agree to the proposed placement by indicating this on the "Proposed Placement Response" form, the move will take place (unless there is an objection by the Mental Hygiene Legal Services). Persons who are 18 year of age or older and who are considered capable to do so, may agree to a proposed move on their own.

If you do not agree to the proposed placement, you should note your objection on the "Proposed Placement Response" form and return it to the sender within 30 days of receipt of the notice.

If you do not respond within 30 days of receipt of the notice and no other timely objection is received, we will proceed with the proposed placement. If you are the correspondent for a member of the Willowbrook Class, and you do not respond within 30 days, the Willowbrook Consumer Advisory Board will be authorized to act in your place in connection with the proposed placement.

If you disagree with the proposed placement and formally object in writing, and the facility wishes to proceed with the proposed placement, within five days of receipt of your formal written objection OMRDD will act upon your request for a hearing before a hearing officer. You will be given notice at least ten days in advance of the date on which this hearing will take place.

At this hearing, you have the right:

- To be assisted by a lawyer or any other representative you choose.
- To make any statement, or refer the hearing officer to any document, evidence, or other information in support of you objection to the proposed placement.
- To ask questions of facility representatives at the hearing, and to request the presence of other facility employees who can provide necessary information.
- To object to the consideration of documents, evidence, or other information offered at the hearing.

Within fourteen days of completion of the hearing, the hearing officer must decide, in writing, whether it has been shown that the proposed placement will offer the person better services, opportunities for personal development, and more suitable living environment than at his or her present setting; that the new placement is the least restrictive and the most appropriate alternative available; whether the proposed placement and program comply with statutory, regulatory, and any other legal requirements; and whether any other considerations advanced by the objecting party or parties renders the placement one which is not in the best interest of the person.

Your objection to the proposed placement will be sustained if the documents, evidence and other information supports a finding that the reasons advanced by you as to why the proposed placement is not in the person's best interest outweigh the benefits the proposed placement will offer the person.

If you do not agree with the decision of the hearing officer, you may, within ten days of receipt of the decision, ask the Commissioner of OMRDD to review the documents, evidence, and other information and render a written decision on your appeal.

The Commissioner will decide on your appeal within fourteen days of your request. The person may not be moved until all administrative proceedings have been completed, unless an emergency move is necessary. In certain emergencies, the placement procedures must be followed after the move is made, and you still have the opportunity to agree with or object to the move.

You may obtain a copy of the detailed official policies and procedures related to placement by writing or calling the staff member named as your contact in the notice of placement.

DEFINITIONS

Capable Adult - A person (see definition below) who is 18 years of age or older who is able to understand the nature and implication of various issues such as program planning, treatment, or placement. The assessment of capability in relation to each issue as it arises will be made by the person's Program Planning Team (PPT). This will be done with notice to the Mental Hygiene Legal Service. Capability, as stipulated by the definition, does not mean legal competency; nor does it necessarily relate to a person's capacity to independently handle his or her own financial affairs; nor does it relate to the person's capacity to understand appropriate disclosures regarding proposed professional medical treatment, which must be evaluated independently. Thus a person may be capable of participation in planning for his or her services and programs but still require assistance in the management of financial or other matters. Whenever there is doubt on the part of any other party interested in the welfare of the person as to that person's ability to make decisions, as ascertained by the Program Planning Team, a determination of capability is to be made by an external capability review board designated by the Commissioner. A capable adult person cannot override the authority of a guardian appointed in accordance with the Surrogate Court Procedure Act, or of a conservator, or of a committee.

Person/Persons - For the purposes of this and other policies related to placement, a child or adult with a diagnosis of developmental disability, who is being served by a state, private, or voluntary facility operated/certified by OMRDD.

Placement - The relocation (change of address) of a person from an OMRDD operated or certified residential location to another residential setting as proposed and planned by the person's program planning team (e.g., to an OMRDD operated or certified ICF/DD, community residence, or family care home; to a nursing home; to an independent living situation; to live with family); or relocation to another OMRDD operated or certified residential location as requested by a capable adult or someone acting on behalf of a person.

- "Placement," as used in this and other policies related to placement, does not include the **admission** of someone residing in a non-OMRDD operated or certified residential setting to a community residential facility (e.g., someone is admitted to a residential facility from the parent's home).

- Nor does it include the termination of services to a person when the person will no longer be receiving residential services in an OMRDD operated or certified facility (e.g., when the person or the person's correspondent chooses to terminate such services; the person will reside out-of-state; the person chooses to live independently; a determination is made by the facility that it will no longer provide services). In such instances, the person shall be discharged in accordance with the facility's discharge policies/procedures. However, when the facility has made the determination to terminate services, the person has the right to object to and appeal such a determination in conformance with Community Policy CP-10, **Procedures When There are Objections to an Individual Program Plan (IPP), Proposed Changes Thereto, or Facility Initiated Discharge.**

- **Time limited moves** are not placements (see Community Policy CP-9, **Emergency and Transitional Moves; Time-Limited Services Elsewhere).**
- Hospital stays, vacations at camps, and visits with families are neither time-limited moves or placements and are to be handled in a routine manner.
- For **statistical reporting purposes** this definition of placement has no bearing.

POLICY

Prior to an actual placement, but at a point when all the information is available, a written plan, which is called a Community Services Plan, must be prepared for each person to be placed in another residential setting. This plan is to identify who can provide services and where the person can receive those services in the community. The plan is to be prepared with the input of:

1. The person whose placement is being proposed.
2. The person's correspondent (unless the person is a capable adult and objects to such participation.
3. The person's program planning team.
4. The Resident Resource Agent.
5. Designated staff of any future providers of service in the community, including the person's anticipated residential facility and day program.
6. Designated staff of the local Department of Social Services, if necessary (e.g., the person is on conditional release from a developmental center).
7. Designated staff of the County Mental Health Board (Community Mental Retardation Services) if the person is eligible for and/or needs services from that agency.
8. Mental Hygiene Legal Service (MHLS).
9. For Willowbrook Class members only: the plaintiffs' attorney and others designated by the Willowbrook Permanent Injunction.

This plan is to describe the following as minimal requirements, based on a person's identified needs, and is to include the names and addresses of service providers who are available to provide the described services:

1. The person's current and proposed place of residence.
2. Arrangements for respite, if appropriate.
3. Medical and health services.
4. Sources of economic support for the person.
5. Pre-vocational and/or vocational training, or work placement, if appropriate.
6. Educational programs (required for all persons 21 years of age and under).
7. Training, including, as appropriate, activities of daily living, mobility, social and socialization programs, and activities including recreation and leisure time pursuits.
8. Family, friends and other parties concerned with the well-being of the person.
9. Assistance needed for self-care and the activities of daily living.
10. Transportation arrangements for employment, services, programs, visits, and recreation.

Each plan is to identify someone as having program plan coordination functions who will be responsible for implementing, reviewing, and revising the services detailed in the plan.

Form IPP-71, **Community Services Plan** (or equivalent), should be used (see pages 4 and 5).

NAME (LAST) (FIRST) (MI)	C-NUMBER/DDIS NUMBER	DATE OF BIRTH	GENDER

DATE OF PLAN	SOCIAL SECURITY NO.	OTHER IDENTIFICATION NUMBERS

REFERRED BY:	CASE MANAGER (Person to be contacted when there are problems)
AGENCY	NAME
LIAISON	ADDRESS
PHONE	PHONE

SERVICE/ACTIVITY	PROVIDER (NAME/ADDRESS/PHONE)
1. LIVING ARRANGEMENTS	
2. HEALTH	
3. FINANCIAL	
4. DAY PROGRAM	
5. SOCIAL/RECREATION	

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FACILITY/AGENCY	**COMMUNITY SERVICES PLAN**
	3-81

6. FAMILY	
7. TRANSPORTATION	
8. OTHER	
9. OTHER	
10. OTHER	

STATEMENTS OF PARTICIPATION IN PLAN PROCESS

A. Statement of individual or other person on behalf of individual

"I have participated in the development of this plan; I am aware of its contents and it meets my approval."

_____ Individual Advocate's Signature

_____ Date

B. Statement of staff and agency representatives

"We, the undersigned, have participated in the development of this Community Service Plan and approve its objectives."

Signature Agency Representative	Name and Address of Agency	Telephone	Date

State of New York	Date Issued	T.L. No.	Page	Topic No.
	2/95	62	1 of 1	CP-4(Rev.)
	Chapter Community Policy			
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES	Subject Placement of People in the Community			
POLICY AND PROCEDURES	Topic Approval of Placement by Client or Client's Correspondent			

This policy has been deleted.

Information relative to approval of proposed placement

is found in Community Policy CP-2, Notification of Residential Placement.

State of New York	Date Issued	T.L. No.	Page	Topic No.
	2/95	62	1 of 1	CP-5(Rev.)
	Chapter	Community Policy		
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES	Subject	Placement of People in the Community		
POLICY AND PROCEDURES	Topic	Review Board to Assess Capability of Persons with Developmental Disabilities		

DEFINITIONS

Capable Adult - A person (see definition below) who is 18 years of age or older who is able to understand the nature and implication of various issues such as program planning, treatment, or placement. The assessment of capability in relation to each issue as it arises will be made by the person's Program Planning Team (PPT). This will be done with notice to the Mental Hygiene Legal Service. Capability, as stipulated by the definition, does not mean legal competency; nor does it necessarily relate to a person's capacity to independently handle his or her own financial affairs; nor does it relate to the person's capacity to understand appropriate disclosures regarding proposed professional medical treatment, which must be evaluated independently. Thus a person may be capable of participation in planning for his or her services and programs but still require assistance in the management of financial or other matters. Whenever there is doubt on the part of any other party interested in the welfare of the person as to that person's ability to make decisions, as ascertained by the Program Planning Team, a determination of capability is to be made by an external capability review board designated by the Commissioner. A capable adult person cannot override the authority of a guardian appointed in accordance with the Surrogate Court Procedure Act, or of a conservator, or of a committee.

Person/Persons - For the purposes of this and other policies related to placement, a child or adult with a diagnosis of developmental disability, who is being served by a state, private, or voluntary facility operated/certified by OMRDD.

POLICY

It is the responsibility of a person's program planning team to determine on a situation specific basis whether a person is a capable adult who is able to understand the nature and implication of various issues such as program planning, treatment, and movement. If there is any question as to the determination of the program planning team with relation to such issues, a Capability Review Board is to review the situation and make a determination. MHLS is to be notified and consulted when this review takes place.

To facilitate placement of persons, the B/DDSO director is to contact the Commissioner to request the establishment of a Capability Review Board to assess the ability of an adult residing in a facility to understand the nature and implications of movement when the determination of the program planning team has been disputed. This Capability Review Board is to be composed of representatives of clinical and legal professions and is to have at least three members. One members is to be either a psychiatrist or psychologist certified by the New York State Department of Education. No member of the board is to be on the staff of the facility currently providing services to the person, or of a facility which proposes to provide service.

DEFINITIONS

Capable Adult - A person (see definition below) who is 18 years of age or older who is able to understand the nature and implication of various issues such as program planning, treatment, or placement. The assessment of capability in relation to each issue as it arises will be made by the person's Program Planning Team (PPT). This will be done with notice to the Mental Hygiene Legal Service. Capability, as stipulated by the definition, does not mean legal competency; nor does it necessarily relate to a person's capacity to independently handle his or her own financial affairs; nor does it relate to the person's capacity to understand appropriate disclosures regarding proposed professional medical treatment, which must be evaluated independently. Thus a person may be capable of participation in planning for his or her services and programs but still require assistance in the management of financial or other matters. Whenever there is doubt on the part of any other party interested in the welfare of the person as to that person's ability to make decisions, as ascertained by the Program Planning Team, a determination of capability is to be made by an external capability review board designated by the Commissioner. A capable adult person cannot override the authority of a guardian appointed in accordance with the Surrogate Court Procedure Act, or of a conservator, or of a committee.

Days - Calendar Days. In computing "days" as used in this policy, the day that the notice is received is to be included. If the last day of a designated period ends on a Saturday, Sunday or legal holiday, the next business day shall be identified as the last day of the period. For purposes of this policy, legal holidays are as follows:

1. New Year's Day
2. Martin Luther King's Birthday
3. Washington's Birthday
4. Memorial Day
5. Independence Day
6. Labor Day
7. Columbus Day
8. Veteran's Day
9. Thanksgiving Day
10. Christmas Day

Emergency Move - The immediate and unplanned change of residence of a person due to a sudden and acute medical or psychotic episode, behavior constituting an imminent danger of serious harm to another resident or others, or any other circumstance necessitating the immediate change of residence of a person.

Person/Persons - For the purposes of this and other policies related to placement, a child or adult with a diagnosis of developmental disability, who is being served by a state, private, or voluntary facility operated/certified by OMRDD.

Placement - The relocation (change of address) of a person from an OMRDD operated or certified residential location to another residential setting as proposed and planned by the person's program planning team (e.g., to an OMRDD operated or certified ICF/DD, community residence, or family care home; to a nursing home; to an independent living situation; to live with family); or relocation to another OMRDD operated or certified residential location as requested by a capable adult or someone acting on behalf of a person.

- "Placement," as used in this and other policies related to placement, does not include the **admission** of someone residing in a non-OMRDD operated or certified residential setting **to** a community residential facility (e.g., someone is admitted to a residential facility from the parent's home).

- Nor does it include the termination of services to a person when the person will no longer be receiving residential services in an OMRDD operated or certified facility (e.g., when the person or the person's correspondent chooses to terminate such services; the person will reside out-of-state; the person chooses to live independently; a determination is made by the facility that it will no longer provide services). In such instances, the person shall be discharged in accordance with the facility's discharge policies/procedures. However, when the facility has made the determination to terminate services, the person has the right to object to and appeal such a determination in conformance with Community Policy CP-10, **Procedures When There are Objections to an Individual Program Plan (IPP), Proposed Changes Thereto, or Facility Initiated Discharge.**

- **Time limited moves** are not placements (see Community Policy CP-9, **Emergency and Transitional Moves; Time-Limited Services Elsewhere).**

- Hospital stays, vacations at camps, and visits with families are neither time-limited moves or placements and are to be handled in a routine manner.

POLICY

All objections to placement are to be made pursuant to Section 633.12 of 14 NYCRR, as set forth is this and other applicable OMRDD policies/procedures. Except where a person is a capable adult and agrees to a placement, objections by any party required to be notified of a proposed placement requires a hearing as set forth below. Where a capable adult agrees to a proposed placement, placement may take place without delay, and all parties are to be notified.

When a party objects to a placement, but has not requested a hearing, the chief executive officer or designee is to attempt to resolve this objection on an informal basis within fourteen days of the facility being made aware of the objection. If no resolution can be reached, and the objecting party desires a hearing, a formal written objection requesting a hearing is to be submitted. If such written objection is not forthcoming within five days, the placement process is to continue.

When a timely formal written objection to placement is made by any party required to be notified during the 30 day notification period, the placement cannot be made pending the completion of the administrative proceedings set forth herein. However, the Commissioner may move a person prior to, or during the proceedings, if proper documentation, presented by the chief executive officer, shows that an emergency move is required. In this case, retroactive notice of the move is given to those parties designated in Community Policy CP-2, **Notification of Residential Placement.**

If a formal written objection is not received within 30 days of the receipt of the placement notification or within any authorized extension of time, the placement may be completed as planned.

Should a formal objection be made and a hearing be necessary, it will be held before a hearing officer, designated by the Commissioner of OMRDD, who has experience with people with developmental disabilities, but who is not employed at either the sending or proposed receiving facility.

Transcripts or recordings are to be available of all hearings and kept on file at the sending facility for twelve (12) months.

RESPONSIBILITY		PROCEDURE
Objecting Party	1.	Conveys objection to the facility's chief executive officer or designee.
Chief Executive Officer or Designee	2.	If a party objects to the placement, but has not requested a hearing, attempts to informally resolve objection(s). Notes objection and proposed strategies for resolution in the person's clinical record.
Chief Executive Officer	3.	Sends letter of confirmation to objecting party with results of attempts to informally resolve objection(s). If objecting party submits a formal written objection requesting a hearing, notifies B/DDSO immediately upon receipt of the objection of need to schedule a hearing.
B/DDSO Director	4.	Within five (5) days after the receipt of a demand for a hearing, schedules the hearing and provides no less than ten (10) days' notice to the involved parties.
	5.	Ensures that notice of the hearing is sent by certified mail, return receipt requested, to all parties who received the original notices of placement, or notification copies thereof.
Objecting Party, Resident, Chief Executive Officer of the Person's Residential Facility, and MHLS	6.	May appear with counsel or any other representative, may make any statement respecting the proposed placement, and may call to the attention of the hearing officer conducting the hearing, any documents relevant to the proposed placement. Such documents will have been made available and will continue to be available to the party objecting to the placement.

Chief Executive Officer or Designee, of person's Residential Facility	7.	Designates appropriate staff (who may or may not be accompanied by counsel) to attend the hearing for the purpose of presenting evidence and information in support of the proposed placement and answering any inquiries put to them by the hearing officer.
	8.	Attends the hearing to state the reasons for the proposed placement and the basis therefor and provide relevant documentation upon which a decision can be based.
Hearing Officer	9.	Has the authority to require the presence of anyone, in addition to those designated by the chief executive officer. If necessary, an adjournment of not more than five (5) days may be allowed to secure the presence of such parties. However, adjournments are not to be favored.
	10.	Ensures that the hearing testimony and statements are recorded, either by a stenographer or electronically.
	11.	Accepts all relevant written statements and documents, and testimony from all parties that were entitled to notice of the proceedings and who wish to be heard.
	12.	Determines if the proposed placement will offer the person better services, an opportunity for personal development, and a more suitable living environment than that available at the person's present setting. In making this determination, considers, too, whether the proposed placement setting is the least restrictive appropriate alternative available, and whether any other considerations advanced by the objecting party or parties renders the placement one which is not in the best interest of the person. Sustains the objection to the proposed placement if, after determining and considering the above-mentioned factors, he or she is convinced that the proposed placement is not in the person's overall best interest.
	13.	Within fourteen (14) days of the hearing, renders a decision in writing setting forth the conclusion reached and the reasons therefor and forwards it to the B/DDSO director.
B/DDSO Director	14.	Immediately distributes copies of the decision to all parties by certified mail, return receipt requested.

Objecting Party or Chief Executive Officer of the Person's Residential Facility	15.	If the decision is unsatisfactory, may within ten (10) days of receipt of the decision, seek review by the Commissioner by submitting a request to the Commissioner.
Commissioner	16.	May, at his or her discretion, send the matter back to the hearing officer for further review.
	17.	Renders a written decision on the appeal. The Commissioner will base his or her decision on a review of all evidence presented at the previous hearing.
	18.	Decides all appeals within fourteen (14) days of the request for review, and advises all parties of decision by certified mail, return receipt requested.
Objecting Party	19.	May seek judicial review as provided by the laws of New York State.

State of New York	Date Issued	T.L. No.	Page	Topic No.
	2/95	62	1 of 4	CP-7(Rev. 2)
	Chapter	Community Policy		
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES	Subject	Placement of People in the Community		
POLICY AND PROCEDURES	Topic	Requests to Move to Another Setting or to be Discharged		

DEFINITIONS

Capable Adult - A person (see definition below) who is 18 years of age or older who is able to understand the nature and implication of various issues such as program planning, treatment, or placement. The assessment of capability in relation to each issue as it arises will be made by the person's Program Planning Team (PPT). This will be done with notice to the Mental Hygiene Legal Service. Capability, as stipulated by the definition, does not mean legal competency; nor does it necessarily relate to a person's capacity to independently handle his or her own financial affairs; nor does it relate to the person's capacity to understand appropriate disclosures regarding proposed professional medical treatment, which must be evaluated independently. Thus a person may be capable of participation in planning for his or her services and programs but still require assistance in the management of financial or other matters. Whenever there is doubt on the part of any other party interested in the welfare of the person as to that person's ability to make decisions, as ascertained by the Program Planning Team, a determination of capability is to be made by an external capability review board designated by the Commissioner. A capable adult person cannot override the authority of a guardian appointed in accordance with the Surrogate Court Procedure Act, or of a conservator, or of a committee.

Correspondent - Someone (not on the staff of the facility) who assists a person in obtaining necessary services, participates in the person's program planning process as a member of the person's program planning team, and who receives notification of certain significant events in the life of that person. The fact that a correspondent is providing advocacy for a person as a correspondent does not endow that party with any legal authority over the person's affairs.

1. In the first instance, a correspondent would be the parent, legal guardian or committee listed in the person's Individual Program Plan. If parents are deceased or their whereabouts cannot, with due diligence be ascertained, or they have failed to designate an appropriate representative, and there is no guardian or committee, then, for other than Willowbrook Class members, the correspondent may be defined as the relative or other party, if any, in closest relationship with the person who has, at least once within the previous year, manifested interest in the person by communication with the facility regarding the person, or by visiting that person.

2. If none of the above can be located, of if such party or parties refuse to participate in the program planning process for the person, the chief executive officer is to designate another party to be the person's correspondent, unless the person is a Willowbrook Class Member. For Willowbrook Class Members, regardless of present location, the correspondent in this instance will be a member of the Consumer Advisory Board established by the Willowbrook Consent Judgement.

Discharge - By regulation, most facilities are required to have admission and discharge policies. As used in that context, discharge means the release of a person from the facility and the termination of programs/services at the facility. "Discharge" can be the administrative process that takes place to remove a person's name from the records when that person, who has undergone the placement process, takes up residence in another facility.

However, "discharge" also takes place when a residential or day program facility determines, in conformance with its policies/procedures, that it can no longer provide programming/services, even if it has not been able to make provision for alternatives. In a developmental center, or for a person on conditional release from a developmental center, a person's "discharge" must also comply with Article 29 of the Mental Hygiene Law, thereby terminating a person's "inpatient status" (see developmental center Policy 2.5.1). Community based facilities, whether State or voluntary operated, do not come under the requirements of Article 29 relative to legal admission or discharge and can, therefor, establish their own criteria for discharge, which must be in compliance with the regulations governing that class of facility.

Non-Correspondent Status - There is no correspondent acting on behalf of a person as established by an annual determination. Additionally, for a Willowbrook Class member, non-correspondent status shall mean that the correspondent has failed to respond to a notice of proposed placement forwarded pursuant to procedures; or that the correspondent has indicated that he or she does not wish to participate in placement planning. Members of the Willowbrook Class who are considered to be on non-correspondent status will be represented by the Consumer Advisory Board for the Willowbrook Class members.

Person/Persons - For the purposes of this and other policies related to placement, a child or adult with a diagnosis of developmental disability, who is being served by a state, private, or voluntary facility operated/certified by OMRDD.

Placement - The relocation (change of address) of a person from an OMRDD operated or certified residential location to another residential setting as proposed and planned by the person's program planning team (e.g., to an OMRDD operated or certified ICF/DD, community residence, or family care home; to a nursing home; to an independent living situation; to live with family); or relocation to another OMRDD operated or certified residential location as requested by a capable adult or someone acting on behalf of a person.

- "Placement," as used in this and other policies related to placement, does not include the **admission** of someone residing in a non-OMRDD operated or certified residential setting to a community residential facility (e.g., someone is admitted to a residential facility from the parent's home).

- Nor does it include the termination of services to a person when the person will no longer be receiving residential services in an OMRDD operated or certified facility (e.g., when the person or the person's correspondent chooses to terminate such services; the person will reside out-of-state; the person chooses to live independently; a determination is made by the facility that it will no longer provide services). In such instances, the person shall be discharged in accordance with the facility's discharge policies/procedures. However, when the facility has made the determination to terminate services, the person has the right to object to and appeal such a determination in conformance with Community Policy CP-10, **Procedures When There are Objections to an Individual Program Plan (IPP), Proposed Changes Thereto, or Facility Initiated Discharge.**

- **Time limited moves** are not placements (see Community Policy CP-9, **Emergency and Transitional Moves; Time-Limited Services Elsewhere).**
- Hospital stays, vacations at camps, and visits with families are neither time-limited moves or placements and are to be handled in a routine manner.
- For **statistical reporting purposes** this definition of placement has no bearing.

Willowbrook Permanent Injunction - A court order, agreed to on March 11, 1993, that replaced the Willowbrook Consent Judgement/Decree in NYSARC and Parisi v. Carey as related to the Willowbrook Developmental Center and any subsequent amendments.

POLICY

A request to move to another residential setting, operated or certified by OMRDD may be made by a person; or that person's parent, guardian, or correspondent; or a legal representative. The person's program planning team at the facility where the person now resides will consider such a request as expediently as possible, and make a recommendation as to whether such placement is in the best interests of the person, if available. MHLS is to be advised of the request, as is the B/DDSO if the person is on conditional release from a developmental center. This recommendation may be appealed in accordance with Community Policy CP-06, **Procedures When There Is An Objection to Placement.**

If a person or someone acting on a person's behalf requests discharge, such discharge, if in the person's best interest, is to take place in accordance with the agency/facility policies/procedures on discharge. Placement policies are not applicable to requests for discharge. Notification of a pending discharge shall be made to MHLS, and, for Willowbrook class members, to the plaintiff's attorney and others designated by the Willowbrook Permanent Injunction.

If a person on conditional release from a developmental center or someone acting on the person's behalf requests discharge from a community residential facility, the B/DDSO is to be advised immediately and developmental center Policy 2.5.1, **Process for Discharge or Conditional Release** is to be followed.

RESPONSIBILITY	PROCEDURE
Person or Correspondent	1. Requests move to another residential setting, and submits, when possible, the name of the program to which admission is requested and information on availability and arrangements (financial or otherwise) that have or can be made.

Program Planning Team

2. Considers request and supporting documentation.

3. In as timely a manner as possible, but always within 30 days after receipt of request, responds in writing, accepting or rejecting the request, and stating the reasons for any rejection. A request may be rejected because of, but not limited to:

   a. The setting does not provide better services or an opportunity for personal development, it is not a more suitable living environment, it is not the least restrictive appropriate alternative available, the move is otherwise not in the best interest of the person, or the continued certification of the facility is under question.

   b. The requested placement does not comply with a specific provision of law or regulation.

   c. The requested placement is not geographically appropriate.

   d. The requested placement is not available.

4. If the program planning team agrees that such a placement is appropriate, notification of movement is to be sent in conformance with Community Policy CP-2, **Notification of Residential Placement**.

5. If the program planning team determines that such placement is not in the best interest of the person or is not available, the party originating the request for the move is to be notified in writing of the determination. The party must also be advised that if he or she is dissatisfied with the decision he or she may, within ten (10) days, submit a formal written objection to the decision in conformance with Community Policy CP-6, **Procedures When There Is An Objection to Placement**. A copy of the correspondence is to be sent to each person entitled to receive notification of placement (see Community Policy CP-2, **Notification of Residential Placement**).

State of New York	Date Issued	T.L. No.	Page	Topic No.
	2/95	62	1 of 1	CP-8(Rev.)
	Chapter	Community Policy		
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES	Subject	Placement of People in the Community		
POLICY AND PROCEDURES	Topic	Psychiatric Emergencies		

This policy has been deleted.

Information relative to psychiatric emergencies is found in

Community Policy CP-9, Emergency and Transitional Moves; Time-Limited Services Elsewhere

State of New York	Date Issued	T.L. No.	Page	Topic No.
	2/95	62	1 of 3	CP-9(Rev.2)
	Chapter	Community Policy		
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES	Subject	Placement of People in the Community		
POLICY AND PROCEDURES	Topic	Emergency and Transitional Moves: Time-Limited Services Elsewhere		

DEFINITIONS

Emergency Move - The immediate and unplanned change of residence of a person due to a sudden and acute medical or psychotic episode, behavior constituting an imminent danger of serious harm to the resident or others, or any other circumstance necessitating the immediate change of residence of a person.

Placement - The relocation (change of address) of a person from an OMRDD operated or certified residential location to another residential setting as proposed and planned by the person's program planning team (e.g., to an OMRDD operated or certified ICF/DD, community residence, or family care home; to a nursing home; to an independent living situation; to live with family); or relocation to another OMRDD operated or certified residential location as requested by a capable adult or someone acting on behalf of a person.

- "Placement," as used in this and other policies related to placement, does not include the admission of someone residing in a non-OMRDD operated or certified residential setting to a community residential facility (e.g., someone is admitted to a residential facility from the parent's home).

- Nor does it include the termination of services to a person when the person will no longer be receiving residential services in an OMRDD operated or certified facility (e.g., when the person or the person's correspondent chooses to terminate such services; the person will reside out-of-state; the person chooses to live independently; a determination is made by the facility that it will no longer provide services). In such instances, the person shall be discharged in accordance with the facility's discharge policies/procedures. However, when the facility has made the determination to terminate services, the person has the right to object to and appeal such a determination in conformance with Community Policy CP-10, **Procedures When There are Objections to an Individual Program Plan (IPP), Proposed Changes Thereto, or Facility Proposed Discharge.**

- **Time limited moves** are not placements (see Community Policy CP-9, **Emergency and Transitional Moves; Time-Limited Services Elsewhere).**

- Hospital stays, vacations at camps, and visits with families are neither time-limited moves or placements and are to be handled in a routine manner.

- For **statistical reporting purposes** this definition of placement has no bearing.

Psychiatric Emergency - A sudden and acute psychotic episode, or other such behavior which constitutes imminent danger of serious physical harm to a person or others, and requires immediate treatment for no more than 60 days in a place providing psychiatric services .

Time Limited Services - The acceptance of a developmentally disabled person by a facility to receive services and occupy a bed at the facility for a period of time not to exceed 30 days, unless an extension of no more than an additional 30 days has been approved by the chief executive officer. The time-limited services a facility may offer are:

- Crisis Intervention Services - Temporary, short-term therapeutic care for a person with severe behavior problem(s), necessitated by the fact that the problem(s) cannot be controlled by the person's care provider.

- Intensive Therapy Services - Provision of concentrated professional services for the amelioration of deficits in such areas as behavioral management, physical disorders, or daily living skill training.

- Observation and Assessment Services - Provision of professional diagnostic services for the identification and determination of a person's needs in relation to medical or adaptive behavior problems, or for the diagnosis of developmental disability(ies).

- Respite Services - Provision of temporary, short-term relief for care providers which enables them to arrange their vacations, emergency coverage in the event of provider illness or death, or provides a break from constant, intensive provision of care and supervision.

- Stabilization Services - A continual monitoring service to establish the norms to be followed in treatment of behavioral or medical problems.

Willowbrook Permanent Injunction - A court order, agreed to on March 11, 1993, that replaced the Willowbrook Consent Judgement/Decree in NYSARC and Parisi v. Carey as related to the Willowbrook Developmental Center and any subsequent amendments.

POLICY

Emergency Move - Permanent:

An emergency move can be made whereby a person is relocated, for permanent placement, to a new residential setting prior to completion of placement procedures. As soon as possible after the move is made, it is necessary to follow placement procedures as set forth in Community Policy CP-2, **Notification of Residential Placement;** and, if applicable, Community Policy CP-6, **Procedures When There Is An Objection to Placement.** If an emergency move is necessary while a planned proposed placement is undergoing the administrative review process because of a formal objection, the move can only be made with the Commissioner's approval, based on documentation that such a move is required.

Emergency Move - Transitional:

When an emergency move is made to provide a **transitional** place of residence until a permanent placement can be effected (e.g., waiting for the actual opening of a new facility to which placement is already scheduled; due to unexpected closing of a residence because of fire, flooding, or hazardous

conditions, a temporary residence is needed while a permanent placement is sought), the policies and procedures pertinent to placement do not have to be followed relative to that emergency move. However, if a person is still at the transitional location after 60 days, and permanent placement to another setting has not been proposed pursuant to Policy CP-2, **Notification of Residential Placement**, placement procedures for the transitional location have to be implemented. Nevertheless, a person does not have the right to remain at a transitional place of residence just because he or she objects to a proposed permanent placement.

Time Limited Services:

A person may be temporarily relocated for the purpose of receiving time-limited services elsewhere. This may be based on the recommendation of the person's program planning team; or, in a psychiatric emergency, based on the need for a person to be taken immediately to a psychiatric unit at a local hospital or other similar facility in the community, or to a State psychiatric center. If a person receives time-limited services in the community and is away from the residential facility for more than a 24 hour period, he or she is to be placed on therapeutic leave. It is incumbent upon the sending facility to notify the person's correspondent and MHLS of the move as immediately as possible, and in writing within 24 hours (unless the person is a capable adult and objects to such notification being made). For Willowbrook class members, notification is to be made to the plaintiff's attorney and others designated by the Willowbrook Permanent Injunction.

If a determination is made that a person will need to remain in a place providing time-limited services (i.e., treatment will take more than 60 days), such relocation is considered to be a "placement" and must conform, retroactively as necessary, with the following policies:

Policy CP-2 **Notification of Residential Placement**
Policy CP-6 **Procedures When There Is An Objection to Placement.**

As proposed and planned by a person's program planning team, a person may be moved for long term treatment from a residential facility to a place providing psychiatric care (i.e., treatment will take more than 60 days). Such movement must also comply with the above listed policies, except that they would be initiated prior to movement.

If a person is on conditional release from a developmental center and is to be admitted to a State psychiatric center, he or she must be legally discharged from the developmental center (see developmental center Policy 2.5.1, **Process for Discharge or Conditional Release from a Developmental Center**).

During such time-limited period, the person is to continue to receive day programming in the community pursuant to existing arrangements unless, due to exceptional circumstances, alternative equivalent programming is provided elsewhere as agreed to by the person's program planning team and the administrator at the receiving facility.

DEFINITIONS

B/DDSO - The local administrative unit of OMRDD that has major responsibility for the planning and development of community residential and other program services. The B/DDSO is also responsible for coordinating the service delivery system within a particular service area, planning with community and provider agencies, and ensuring that specific placement and program plans and provider training programs are implemented. In New York City, this unit is called the Borough Developmental Services Office (BDSO; elsewhere in the State it is called the Developmental Disabilities Services Office (DDSO).

Capable Adult - A person (see definition below) who is 18 years of age or older who is able to understand the nature and implication of various issues such as program planning, treatment, or placement. The assessment of capability in relation to each issue as it arises will be made by the person's Program Planning Team (PPT). This will be done with notice to the Mental Hygiene Legal Service. Capability, as stipulated by the definition, does not mean legal competency; nor does it necessarily relate to a person's capacity to independently handle his or her own financial affairs; nor does it relate to the person's capacity to understand appropriate disclosures regarding proposed professional medical treatment, which must be evaluated independently. Thus a person may be capable of participation in planning for his or her services and programs but still require assistance in the management of financial or other matters. Whenever there is doubt on the part of any other party interested in the welfare of the person as to that person's ability to make decisions, as ascertained by the Program Planning Team, a determination of capability is to be made by an external capability review board designated by the Commissioner. A capable adult person cannot override the authority of a guardian appointed in accordance with the Surrogate Court Procedure Act, or of a conservator, or of a committee.

Discharge - By regulation, most facilities are required to have admission and discharge policies. As used in that context, discharge means the release of a person from the facility and the termination of programs/services at the facility. "Discharge" can be the administrative process that takes place to remove a person's name from the records when that person, who has undergone the placement process, takes up residence in another facility. However, "discharge" also takes place when a residential or day program facility determines, in conformance with its policies/procedures, that it can no longer provide programming/services, even if it has been unable to make provision for alternative programming or services; in this instance, objection to facility initiated discharge can be processed pursuant to section 633.12. In a developmental center, or for a person on conditional release from a developmental center, a person's "discharge" must also comply with Article 29 of the Mental Hygiene Law, thereby terminating a person's "inpatient status" (see developmental center Policy 2.5.1). Community based facilities, whether State or voluntary operated, do not come under the requirements of Article 29 relative to legal admission or discharge and can, therefor, establish their own criteria for discharge, which must be in compliance with the regulations governing that class of facility.

Mental Hygiene Legal Service (MHLS) - An agency of the appellate division of the State Supreme Court established pursuant to Article 47 of the Mental Hygiene Law, and which provides protective legal services, advice, and assistance to developmentally disabled persons.

Person/Persons - For the purposes of this and other policies related to placement, a child or adult with a diagnosis of developmental disability, who is being served by a state, private, or voluntary facility operated/certified by OMRDD.

POLICY

Pursuant to §633.12 of 14 NYCRR, each adult person receiving services in an OMRDD operated or certified facility in the community, his or her correspondent, and MHLS have the right to object to and appeal the person's program plan, proposed changes thereto, or a proposal initiated by the facility to terminate programs/services by discharging the person from the facility. Please note, however, that the process outlined in this policy is not to be used where a person is discharged, in accordance with administrative procedures, after the person has changed his or her place of residence as a result of placement procedures conducted in conformance with applicable OMRDD policies. Objection to a placement is made in conformance with Policy CP-6, **Procedures When There is an Objection to Placement.**

When, in conformance with the requirements of the regulations for the class of facility, a person and his or her correspondent are invited to attend a team meeting to review progress and discuss changes to the program plan, they are also to be advised in writing (or other appropriate method) of the right to object to the plan and the procedures for making a formal written objection should informal discussions fail to result in agreement. MHLS is also to be notified of those team meetings to which the person and his or her correspondent have been invited. However, a capable adult can object to any invitations or notifications being made, and may refuse objections or appeals initiated on his or her behalf.

While an objection to programming or facility initiated discharge is pending, a person is to continue to participate in programming agreeable to all parties. Every effort feasible is to be made to maintain a person in at least his or her current level of programming. However, a person's program can be changed while an objection is pending where such is necessary to protect his or her health, safety, or welfare, or the health, safety, or welfare of others.

When a hearing officer or the Commissioner upholds an objection and recommends a resolution to the dispute, and no further appeal is made, the chief executive officer is to make every feasible effort, within existing resources, to comply with the recommendation(s). If the objecting party is of the opinion that the efforts to meet compliance are inadequate, this may be brought to the attention of the Commissioner.

RESPONSIBILITY	PROCEDURE
Coordinator	1. Ensures that, in conformance with the regulations for the class of facility, when a person's program plan is periodically reviewed or when changes are proposed to the program plan, the person's and

his or her correspondent are advised of the review and of their right to participate in the planning process, and of their right to object to the plan, proposed changes, or facility initiated discharge. Provides such notification in writing or such other means as is necessary to ensure comprehension. As part of this notification:

a. Provides the name, office address, and telephone number of the B/DDSO director to whom formal written objections are to be addressed.

b. Describes the role of MHLS as an advocate for persons with developmental disabilities.

c. For Willowbrook Class members, states availability of the Willowbrook Consumer Advisory Board to act on a person's behalf when designated by the correspondent, if the correspondent cannot exercise this right (e.g., because of age, illness, out-of-state residence, etc.).

2. Attempts to resolve objections on an informal basis. Notes objections and strategies for resolution in the person's program plan.

Chief Executive Officer

3. Sends letter of confirmation to objecting party with results of attempts to resolve objections on an informal basis. If unable to resolve objections, explains to the person, correspondent, or MHLS the right to invoke the formal written objection and appeal procedures set forth below.

Person Receiving Services, or Other Party Objecting

4. Conveys objection(s) and request for a hearing in writing to the B/DDSO director.

B/DDSO Director

5. Within five days, arranges for a hearing to be held before a hearing officer, with at least ten (10) days advance notice of the hearing date to those entitled to be involved. The notice is to be sent by certified mail, return receipt requested, to the correspondent and MHLS. The person and his or her coordinator are to receive copies of the same notice. All parties are to receive copies of the written objection.

Person Receiving Services, Correspondent, Chief Executive, Officer, Coordinator, Appropriate Staff, MHLS

6. Are all entitled to appear at the scheduled hearing and present oral or written statements, documents, or testimony in support of their position relative to the objection. In accordance with facility policy, the coordinator or other designated staff person makes arrangements for appropriate staff to attend and participate in the hearing.

Hearing Officer

7. Conducts the hearing and ensures receipt of all material and relevant statements, documents and testimony.

8. Ensures that testimony and statements are recorded, either by a stenographer or electronically.

9. Determines, from everything submitted by the parties at the hearing, if the objection is sustainable. In making this determination, considers, among other things, the person's program and service needs; whether services and programs currently received by the person meet those needs; whether other programs and services, more appropriate to meet the person's needs, are available within existing resources; and the efforts by staff to plan for and implement the provision of more appropriate programs and services within the current location and/or elsewhere.

10. Sustains the objection if, after weighing the above factors and any other relevant considerations advanced by the parties, he or she finds that the plan or proposed changes thereto, including facility initiated proposals to discharge, are not reasonable under the circumstances.

11. Prepares a written decision within fourteen (14) days of the hearing, setting forth findings made and reasons that support said findings. Where an objection is sustained, recommends resolution to the dispute. Forwards decision to the B/DDSO director.

B/DDSO Director

12. Sends the hearing officer's written decision, by certified mail, return receipt requested, to the chief executive officer, correspondent and MHLS. Includes a cover letter which explains that any party dissatisfied with the decision can appeal, within ten (10) days of receipt of the decision, to the Commissioner (including the

Commissioner's name and address). Sends a copy of the decision to the person and his or her coordinator.

Chief Executive Officer

13. Where the hearing officer's decision sustains the objecting party's objection and recommends a resolution to the dispute, and no appeal is taken, attempts to carry out the recommended resolution in a timely fashion and within available resources.

Parties to the Proceeding

14. May appeal the hearing officer's decision by sending a written letter of appeal to the Commissioner within ten (10) days of receipt of the decision.

Commissioner

15. May, at his or her discretion, send the matter back to the hearing officer for further review.

16. Upon receipt of letter of appeal, reviews evidence presented at hearing and, based on such review, renders a written decision on issues presented within fourteen (14) days of receipt of letter of appeal.

17. Sends written decision to all parties involved in the proceedings, by certified mail, return receipt requested.

Objecting Party

18. May seek judicial review as provided by the laws of New York State.

NOTICE OF RIGHT TO OBJECT TO A PERSON'S PROGRAM PLAN, PROPOSED CHANGES THERETO, OR PROPOSED DISCHARGE

(This is a suggested format. If a person is not a Willowbrook Class member, that portion of the notice referring to Willowbrook Class members is to be omitted.*)

Date _____

TO:

FROM:

SUBJECT: **RIGHT TO OBJECT TO A PROGRAM PLAN, PROPOSED CHANGES THERETO, OR PROPOSED DISCHARGE**

Enclosed is a copy of _____(person's name)_____'s program plan incorporating (proposed changes thereto) (proposed discharge). If, after you have read this material you do not agree with the services, care, or treatment reflected in the plan, you have a right to object. You should feel free to contact the coordinator of the person's program plan if you have any questions about it. He or she will be happy to answer questions and discuss the plan, even if you do not have a specific objection, or help you resolve your differences of opinion. OMRDD has established specific procedures to make sure that all formal written objections and appeals are given fair consideration. Basically, this is a two step process:

1. A formal written objection is submitted to the B/DDSO director designated below.

2. An appeal is made to the Commissioner if the decision on your objection is unsatisfactory to you.

If you do not agree with the services, care, or treatment reflected in the program plan, the proposed changes thereto, or proposed discharge, and you wish to make a formal written objection, you should immediately contact:

_____(insert name of B/DDSO director)_____

_____(address)_____

_____(phone number)_____

If you are elderly, ill, or living outside New York State, you are free to ask a specific advocacy group to a lawyer to act in your behalf in this appeal process.

*As _____(person's name)_____ is a member of the Willowbrook Class (that is, he or she was a resident at the Willowbrook Developmental Center on March 17, 1972), you may ask the Willowbrook Consumer Advisory Board to act in your behalf. If you are eligible and wish to designate the Consumer Advisory Board to act for you, you should immediately contact:

Willowbrook Consumer Advisory Board
Staten Island B/DDSO
1050 Forrest Hill Rd.
Staten Island, NY 10314
Telephone: (718) 983-5206