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EXCEPTIONAL FAMILY RESOURCES  
Policy and Procedure Manual

Topic: Due Process: The Right to Object to and Appeal Individual Services

Index #:

Relevant to Dept(s): All

Original Effective Date: ~1999

Revision Date: June 1, 2011

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**Policy:** Exceptional Family Resources (EFR) is committed to working cooperatively with individuals and their families. If there is cooperation and agreement on services, these policies become moot. However, whenever there is a significant objection to the services EFR provides, every attempt will be made to resolve the matter through negotiation and informal settlement by the involved parties. Exceptional Family Resources encourages mediation toward dispute resolution and expects that such an effort will precede formal due process. If informal processes fail, more formal methods may be pursued. For those services provided through the Home and Community-Based Services (HCBS) Waiver the individual has the right to object and appeal through a formal process as outlined further below.

**Procedures Upon Admission (and for any catch-up) and for changes to procedures :** The statement entitled, "Due Process: The Right to Object to and Appeal Individual Services" and key contacts (Attachments #1 and #2), will be provided to individuals and/or their family member/advocate receiving services through Medicaid Service Coordination or any EFR HCBS Waiver service as of June 1, 2011. Any individuals newly enrolled in MSC or an HCBS Waiver service after June 1, 2011 will be provided the statement upon enrollment in that service by the Executive Director or his/her designee. Further distributions will occur as changes occur upon any substantive amendment to the regulations. The statement outlines the following:

**Procedures for informal resolution:**

**For all services:**

If any service recipient, parent, guardian, correspondent and advocate of person receiving services objects to something in the services provided by EFR, every effort will be made to resolve these to the satisfaction of all parties through informal and formal means. A process similar to all grievances will be utilized. EFR shall include documentation of the result of the process in the person's record.

Step 1: The person receiving services, parent, guardian, correspondent and advocate of person receiving services (hereafter referred to as "the objecting party") should bring the concern to the attention of the person who supervises/coordinates the services at EFR. A meeting will be held to discuss the concern. At any point in this process, the individual's service coordinator and/or advocate may be involved in the process if desired by the person receiving services.

Step 2: If the objecting party is not satisfied with the results of this meeting, the objecting party may request a meeting with the Supervisor. At this time, the Supervisor will also notify the Director about the concern if they are not the same person.

Step 3: If, after a meeting with the Supervisor, the objecting party is still dissatisfied, a meeting will be arranged with the Director for the Department if they are not the same person.

Step 4: If, after a meeting with the Director, the objecting party is still dissatisfied, a meeting will be arranged with the Executive Director.

Step 5: If the Executive Director is unable to settle the matter, more formal methods will then be utilized (e.g., involvement of the Board of Directors, mediation with an external party, etc.).

Step 6: **For HCBS Waiver services and MSC only**, if all methods above fail, there are specific procedures to be followed which are detailed below.

**Procedures for Objections Related to HCBS Waiver Services (for HCBS Waiver and MSC services only):**

**Policy for objections to plans and discharges:** As described above, service recipients or their representatives have the right to object to and appeal the following: any plan of services, including an individualized service plan (ISP) or part thereof and/or proposed changes thereto, care or treatment, plans for placement, a proposal initiated by the agency to discharge from an HCBS waiver service (s).

**Procedures:**

1. If all informal methods fail in matters related to resolving objections to a plan of services specific to an individualized service plan (ISP) or part thereof and/or proposed changes thereto, care or treatment, plans for placement, and/or a proposal initiated by the agency to discharge from an HCBS waiver service, the Executive Director must provide a written notice to the individual advising him or her of the failure of informal means to resolve the objection. The letter will also include information on how the aggrieved party can pursue a formal objection.
2. The process requires the service recipient or their representative to submit a formal written objection requesting a hearing with the CNY Developmental Disabilities Services Office (DDSO) Director (or designee), with copies sent to the Deputy Director, the service coordinator, the service provider (EFR) and the DSO Director of Quality Assurance.
3. Within five (5) days of receipt of a formal written objection, a hearing shall be scheduled before the DDSO Director (or designee) with no less than ten (10) days notice to the involved parties.
4. A written decision by the hearing officer shall be sent to the involved parties within fourteen (14) days of that hearing.
5. If any party to the proceeding is not satisfied with the decision, it may be appealed within ten (10) days to the Commissioner of OPWDD, who will issue a final written decision to all parties within fourteen (14) days of receipt of the appeal. The Commissioner may at his or her discretion, send the matter back to the hearing officer for further review.
6. During the hearing process and administrative review, the person shall receive services agreeable to the objecting party, the agency and others involved, with every effort made to continue the level of service at least the current level. While an objection is in process, relocation or discharge may only occur with the commissioner's approval.

**Policy for proposals to reduce, suspend, or withdraw an HCBS Waiver service:** Regulations require a different notification process by a provider of HCBS Waiver services, in this case EFR, when the provider proposes a reduction, suspension or withdrawal of Waiver services. The formal objection process is also different.

**Procedures:**

1. Any proposal by an EFR staff member providing a Medicaid service to reduce, suspend or withdraw an HCBS Waiver service *contrary* to what is desired by a service recipient and/or their advocates must first be brought to the department Director. If the Director agrees, this must then be reviewed and approved by the Executive Director. If and only if the Executive Director agrees, these procedures require the EFR Executive Director to notify individuals in writing that the provider intends to propose a reduction, suspension, or discontinuance of a Waiver service. (See Attachment #3)
2. If the individual objects to the proposed reduction, suspension, or withdrawal of waiver services, the parties should attempt to informally resolve the issue. If the parties are not able to resolve the objection, the Executive Director must send written notice of the parties' inability to resolve the objection to the individual advising that the individual has the right to request an administrative review (Attachment #4). This notice must be sent by certified mail, return receipt requested or such other means so that the time of receipt of the information can be documented.
3. The objecting party may submit a written objection to the DDSO Director requesting administrative review of the reduction, suspension or discontinuance, within fourteen (14) days after receipt of the notice. EFR shall not reduce, suspend or discontinue the HCBS waiver service(s) at issue during the 14 day period, unless otherwise agreed to by the parties.
4. Upon receipt of a written objection requesting an administrative review, the DSO Director (or designee) shall contact the objecting party and the agency to mediate resolution of the objection. If there is no resolution within (14) days of receipt of the objection, a hearing shall be scheduled with no less than (10) days notice to the involved parties. The parties may agree to extend the time periods noted in this clause.
5. The hearing officer shall issue a written decision to the objecting party and the agency within (14) days after the conclusion of the hearing. Either party may appeal the decision to the Commissioner and submit a written reply to the decision within (14) days of its receipt. The Commissioner will issue a final written decision to all parties within 14 days of the last date to appeal. The Commissioner may also opt to send the matter back to the hearing officer for further review.
6. Throughout the review process the provider may reduce, suspend, or discontinue the service **only if both parties agree. If no agreement is reached, services must continue as provided by the current ISP.**
7. Expedited reviews may be requested by either party when the reduction, suspension, or discontinuance of the service is proposed to prevent immediate risk to the safety or health of the individual or others. An agency shall immediately notify the person or representative of an expedited request. **As with the administrative review process, the provider may not reduce, suspend or discontinue services during the process unless the parties agree otherwise.** Such requests shall be sent directly to the Commissioner of OPWDD who will determine if an expedited hearing is warranted. If it is, a hearing is scheduled within seven (7) days with a hearing officer assigned by the CNY DSO Director.
8. Unless there is good cause, the parties involved in the objection will receive at least 3 days notice of the hearing. The hearing officer's recommendation shall be sent to the parties and to the Commissioner within five (5) days of the conclusion of the hearing. The hearing officer shall advise the parties of their opportunity to send a written reply to the recommendation directly to the Commissioner. The Commissioner will issue a final written decision as soon as possible thereafter.
9. No person, or objecting party or a representative of either, shall be denied the opportunity to participate in any hearings pursuant to this section. The aforementioned persons may offer information and ask relevant questions of any parties participating in any such hearing. During the period that the objection

is undergoing administrative review, there shall be no communication between either the agency or the objecting party and either the hearing officer or the Commissioner, concerning the objection, except on notice and opportunity for all parties to participate.

10. The Commissioner's decision is the final administrative remedy available and may be appealed in accordance with the provisions of Article 78 of the Civil Practice Law and Rules.
11. 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 and limb of that person or others, at the discretion of EFR's Executive Director and in accordance with EFR's policies/procedures.
12. People served by Exceptional Family Resources always have the right to seek counsel or representation from persons or groups outside of the agency and to use such persons and groups to appeal their care or treatment. If requested to do so, Exceptional Family Resources' staff are obligated to assist an individual to contact the Mental Hygiene Legal Service representative.

**Exceptional Family Resources**  
**Due Process: The Right to Object to and Appeal Individual Services**  
**Attachment #1**

Exceptional Family Resources is committed to working cooperatively with you and your family and others who advocate for you. We believe strongly that a key to good services is working together to gain cooperation and agreement, which in most circumstances makes it so these policies become moot. However, whenever there is a significant objection to the services EFR provides, every attempt will be made to resolve the matter through negotiation and informal settlement by the involved parties. Exceptional Family Resources encourages mediation toward dispute resolution and expects that such an effort will precede formal due process. If informal processes fail, more formal methods may be pursued. For those services provided through the Home and Community-Based Services (HCBS) Waiver the individual has the right to object and appeal through a formal process as outlined further below.

**Procedures for informal resolution, for all services:**

If you—a service recipient, parent, guardian, correspondent and advocate of person receiving services—objects to something in the services provided by EFR, every effort will be made to resolve these to the satisfaction of all parties through informal and formal means. A process similar to all grievances will be utilized. EFR shall include documentation of the result of the process in the person's record.

Step 1: You should bring the concern to the attention of the person who supervises/coordinates the services at EFR. A meeting will be held to discuss the concern. At any point in this process, the individual's service coordinator and/or advocate may be involved in the process if desired by the person receiving services.

Step 2: If you are not satisfied with the results of this meeting, you may request a meeting with the Supervisor. At this time, the Supervisor will also notify the Director about the concern if they are not the same person.

Step 3: If, after a meeting with the Supervisor, you are still dissatisfied, a meeting will be arranged with the Director for the Department if they are not the same person.

Step 4: If, after a meeting with the Director, you are still dissatisfied, a meeting will be arranged with the Executive Director.

Step 5: If the Executive Director is unable to settle the matter, more formal methods will then be utilized (e.g., involvement of the Board of Directors, mediation with an external party, etc.).

Step 6: **For HCBS Waiver services and MSC only**, if all methods above fail, there are specific procedures to be followed which are detailed below.

**If resolution is not reached on an informal basis to a plan with which you disagree, and the proposal is regarding your plan or a planned discharge with which you disagree:**

You have the right to object to and appeal any plan of services, or parts thereof, care or treatment, plans for placement with which you disagree by submitting a formal written objection requesting a hearing with the CNY DSO Director (or designee), with copies sent to the Deputy Director, the service coordinator, the service provider, and the DSO Director of Quality Assurance. Within five (5) days of receipt of a formal written objection, a hearing, to take place before a hearing officer, shall be scheduled with no less than ten (10) days notice to the involved parties. A written decision by the hearing officer shall be sent to the involved parties within fourteen (14) days of that hearing. *This means that if you strongly disagree or object to any HSBS Waiver services or care you receive, you:*

- a) Ask your service coordinator to arrange a meeting with the CNYDSO Director. This request must be made in

writing.

- b) A meeting will be scheduled so that the objecting party can report your objection to a hearing officer.
- c) The decision of the hearing officer will be sent to you in writing.

If you are not satisfied with the decision, you may appeal it within ten (10) days to the Commissioner of OPWDD, who will issue a final written decision to all parties within fourteen (14) days of receipt of the appeal. The Commissioner may, at his or her discretion, send the matter back to the hearing officer for further review. *This means that if the objecting party is not satisfied with the decision of the hearing officer, the objecting party can write to the Commissioner and ask to have the decision reviewed. The commissioner will let you know the decision in fourteen (14) days or he or she may ask the hearing officer to review your case again.*

The Commissioner's decision is the final administrative remedy available and may be appealed in accordance with the provisions of Article 78 of the Civil Practice Law and Rules. *This means that the Commissioner's decision is the final decision within OPWDD. If you don't agree with the decision, you have the option to go to court.*

An individual whose care or treatment is being appealed will not be denied the opportunity to participate in any conference related to the objection. *This means that you may participate in any conferences or meetings related to the objection.*

During the time that an objection is being reviewed or appealed, you will receive services and supports mutually agreeable to the individual, the individual's family/guardian/advocate, the objecting party and the service provider. Every effort possible will be made to maintain the individual in at least his/her current level of services. However, nothing herein shall preclude a change in services, relocation or discharge of a person to protect his/her health, safety or welfare, or that of others. However, while an objection to placement or discharge is undergoing administrative review, relocation or discharge shall only take place with the Commissioner's approval.

#### **Procedures for HCBS Waiver Provider Proposal to Reduce, Suspend, or Withdraw a Waiver service:**

Regulations require a different written notification process by a provider (EFR or other agency provider) of HCBS Waiver services when the provider proposes a reduction, suspension or withdrawal of waiver services.

Any proposal by an EFR staff member providing a Medicaid service to reduce, suspend or withdraw an HCBS Waiver service *contrary* to what is desired by you and/or your advocates must first be brought to the department Director. If the Director agrees, this must then be reviewed and approved by the Executive Director. If and only if the Executive Director agrees, these procedures require the EFR Executive Director to notify you in writing that EFR intends to propose a reduction, suspension, or discontinuance of a Waiver service. *This means that EFR will only consider these measures after several reviews and we must let you know in writing if EFR plans to reduce, suspend or stop your services. This relates to a formal reduction in services that is permanent and is different that what you desire.*

If you object to the proposed reduction, suspension, or withdrawal of waiver services, the provider will attempt to informally resolve the issue with you. *This means that you may:*

- a) Let your service coordinator know that you disagree with the provider's decision to stop or reduce services.
- b) If you don't agree with this proposal, you should ask your service coordinator to help you resolve this informally with the provider.

If you and EFR are not able to resolve your objection, we must then send a written notice to you advising you of the outcome of the informal process and notifying you of your right to request an administrative review. If you wish to pursue the administrative review, you must send a written request for the review within fourteen (14) days of receipt of the notice to the CNY DSO Director. *This means that you may:*

- a) Let your service coordinator know that you have received a Notice of Right to Administrative Review.

b) *Ask your service coordinator to help you make a request in writing to the DSO Director for that Administrative Review.*

The DSO Director (or designee) will attempt to mediate the dispute prior to scheduling a hearing. You and the provider may agree to extend the fourteen (14) day period for mediating the dispute. Throughout the review process the provider may reduce, suspend, or discontinue the service only if both parties agree. If no agreement is reached, services must continue as provided by the current ISP.

Expedited reviews may be requested by either party when the reduction, suspension, or discontinuance of the service is proposed to prevent immediate risk to the safety or health of the individual or others. Such requests shall be sent directly to the Commissioner of OPWDD who will determine if an expedited hearing is warranted. If it is, a hearing is scheduled within seven (7) days and the hearing officer's recommendation is sent to the Commissioner within five (5) days of the hearing. *This means that if you or the provider think that your health or safety or someone else's health or safety is at risk, you or the provider can ask the Commissioner of OPWDD to order the review to take place more quickly.*

EFR may not reduce, suspend or discontinue services during the process unless the parties agree otherwise.

People served by Exceptional Family Resources always have the right to seek counsel or representation from persons or groups outside of the agency and to use such persons and groups to appeal their care and/or treatment, or a proposal to reduce, suspend or withdraw a waiver service. If requested to do so, Exceptional Family Resources' staff are obligated to assist an individual to contact the Mental Hygiene Legal Service representative. All pertinent addresses and phone numbers are attached for your convenience.

**Exceptional Family Resources**  
**Due Process: The right to object to and appeal individual HCBS Waiver services**  
**Attachment #2**

Addresses of Key Personnel

**Exceptional Family Resources**

1820 Lemoyne Avenue  
Syracuse, New York 13208  
(315) 478-1462

Executive Director  
Director of Quality Assurance  
Medicaid Service Coordinator

**Central New York Developmental Disabilities Service Office (CNY DSO)**

187 Northern Concourse  
N Syracuse, New York 13212  
(315) 473-5050

CNY DSO Director  
CNY DSO Deputy Director  
CNY DSO Director of Quality Assurance

**Office for People With Developmental Disabilities (OPWDD)**

44 Holland Avenue  
Albany, New York 12229-0001  
(518) 473-1997

Commissioner

**Mental Hygiene Legal Service**

Hughes State Office Building, 5<sup>th</sup> Floor  
333 East Washington Street  
Syracuse, New York 13202  
(315) 428-4053