

<b>TOPIC: Due Process and Grievance</b>	<b>DEPARTMENT: Programs and Services</b>
<b>POLICY NAME: Due Process Policy</b>	<b>POLICY NUMBER:</b>

**PURPOSE:**

This policy outlines the formal process to address individual objections to services as well as objections to agency initiated significant changes to an individual’s Home and Community Based Services (HCBS) waiver services.

**REFERENCE(S):**

**NYCRR Part 633.12**

**DEFINITION(S):**

**NYCRR Part 633.12:** “Objection to Services Process” known as “Due Process” will always be adhered to in response to any identified objection to a change in HCBS waiver services.

**DDSO:** Local Developmental Disabilities Services Office operated by The NY State Office for People With Developmental Disabilities (NYS OPWDD).

**DDRO:** Developmental Disabilities Regional Office operated by The NY State Office for People With Developmental Disabilities (NYS OPWDD).

**POLICY:**

This policy is made available to individuals and their family (guardians, actively involved family members, correspondents, or advocates) upon intake to any HCBS waiver service provided by the agency, when objections are made or when the agency proposes significant changes to HCBS waiver services.

At the individual’s annual Life Plan review an overview of the Grievance and Due Process Procedures will occur and be documented via an acknowledgement signature by the person and/or their advocate.

**Individual initiated changes/requests:** Changes to services (days attending, goal/plan change, additional service) may be initiated by the individual, their family (guardians, actively involved family members, correspondents, or advocates), Care Manager, and/or Mental Hygiene Legal Services. Oswego Industries/The Arc of Oswego County (OI/Arc) will respond to any requests brought forth initially through informal processes as outlined in the agencies *Due Process Policy and Procedures*. Should the request not be resolved through informal measures, the individual and agency will then move to formal processes to resolve the issues.

**Oswego Industries/The Arc of Oswego County initiated changes:** At times it may be necessary for Oswego Industries/The Arc of Oswego (OI/Arc) to propose a significant change to an individual’s HCBS waiver service. A *significant change includes: decreasing the frequency of, suspension of, or discontinuance of an individual’s HCBS waiver service*. When this occurs a formal process for notification and right to objection is necessary according to NYS regulations **NYCRR Part 633.12**. As part of OI/Arc’s commitment to quality services as a provider of HCBS waiver services, OI/Arc recognizes the importance of having a clear process to address these situations.

**Procedures**

The agency ensures that all staff are knowledgeable regarding the procedures for individuals and their families to express both grievances and objections so they can support people to express themselves in the appropriate forum and to the appropriate parties. This includes ensuring that grievances and objections are responded to in a timely manner.

Grievances will be addressed through informal manners as outlined in the *Due Process Policy and Procedures*.

Objections will be addressed through informal channels such as team meetings and then formal as outlined in the following sections. If or when an objection is made through formal processes, Oswego Industries/The Arc Oswego will formally respond to the objection in writing. The agency will explain the rationale for adjusting programs and services. OI/Arc is committed to following due process as defined by OPWDD in regulatory Part 633.12.

**Grievances:** At times through the course of services an individual may have a concern regarding an aspect of their programing that does not rise to the level of an objection. Examples of this may include discontent with a peer, desire to have a specific goal/staff support provided in a different manner, desire to change time of programing activity and a number of other items. These concerns are often best addressed through open communication with the individual and their program planning team as this is the group with the greatest opportunity to make program level change. The following processes are part of OI/Arc's response:

**A. Informal Procedures for Addressing an Individual Grievance:**

The following is intended to guide individuals and staff to communicate and resolve concerns raised by individuals (and/or their advocates, families, etc.):

- **Care Manager (CM)**– If an individual receives Care Management, they can discuss the issue of concern with their Care Manager who can help advocate on behalf of any changes. It is the duty of the Care Manager to act as an independent/non-biased and formal advocate for the individual within the system of support.
- **Plan Coordinator**-All people participating in OI/Arc services are assigned a Plan Coordinator (with the exception of Respite, FSS, and self-direction). The Plan Coordinator is the person's program advocate and authors the program plan. The Plan Coordinator shall bring forth any complaint or grievance to the Program Manager or Director to be addressed.
- **Program Coordinator/Manager**- Program leaders should be contacted for all issues or concerns related to the program. The Program Leadership shall address any issues or concerns presented by the Person Supported or their team of advocates. If an issue cannot be resolved by the Program Leadership, it will be brought to the Program Director and Quality Assurance/Compliance Department for internal resolution.
- **Life Plan Review Meetings** – All individuals who access services have at minimum semi-annual plan review meetings where program staff that provide services and supports are in attendance. Review meetings focus on the individual and their goals. Review meetings are an ideal time for an individual to raise concerns because the parties that support the individual are present and responsive. If a particular staff person is not in attendance the individual and/or the Care Manager will follow up after the meeting to address concerns.
- **Satisfaction Survey** – All individuals (or their advocate/guardian, etc.) receiving services from OI/Arc have the opportunity to complete an annual *Satisfaction Survey*. Satisfaction surveys present a format for expressing both program specific and personal experiences, including concerns or problems. Surveys are reviewed and responded to annually by agency management and quality staff.
- **Open-door policy** – OI/Arc leadership utilize an “open-door” communication policy. Through the “open-door” policy program concerns may be brought to any Manager/Director including the Executive Director whenever necessary.

**B. Formal Procedures for Addressing an Individual Grievance:**

If an individual or family has attempted to raise concerns related to the services they receive from OI/Arc and their concern has not been satisfactorily reviewed and/or resolved; or if the concern is one the individual or family is not comfortable bringing directly to OI/Arc Leadership, *a formal letter of grievance*

may be submitted to Oswego Industries/The Arc of Oswego County's Corporate Compliance Officer (CCO). The CCO is independent of all the programs that the agency provides. The CCO may be contacted through a variety of methods, several of which can be anonymous (telephone (315) 887-5950 or email available at both <http://www.oswegoindustriesinc.org/reporting/> and <https://www.arcofoswegocounty.org/corporate-compliance/reporting/>). If writing a formal letter of grievance presents an undue burden on someone, a grievance can be directly expressed to the CCO or through the individual's Care Manager.

A formal grievance should explain:

- The nature of the grievance;
- What program(s) the grievance is related to and;
- What actions if any have been taken to date.

Once a grievance has been made to the CCO, the CCO brings the concern to appropriate members of the Senior Leadership Team to meet and compose a formal response, including any changes that will be made. The formal response from the Senior Leadership Team is given to the individual or other party submitting the formal grievance.

**Objections:** At times through the course of services an individual may wish to object to:

- any plan of services, or part thereof and proposed changes thereto;
- plans for program placement/change;
- a proposal initiated by OI/Arc to discharge;
- a proposal to reduce, suspend or discontinue any HCBS waiver service(s).

The informal procedures as outlined for grievances can be used for addressing any objections. If a resolution cannot be reached via informal methods and the individual is objecting to any of the specific items listed above, more formal procedures are used.

**A. Formal Procedures for Significant Changes to HCBS Waiver Services Initiated by the Provider:** Oswego Industries/The Arc of Oswego is required to notify the individual, their advocate (guardian, actively involved family member, correspondent, or advocate) and their CM *in writing* about any significant change to HCBS waiver services regarding *decreasing the frequency of, the suspension of or the discontinuance of* any HCBS waiver service provided to an individual.

- "Notice of Proposed Change" (for OI/Arc initiated changes only) is sent to or given to the individual, their family and their Care Manager to satisfy the written notice requirement.

**\*NOTE:** If a formal grievance is to be discussed during a Life Plan review meeting, notice must be given to all involved parties (individual, advocate, Care Manager, service staff) at least *24 hours prior to the meeting*.

**B. Formal Procedures for Significant Changes to HCBS Waiver Services Initiated by an Individual (or others on their behalf):** An objection to the listed changes can be initiated by the individual, their family and/or Mental Hygiene Legal Services. Should this occur the formal due process procedure is followed:

**1. Actions allowable while an objection is in "Due Process":**

- OI/Arc will continue to serve the individual consistent with the individual's Life Plan.
- Services may be delivered despite objection (other than those requiring informed consent) to an individual where the service or treatment is deemed necessary to avoid serious harm to life or limb of that individual or others at the discretion of the Executive Director.

**Due Process Initiation for an Objection:**

1. The individual and/or their family may contact the agency Corporate Compliance Officer (CCO) to initiate formal due process procedures if they object to a change or if they attempted to raise concerns related to the services they receive from OI/Arc and the concern has not been satisfactorily reviewed and/or resolved, or if the concern is one the individual or family is not comfortable bringing directly to program's Leadership Team.
2. The CCO will conduct an independent review of the situation, in conjunction with program Leadership Team (when appropriate) and will determine an outcome. A letter is then sent informing the individual (and/or their team as needed) of the outcome. If the outcome is satisfactory the process is complete.
3. If a satisfactory outcome cannot be reached the individual, their family and their Care Manager will receive notice in writing outlining the changes to HCBS waiver services. The letter will note the effective date for the changes (no sooner than 14 days following receipt of notice). Additionally, the letter will outline the individual's right (noted in Part 633.12 Due Process) *to complete a formal written objection* to the regional DDRO Director within 14 days of receipt of the notice.
  - "Notice of Right to Administrative Review" is sent to the individual, their family, their CM, to the regional DDRO Director and to Mental Hygiene Legal Services to satisfy the written notice requirement. This letter is sent via certified mail, return receipt requested so that the receipt of information is documented.
4. If no *formal written objection* is made within 14 days, the changes to the HCBS waiver service are made.
5. Should the individual (and/or other party on their behalf) complete a *formal written objection* to the regional DDRO Director, the DDRO Director arranges for DDRO staff to meet with the individual, etc. and the provider to resolve the matter.
6. *Administrative Hearing*: Should the matter not be resolved in 14 days the DDRO Director will assign a hearing officer who will schedule a hearing to determine whether the proposed change is reasonable under the circumstances. The individual (and/or other party on their behalf) and the provider will be given at least 10 days notice of the date the hearing will take place.
7. *During administrative review* there will be no communication between the individual, etc. and OI/Arc concerning the objection except on notice and opportunity for all involved parties to participate. The individual will be able to participate in programming mutually agreeable between the individual (or other party on their behalf) and the agency. Every effort must be made to maintain the individual in at least his/her current level of programming. To protect the individual's or other's health and safety nothing precludes a change in programming for or relocation/discharge of the individual (identified as a significant change to a HCBS waiver service). However, when an objection to placement or discharge is under administrative review, relocation or discharge can only occur with approval by the OPWDD Commissioner.
8. Within 14 days of completion of the hearing, the hearing officer will send the OPWDD Commissioner a written recommendation whether the proposed changes or termination of the HCBS waiver services are reasonable under the circumstances. Copies of the recommendation will be sent to the individual, their advocate, the CM and OI/Arc.
9. Appeals may be submitted to the OPWDD Commissioner by the individual and their family or Oswego Industries/The Arc of Oswego addressing any believed errors made by the hearing officer in their recommendation. This must occur within 10 days of receipt of the recommendation.
10. *Final Ruling*: The OPWDD Commissioner will issue a final written decision to all parties within 14 days of receipt of the appeal. All decisions by the Commissioner are considered final resolution to the objection.

**Immediate Health or Safety Risks:** When OI/Arc proposes to reduce, suspend, or discontinue HCBS waiver services to prevent immediate health or safety risk to an individual or to others because of the actions of an individual receiving HCBS waiver services:

- If the health or safety of the Individual or other people participating in services is in jeopardy the Executive Director may temporarily suspend services to develop a plan to address the Health or Safety concern. If such a need arises the agency shall immediately seek out approval from the person's Care Manager and Advocate.
- If there is any disagreement or dispute regarding the temporary suspension of services the agency shall seek guidance from OPWDD Crisis Management, DDRO Liaison, Mental Hygiene Legal Services (if applicable), and if the services are with The Arc of Oswego, The Arc NY will be notified.
- Such suspensions of services shall be reserved for situations which are truly dangerous in nature and put people at risk for significant injury and/or death.
- OI/Arc must make reasonable efforts to alleviate the health and safety risks and/or either OI/Arc or the individual (or other party on their behalf) can request an expedited hearing if the formal process has been invoked.

**Expedited hearing:** A written request for an expedited hearing can be sent by the individual (or other party acting on their behalf) or by OI/Arc to the OPWDD Commissioner. If OI/Arc is requesting an expedited hearing the written notification will be provided to the individual (or other party acting on their behalf). If the OPWDD Commissioner determines that an expedited hearing is appropriate the DDRO Director will schedule a hearing within 7 days of the determination. A hearing officer will be appointed by the DDRO Director. All parties will be provided at least 3 days' notice of the hearing. The hearing officer's recommendation will be sent to the parties and Commissioner within 5 days of the conclusion of the hearing. Direct replies may be sent to the Commissioner who will issue a final decision as soon as possible.

**Contacts:** This contact information must be provided to the individual, their guardian/advocate/representative or other appropriate party at the Annual Life Plan review as well as well as a conversation about due process.

**Oswego Industries/The Arc of Oswego County**  
**Corporate Compliance Officer**  
7 Morrill Place  
Fulton, NY 13069  
(315) 598-3108

**Oswego Industries/The Arc of Oswego County**  
**Executive Director**  
7 Morrill Place  
Fulton, NY 13069  
(315) 598-3108

**DDRO Region 2 Central**  
**Director**  
315-473-6978  
Information Line 1-(866)-946-9733

**OPWDD**  
**Commissioner**  
44 Holland Avenue  
Albany, NY 12229

**Mental Hygiene Legal Services**  
**Syracuse Area Office: (Cayuga, Jefferson, Onondaga, and Oswego Counties)**  
**224 Harrison Street, Suite 502**  
**Syracuse NY 13202**  
**315-401-3350**

**NYS Justice Center for People with Special Needs**  
**For Certified Programs only**  
**1-855-373-2122**  
**Relay users: Dial 7-1-1 and then 1-855-373-2122**

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**Approved by Executive Director/CEO:**

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	Laurie Davis	
Signature	Name	Date