



Southern Tier Independence Center Policy for Objections Related to HCBS Waiver Services

In accordance with 14 NYCRR 633.12, Southern Tier Independence Center has developed this policy and procedure to establish a mechanism to resolve objections related to HCBS services.

This policy applies to objections related to HCBS waiver services and may be initiated regarding:

- any plan of services or part thereof, as well as proposed changes to a plan of services, including but not limited to a(n):
 - ISP, supported employment service plan, behavior support plan, or habilitation plan;
- plans for placement; and
- a proposal to reduce, suspend or discontinue HCBS waiver services.

Notice

A person receiving services, his or her parent, guardian, correspondent or advocate, as applicable, will be notified of the mechanism to resolve an objection by the staff responsible for developing a plan of services:

- upon enrollment in HCBS waiver services;
- as changes occur; and
- upon any substantive amendment to 14 NYCRR 633.12

Objecting Parties

The following parties may initiate an objection:

- individuals over 18 years old receiving services;
- parents, guardians, correspondents, and advocates of persons receiving services;
- Mental Hygiene Legal Service

Upon such objection, the person or party shall be referred to as the objecting party.

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

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

Resolve an Objection

The following process is available to resolve an objection, unless the objection concerns a proposal to reduce, suspend or discontinue HCBS waiver services.

Informal Objection

The objecting party may informally object by notifying the staff person responsible for developing the plan in question, the program coordinator and/or the Executive Director (or designee).

Objections may be made either verbally or in writing to the parties listed above, in the order in which those parties are listed. This process may include the person's service coordinator and advocate, at the objecting party's discretion.

Written confirmation of resolution or inability to reach a resolution shall be sent to the objecting party by the Executive Director.

Formal Objection

If a resolution cannot be reached through an informal mechanism, the objecting party will be given the opportunity to submit a formal written objection requesting a hearing to the appropriate DDSO director. Within five days of receipt of a formal written objection, a hearing will be scheduled, to take place before a hearing officer appointed by the DDSO Director, with no less than 10 days' notice to the involved parties. A written decision by the hearing officer shall be sent to the involved parties within 14 days of that hearing.

If any party to the proceeding is not satisfied with the decision, it may be appealed within 10 days to the commissioner of OPWDD, who will issue a final written decision to all parties within 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.

During the period that an objection is undergoing administrative review:

- a person will participate in programming mutually agreeable to the objecting party, STIC, the person, and his or her parent, guardian, correspondent or advocate;
- every effort feasible will be made to maintain the person in at least his or her current level of service; and
- in order to protect a person's health, safety, or welfare or the health, safety, or welfare of others, nothing shall preclude a change in service for a person.

Resolve an Objection Related to the Reduction, Suspension or Discontinuance of Services

The following process is available to resolve an objection related to a proposal to reduce, suspend or discontinue HCBS waiver services.

Informal Objection

The objecting party may informally object to a reduction, suspension or discontinuance by notifying the staff person responsible for developing the plan for the services at issue, the program coordinator and/or the Executive Director (or designee).

Objections may be made either verbally or in writing to the parties listed above, in the order in which those parties are listed. Such process may include the person's service coordinator and advocate, at the objecting parties' discretion.

Written confirmation of resolution or inability to reach a resolution shall be sent to the objecting party by the Executive Director. Such notice will be in a form and format approved by OPWDD, and will be sent by certified mail, return receipt requested, or such other means so that receipt of the information can be documented.

Formal Objection

If a resolution cannot be reached, the objecting party may submit a written objection to the DDSO director requesting administrative review of the reduction, suspension or discontinuance, within 14 days after the receipt of the notice. During this 14 day period, STIC will not reduce, suspend or discontinue the HCBS waiver service(s) at issue, unless otherwise agreed to by the parties.

Upon receipt of a written objection requesting an administrative review, the DDSO director or his or her designee shall contact the objecting party and the agency providing the service(s) 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 hearing shall be conducted by a hearing officer appointed by the DDSO director. The objecting party and the agency may mutually agree to extend the time periods noted in this clause.

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

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

Reduction, Suspension or Discontinue Due to Health or Safety Concerns

When STIC 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, STIC will make reasonable efforts to alleviate the health and safety risks at issue. STIC will also notify the objecting party that both STIC and the objecting party may request an expedited hearing by the following process:

- A written request for the hearing must be sent to the commissioner of OPWDD.
 - STIC will immediately notify the person, parent, guardian, correspondent and advocate, if an expedited requested is initiated by STIC.
- If the commissioner determines that an expedited hearing is warranted, the appropriate DDSO director will schedule a hearing within seven days of the commissioner's determination. The hearing will be held before a hearing officer appointed by the DDSO director. Absent good cause, the parties involved in the objection will receive at least three days' notice of the hearing.
- The hearing officer's recommendation shall be sent to the parties and sent to the commissioner within five 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 practicable thereafter.

No person, objecting party or a representative of either, will be denied the opportunity to participate in any hearings. The person, objecting party or a representative may offer information and ask relevant questions of any parties participating in any such hearing.

During the period that an 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 involved parties to participate.

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.

Medical Treatment

Objections to major medical treatment, for which informed consent is necessary, are not governed by the objection processes of this policy. Treatment may be given, if informed consent is not required, 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 Executive Director and in accordance with agency policies and procedures.

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