

**Conforming Changes Related to Chapter 106 of the Laws of 2015  
AMENDMENTS TO 14 NYCRR SECTION 633.21**

**EMERGENCY/PROPOSED REGULATIONS**

**Emergency Regulations Effective: March 1, 2016  
Comments Due: May 2, 2016**

- **Section 633.21 is amended as follows:**

633.21 Administrative process applicable to persons who are subject to placement [out of transitional care] under Mental Hygiene Law section 13.38

(a) Principles of compliance.

(1) The provisions of this section and any administrative process associated with its implementation, shall be in conformance with article 13, section 13.38 of the Mental Hygiene Law.

(2) Upon making a determination that a person who is receiving care pursuant to section 13.37-a or subdivision (g) of section 13.38 of the mental hygiene law can be cared for appropriately in an available adult care facility or by a service that is licensed, certified or approved by OPWDD, and whose removal from a child care facility or residential school is not required on an expedited basis, OPWDD shall notify in writing the person [Each person (see subparagraph [6][iii] of this subdivision) receiving transitional care (see subparagraph [6][iv] of this subdivision)] and the person's guardian (if one has been appointed), or another individual who has been actively involved in the care of the person and who can represent the person's interest, [shall be notified in writing by certified mail, return receipt requested,] of [OMRDD's] OPWDD's determination that the person [who is currently receiving transitional care] can be appropriately cared for at an available placement providing residential care or by receiving another appropriate service(s) certified and/or funded by [OMRDD] OPWDD (see subparagraph [6][i] of this subdivision regarding appropriate placement or plan of services). Such notification also shall provide a description of the proposed new placement or services.

(3)

(i) [Said] The written notification required pursuant to paragraph (2) of this subdivision[, ] shall be served at least 30 days prior to the date on which the proposed placement will be available; service by

Note: New material is underlined and deleted material is in [brackets].

ordinary mail will be deemed effective on the fifth day after mailing. Such notification shall include information about [reference] the availability of [an objection(s) and] an administrative appeal to review the determination if any of the notified parties do not agree with the determination, and of the need to request such appeal in writing within 30 days of [the receipt] service of the notice.

- (ii) Any of the notified parties may request an administrative appeal by sending a written request to the Commissioner and stating the reasons for the objection. If the request is made within the time period required, a hearing will be scheduled with no less than 10 days' notice to the objecting party. The hearing shall be before a hearing officer designated by the Commissioner.
- (4) If [a person, guardian, or other actively involved individual does not] none of the notified parties request a hearing within the timeframe required, or if any requested hearing results in a determination that the proposed residential placement or other service(s) is appropriate to the needs of the person, and is available (see subparagraph [6][ii] of this subdivision), or will be available on a [certain] date certain, [OMRDD shall notify the local Department of Social Services that funding for transitional care for the person is to be discontinued] OPWDD shall discontinue care funding for the person as of a date certain.
- (5) [Should an objection and request for appeal be made and a hearing be necessary, it shall be held before a designated Regional Review Panel authorized by the Commissioner of OMRDD, which shall determine whether the proposed placement or plan of services is appropriate and available.
  - (i) The panel shall consist of three members who are professionals with experience in the field of developmental disabilities services.
  - (ii) At least one member of each panel shall be a licensed psychologist, certified social worker or licensed health professional.
  - (iii) The commissioner shall ensure that no member of the panel participates in the review of any proposed placement in which he/she has been previously involved, either by having screened, evaluated or participated in the determination regarding the proposed placement.
    - (a) Panel members shall not be employed by the agency which will provide the proposed residential placement or any aspect of a recommended plan of services, or be employed

Note: New material is underlined and deleted material is in [brackets].

by the involved Developmental Disabilities Services Office (DDSO).

- (b) The commissioner shall arrange for the appropriate substitution of any member of the panel with such potential conflicts of interest.]

The hearing officer shall conduct the hearing and review the parties' presentations and information to determine whether the placement or services identified by OPWDD is appropriate to the needs of the person and is available or will become available on a date certain. The hearing officer shall send a written report and recommendation to the commissioner, and the commissioner or his or her designee shall issue a written determination to the objecting party within thirty days after the close of the hearing record, on whether the proposed placement is appropriate to the needs of the person and is available or will become available on a date certain. The commissioner may, in his or her discretion, send the matter back to the hearing officer for further review. The commissioner's determination shall be the final administrative remedy available and may be appealed in accordance with the provisions of article 78 of the Civil Practice Law and Rules.

- (6) Definitions relevant to this section.
- (i) Appropriate placement or plan of services. The [OMRDD's] OPWDD's determination expressed in a written document, setting forth those adult services necessary to meet the essential needs of a person. Educational, [or] child care, or other services received by a person in his or her current placement may be considered, but shall not be deemed to constitute the standard by which a proposed placement or plan of services is determined to be appropriate.
- (ii) Available placement or plan of services. A placement or plan of services which can be provided to a person within 90 days of written notification by [OMRDD] OPWDD, shall be deemed "available." In cases where a placement or plan of services cannot be provided to a person within 90 days, the placement or plan of services shall be deemed available if the [Regional Review Panel] hearing officer determines that such place or plan of services can be provided on a certain date.
- (iii) Person/persons. As used herein, a person with a [diagnosis of mental retardation or other] developmental disability, who is receiving [transitional care] OPWDD funding for care pursuant to section 13.37-a or subdivision (g) of section 13.38 of the mental hygiene law.

Note: New material is underlined and deleted material is in [brackets].

- [(iv) Transitional care. The care and maintenance of a person:
- (a) who was placed in foster care by a social services district pursuant to article six of the Social Services Law and who has become 21 years of age, or who was placed in a residential educational placement by a school district pursuant to article 89 of the Education Law and who is no longer eligible for free educational services because this person has completed the school year in which he/she became 21;
  - (b) who is developmentally disabled and was in need of residential care prior to becoming age 21 or prior to becoming ineligible for free educational services, and who continues to be in need of a residential facility or other service(s); and
  - (c) who became 21 or became ineligible for free educational services prior to July 1, 1996; and
  - (d) for whom the OMRDD has approved a plan of services for continued care, but has not yet identified a currently available appropriate residential placement or other services; and
  - (e) whose residential needs can continue to be met where the person currently resides.]

Note: New material is underlined and deleted material is in [brackets].