

**New York State Office For People With Developmental Disabilities**  
**Liability Notice (OPWDD LIAB 01) (03/2009, Rev. 12/2010)**  
**Liability Notice - Preexisting Services (OPWDD LIAB 02) (03/2009, Rev. 12/2010)**  
**Instructions to provider**

**1. General Instructions**

These two liability notices describe the obligations of the provider, the individual and liable parties under the law and OPWDD regulations (14 NYCRR Subpart 635-12). One notice is for “preexisting” services and the other is for “other than preexisting services” as discussed in the regulations. See the chart below for detailed instructions about which notice to use.

OPWDD regulations require that you (the service provider) give the Liability Notice - Preexisting Services (OPWDD LIAB 02) for all persons receiving any of the following five services from you on a regular basis as of February 15, 2009:

- 1) Day Habilitation
- 2) Residential habilitation in an individualized residential alternative (IRA)
- 3) Residential habilitation in a family care home
- 4) ICF/DD Services (Intermediate Care Facilities for Persons with Developmental Disabilities)
- 5) Residential habilitation in a community residence

OPWDD regulations also require that you (the service provider) give the Liability Notice (OPWDD LIAB 01) whenever an individual is requesting or begins to receive any of the five services listed above from you on or after February 15, 2009.

Do not give either notice to anyone who is receiving or requests a service not listed above. If a person is receiving or requesting a service listed above and other services not listed, give the notice only for the service listed above.

OPWDD LIAB 01 and OPWDD LIAB 02 can be found on the OPWDD website at [www.opwdd.ny.gov](http://www.opwdd.ny.gov). Look under “News & Publications,” then “Benefits Information”

**Instructions to provider**

**2. Fill in the blanks in the notice**

**First page:**

Put your (the provider's) name and address at the top of the notice.

Date the notice.

In OPWDD LIAB 01, fill in the first and last name of the individual who is asking to receive services for him or herself. In OPWDD LIAB 02, fill in the first and last name of the individual who is receiving services. Do not put the name of any person or organization other than the individual requesting or receiving services. For example, do not put the name of a person accompanying or assisting the individual, an advocate, correspondent, parent, family member, guardian, trustee, representative payee or attorney.

**Second page:**

Put your (the provider's) full fee for the service requested or received in the blank space in the sentence that reads: "The full fee is \_\_\_\_\_."

- Write the unit of service for the fee. For example, for an IRA, write \$ xx.xx per month.
- For OPWDD LIAB 01, write the fee that is in effect at the time the person is requesting services. If the person is requesting services for a future date, write the fee that will be in effect on the date as of which the person wishes to receive services. For OPWDD LIAB 02, write the fee in effect on March 15, 2009.
- For services with a monthly unit of service, specify the full monthly fee (even if the individual will only be receiving services for a partial month at first). For day habilitation, if the individual could receive either a full or half unit of service, list both fees.

Alternatively, you may attach a separate sheet listing the fee and put "see attached" in the blank space in the sentence "The full fee is \_\_\_\_\_." If you attach a list of fees for different services, the list must include the fee for the service requested or received and must clearly identify the service to which each fee applies.

**Other:**

It is not necessary to have the person receiving the notice acknowledge receipt in writing, although you may do so, either on the notice itself or on a separate document.

Instructions to provider

3. Which notice do you use?

<p>Use OPWDD LIAB 02 (the Preexisting Services Notice) if:</p>	<p>The individual was receiving any of the five listed services from you on a regular basis as of February 15, 2009</p>
<p>Use OPWDD LIAB 01 if the individual is requesting services (either by him/herself or through someone else) and:</p>	<p>The individual never received the services before from you or any other OPWDD provider</p>
<p>Use OPWDD LIAB 01 if the individual is requesting services (either by him/herself or through someone else) and:</p>	<p>The individual received the services before from you or another OPWDD provider, but not on a regular basis (e.g., there has been an interruption in service or the service was received intermittently)</p>
<p>Use OPWDD LIAB 01 if the individual is requesting services (either by him/herself or through someone else) and:</p>	<p>The individual never received the services before from you but did receive the services before from another OPWDD provider on a regular basis, <b>unless</b> the only reason the individual was receiving services from a different provider is that you and the different provider merged or consolidated, or you took over the other provider's operations</p>

**Note:** If you convert a community residence to an IRA after February 15, 2009, **do not** give an OPWDD LIAB 01 to any individual who was residing in the facility on the date of the conversion. You should have already given the individual an OPWDD LIAB 02 by March 15, 2009.

**Note:** Some individuals will need to receive both an OPWDD LIAB 02 and an OPWDD LIAB 01. For example, prior to February 15, 2009, the individual lived in an IRA operated by provider A and received day habilitation operated by provider B. In April, 2009 the individual requests day habilitation services from provider C. Providers A and B would each the individual an OPWDD LIAB 02. Provider C would give the individual an OPWDD LIAB 01.

Instructions to provider

**4. Who gets the notice?**

Give the notice to **all** of the people who fit the situations described below. This means you may be required to give notice to more than one person.

**Give the notice to the individual** who is receiving or would receive the service if the individual is 21 or older. However, if it is clear that the individual is not capable of understanding the notice, is it recommended that you give the notice to the person accompanying or helping the individual, and ask the person to do his or her best to explain the notice to the individual.

**Give the notice to all persons who meet the criteria in the chart below.**

<b>Give the notice to</b>	<b>If</b>
The individual's parent(s)	the individual is under 21, lives with his or her parent(s) and is receiving day habilitation <b>OR</b> the individual is under 21 and is requesting day habilitation which would be received while he or she lives with his or her parent(s)
The legal guardian	the individual (of any age) has a court-appointed guardian who is responsible for the individual's property or money
The trustee	The individual is a beneficiary of a trust or other legal instrument where the assets of the trust are available income and resources for Medicaid. (If the trust is a "Medicaid qualifying trust" or a "Medicaid exception trust", the trust assets are not available income and resources for Medicaid. Always ask for a copy of the document for the trust or other instrument.)
A representative payee or other payee for benefits	There is a representative payee for SSI, Social Security or a payee for any other benefits the individual receives
Any person holding money or assets for the individual	There is any person holding money or assets for the individual
The conservator	There is a court-appointed conservator for the individual under former Mental Hygiene Law Article 77
The committee	There is a court-appointed committee of the property for the individual under former Mental Hygiene Law Article 78
The spouse	The individual is married

## **5. When do you give the notice?**

**OPWDD LIAB 02 (pre-existing services notice):** by March 15, 2009.

The deadline for giving out OPWDD LIAB 02 is March 15, 2009. You can give this notice earlier if you want. If you discover after March 15, 2009 that there is someone who should have received the notice (e.g., you learn that the individual has a trust, or that he or she has a court-appointed guardian with responsibility for the individual's money or resources), give the notice to that person as soon as you can after you learn about him or her. If circumstances change so that there is a new person who should get the notice (e.g., if the individual gets married or has a guardian appointed with responsibility for the individual's money or resources), give the notice to the new person as soon as you can after you learn of the changed circumstances.

**OPWDD LIAB 01: beginning February 15, 2009, before you start giving the individual services.**

For any individual who begins services on or after February 15, 2009, give OPWDD LIAB 01 before the individual begins services. This can be any time in the intake, assessment or other process you use before individuals begin to receive services. If you discover after you start services that there is someone who should have received the notice (e.g., you learn that the individual has a trust, or that he or she has a court-appointed guardian with responsibility for the individual's money or resources), give the notice to that person as soon as you can after you learn about him or her. If circumstances change so that there is a new person who should get the notice (e.g., if the individual gets married or has a guardian appointed with responsibility for the individual's money or resources), give the notice to the new person as soon as you can after you learn of the changed circumstances.