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Commissioner

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Executive Deputy Commissioner

MEMORANDUM

TO: All DDSO Directors
All Voluntary Agency Chief Executive Officers
Central Office Leadership Team

FROM: Paul R. Kietzman
General Counsel

DATE: March 29, 1996

RE: Limitation of Rights of Consumers

At times it may be necessary to put a limitation on the rights of a consumer for clinical reasons: limiting visitation by family to the facility; limitation on phone calls; or limitation on activities in the community are examples of such situations. This type of situation has been addressed in OMRDD's regulations. However, there has been a recent change to the Mental Hygiene Law that I want to bring to your attention. The change in the Mental Hygiene Law, to which I referred, is found at Section 33.02(b), which was amended to include the following requirement:

Any limitation on the rights enumerated shall be permitted for an individual resident of any other residential facility or program...operated or licensed by the office of mental retardation and developmental disabilities only upon written order by the director or chief executive officer of such facility or program upon receipt of a recommendation by the treating practitioner as defined by paragraph seven of subdivision (a) of section 33.16 of this article with such order to be placed in the resident's clinical record stating the clinical justification for such limitation and the specific period of time such limitation shall remain in effect.

[§633.16(a)(7) - "Treating Practitioner" means the practitioner, who has or had primary responsibility for the care of the patient or client within the facility or if such practitioner is unavailable, a practitioner designated by such facility.]

Under current regulation, Part 633 of 14 NYCRR addresses the limitation of rights of a consumer. It states, in §633.4(a)(3) that:

It is the responsibility of the agency/facility or the sponsoring agency to ensure that rights are not arbitrarily denied. Limitation on client rights must be on an individual basis, for a specific period of time, and for clinical purposes only.



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Facilities are surveyed against the standard set forth in §633.4(b)(6):

For the person who has had limitations placed on any rights, there is documentation in the person's plan of services as the clinical justification and specific period of time the limitation is to remain in effect.

It is not necessary to amend Part 633 to implement the amendment to the Mental Hygiene Law with its final "written order" requirement. Each agency should establish its own procedures to do this, which can include the designation of a designee to assume the responsibility for the chief executive officer (this authority can be found in the definition of the "chief executive officer" in the Glossary of Part 633). This should be done as expeditiously as possible.



Paul R. Kitzman

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