



Quality Management

Sheila McBain, Ph.D., Deputy Commissioner

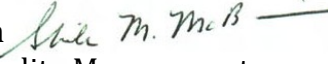
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MEMORANDUM

TO: DDSO Directors
Executive Directors of Voluntary Agencies

FROM: Sheila McBain 
Division of Quality Management

SUBJECT: Discharge Without Due Process

DATE: October 19, 2010

It has come to my attention that there have been several recent cases in which an agency has refused to allow a person to return to his/her residence and/or day program after a period of hospitalization, a visit home or other circumstances when the person has been absent from the program. In addition, there have been recent cases when an agency has notified a person or advocate that the person was being discharged from his/her program without notifying the person of his/her right to object to the discharge. Typically, the agency claims it can no longer serve the particular person because of his/her difficult behavior, health care needs or extended absence. An agency's refusal to allow a person to return to his/her residence or program is effectively a discharge from that program. An agency cannot discharge any person from any residential program without implementing the discharge process required by the OPWDD Placement Procedures (CP 10). Furthermore, an agency cannot discharge any person from any program or OPWDD funded service without providing that person with the opportunity to object to the discharge pursuant to 14NYCRR Part 633.12. If the person or his/her family, guardian or advocate does object to the discharge, the agency is required to continue to provide services to the person until the objection process specified in §633.12 is completed.

Attempting to discharge a person without supporting the person's right to object to the discharge is a violation of Mental Hygiene Law and OPWDD's regulations. In accordance with Mental Hygiene Law, failure to comply with regulatory requirements can be a basis for taking adverse action against an agency or a program.

cc: Associate Commissioners
Provider Association