



**Office for People With  
 Developmental Disabilities**

**ADMINISTRATIVE DIRECTIVE**

<b>Transmittal:</b>	18-ADM-01
<b>To:</b>	Executive Directors of Voluntary Provider Agencies Developmental Disabilities Regional Office Directors Developmental Disabilities State Operations Office Directors OPWDD Developmental Disabilities State Operations Business Officers
<b>Issuing        OPWDD Office:</b>	Revenue Support Field Operations Division of Enterprise Solutions
<b>Date:</b>	March 15, 2018
<b>Subject:</b>	Facility Directors as Representative Payee Regulations
<b>Suggested        Distribution:</b>	Administrators and Managers of Agency Residential Services Agency Business Office Staff Benefits & Entitlements Staff Quality Improvement Staff Medicaid Service Coordinators and MSC Supervisors Revenue Support Field Offices
<b>Contact:</b>	<a href="#">OPWDD Revenue Support Field Offices</a>

<b>Related        ADMs/INFs</b>	<b>Releases        Cancelled</b>	<b>Regulatory        Authority</b>	<b>MHL &amp; Other        Statutory Authority</b>	<b>Records        Retention</b>
		14 NYCRR 633.9 and 633.15	Mental Hygiene Law Section 33.07	4 years

**Purpose:**

To provide additional information and best practices for Facility Directors as Representative Payees in Office for People With Developmental Disabilities (OPWDD) operated and certified residential facilities, including family care homes.

**Background:**

Mental Hygiene Law Section 33.07 requires OPWDD to promulgate regulations concerning the management of benefit funds received by facility directors acting as representative payees. OPWDD promulgated regulations titled Facility Directors as Representative Payees in a new Title 14 New York Code of Rules and Regulations (NYCRR) section 633.9, effective October 11, 2017.

The regulations include determining an individual's need for a representative payee; providing notice to qualified parties when a facility director intends to apply to be representative payee; and transferring funds when an individual moves from one OPWDD certified residential facility to another OPWDD certified residential facility under the auspices of a different agency. The regulations also include policy and procedure requirements applicable when a facility director acts as representative payee. These requirements are detailed in the text of the regulations.

Certain definitions within this regulation do not directly correlate with definitions used in other OPWDD regulations. In the event of an inconsistency, the definitions in section 633.9 apply.

These regulations are in addition to the benefit paying agencies' requirements for representative payees.

**Initial Determination of Need for a Representative Payee:**

Before the effective date of the regulations, as noted in section 633.9, a facility director who wished to act as an individual's representative payee was required to apply to benefit paying agencies within three (3) days of an individual's admission to that facility. This new regulation requires a review of the individual's ability to manage their benefits on admission to a new facility, before a facility director may apply to become representative payee. (The term "team" is interchangeable with "treatment team," "circle of support," and "program planning team".) The time allowed to complete this review and apply to become representative payee has been increased to ten (10) business days. This does not preclude a determination in less time.

This determination of need for a representative payee does not apply to children under the age of 18 because benefit paying agencies require a child to have a representative payee.

If someone other than the facility director is serving as representative payee at the time of the person's admission, and there is a determination that the person can manage their own benefits, then the facility director should report this determination to the benefit paying agency, even though the director will not be applying to be representative payee.

For Supplemental Security Income or Social Security Disability, Retirement or Survivors Benefits, Form SSA-787 (Physician's/Medical Officer's Statement of Patient's Capability to Manage Benefits) is commonly used to provide medical evidence concerning an individual's ability to manage their benefits. This form is available by contacting your local Social Security Administration (SSA) Offices. Other forms or summary reports from medical sources may also be used. Each benefit paying agency provides guidance through the process to the possible representative payee. The information sought on the SSA form provides an example of the information that may be requested by other benefit paying agencies.

### **Change in an individual's need for a representative payee**

If an individual has a representative payee and is subsequently determined to be able to manage their own benefits, or if it is determined that an individual who previously managed their own benefits now needs a representative payee, documentation of these changes must be provided to the specific benefit paying agency to change their records. Form SSA-787 is acceptable for Social Security purposes.

### **Change in an individual's residence**

When an individual moves to a new facility on a permanent basis, the determination of need for a representative payee must be reviewed. If the move is to a facility within the same agency and at the same level of support (e.g. IRA to IRA), best practice would suggest a reconsideration of the representative payee status. If it is determined that no change in representative payee is needed, then the facility will not need to request a change. The facility, however, must follow the benefit paying agency's procedures to report changes in the individual's residence.

These regulations are not intended to apply when individuals in a facility are temporarily re-located due to a physical plant emergency. The emergency move must be reported

to OPWDD immediately or as soon as reasonably feasible. If the individuals will be residing elsewhere for 14 days or more, this relocation must also be reported to the benefit paying agencies.

If there is a merger, takeover, or auspice change of the facility, the determination of need for a representative payee does not need to be reviewed at the time of the change in administration, but must be considered as part of the individualized planning process during the year. The incoming facility director must file for a change in representative payee with the benefit paying agency(s) for those individuals for whom the director of the former agency had acted as representative payee. This change in representative payee should be effective as of the date of the change in administration.

Nothing in section 633.9 requires a facility director to be the representative payee. Service provisions must not be contingent on the facility director becoming the individual's representative payee. The representative payee and provider of services should work together to ensure that the individual's benefits are used to meet current wants and needs.

## **Notification**

Mental Hygiene Law (MHL) Section 33.07 requires the facility director, when applying to become representative payee, to notify the parties (qualified parties) listed in MHL section 33.16(a)(6). Those parties as of the date of this memo include:

- The individual
- A guardian appointed under article 17-A of the surrogate's court procedure act, or a committee appointed under MHL
- The parent of a child, or a guardian of a child, appointed under article 17 of the Surrogate Court Procedure Act (SCPA) or other legally appointed guardian of a child
- A parent, spouse, adult child, or adult sibling of an individual when the family member would otherwise be entitled to clinical records

Although not required by statute, notice should be given to a guardian appointed under Article 81. The beneficiary, or if appropriate, the beneficiary in conjunction with the team, may designate other parties to receive notice.

Proof of notification must be kept to meet document retention schedules for this and other pertinent regulations.

Facilities must modify their “new admissions” process to incorporate notification requirements, including information that Mental Hygiene Legal Services (MHLS) is available to advise beneficiaries regarding the representative payee application process. Contact information for MHLS is available as follows:

- First Judicial Department (Bronx and Manhattan):  
<http://nycourts.gov/courts/ad1/Committees&Programs/MHLS/index.shtml>
- Second Judicial Department (Dutchess, Kings, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester):  
[http://nycourts.gov/courts/ad2/mhls\\_mainpage.shtml](http://nycourts.gov/courts/ad2/mhls_mainpage.shtml)
- Third Judicial Department (Albany, Broome, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Madison, Montgomery, Otsego, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Sullivan, Tioga, Tompkins, Ulster, Warren, and Washington):  
<http://www.nycourts.gov/ad3/mhls/index.html>
- Fourth Judicial Department (Allegany, Cattaraugus, Cayuga, Chautauqua, Erie, Genesee, Herkimer, Jefferson, Lewis, Livingston, Monroe, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Seneca, Steuben, Wayne, Wyoming, and Yates):  
<http://www.nycourts.gov/courts/ad4/MHLS/MHLS-offices.html>

### **Duties of a Representative Payee:**

Representative payees must continue to report to the benefit paying agency any changes that may affect the individual’s benefits. Guidance can be found at the following websites:

- Social Security: <https://www.ssa.gov/payee/NewGuide/toc.htm>
- Railroad Retirement: <https://www.rrb.gov/pdf/rb5.pdf>
- Veterans Administration: [http://benefits.va.gov/fiduciary/fid\\_guide.pdf](http://benefits.va.gov/fiduciary/fid_guide.pdf)
- US Government Civil Service Annuity: [https://www.opm.gov/forms/pdf\\_fill/ri20-7.pdf](https://www.opm.gov/forms/pdf_fill/ri20-7.pdf)

OPWDD’s local [Revenue Support Field Offices](#) also are available to provide advice about benefits and entitlements.

If the facility director is not or will not be serving as representative payee, issues with family or friends as representative payees are outside the scope of the regulations. Mental Hygiene Legal Services, the Social Security Administration and the local Revenue Support Field Offices are sources of advice to address these issues.

## **Policies and Procedures:**

Title 14 NYCRR section 633.9 requires provider agencies to have policies and procedures for the use and management of benefits paid to the facility director as representative payee for individuals. These policies must include but are not limited to the items in subdivision 633.9(e): interest on accounts, internal controls, review of the account, designation of staff, management of personal allowance, action upon receipt of funds that could affect the individual's eligibility for benefits, record keeping and assistance to non-facility director representative payees as needed.

Upon receipt of a lump sum retroactive benefit, inheritance or other funds that might affect benefit eligibility, best practice is to consider the following:

- The timeline for protection of the individual's benefit(s), including the lump sum, as dictated by the rules of the benefit paying organization(s)
- The individual's current and future wants and needs, including a burial fund
- The individual's age and ability to manage their funds
- The individual's choice of other living arrangements
- The individual's need for government benefits in a chosen living arrangement
- The establishment of a trust should be established, and, if so, what type of trust (including first or third party supplemental needs trust, a pooled trust or an ABLE account)
- The amount of the resources to be placed in trust
- The eligibility of the individual to establish a trust
- The availability and willingness of a family member, friend, guardian, or other appropriate party to serve as trustee
- The impact of anticipated costs to establish and maintain the trust, if any, on the amount of trust resources that will be available to the individual
- The individual's Willowbrook status and representation or co-representation by the Consumer Advisory Board, which may introduce additional requirements
- Any other issues relevant to the individual's particular circumstances

It is the obligation of the facility director as representative payee to ensure that an individual does not lose Medicaid due to inaction by the facility director, particularly if that inaction would result in full cost billing for services under OPWDD's liability regulations (Title 14 NYCRR section 635.12).

## **Transfer of Funds**

As part of discharge planning, the current representative payee must help the individual determine a possible successor representative payee. If the director of the current residential facility is the representative payee, and funds must be returned to the benefit

paying agency, then the director must also provide to the possible successor payee information on the amount and date of funds returned to the benefit paying agency. If the individual discharged will be receiving their benefits directly, then the residential facility the individual is leaving must provide information on the amount and date of returned funds to the individual and anyone the individual designates. It is expected that these issues will be addressed during the discharge planning process.

## **Definitions**

### Changed Definitions in 14 NYCRR section 633.15

Account, payee: This is a correction of a drafting error.

### Deleted Definitions in 14 NYCRR section 633.15

Own payee: This definition is deleted. Benefit paying agencies refer to an individual receiving their own benefits directly, without use of a representative payee (or fiduciary), as a beneficiary or recipient or claimant.

Payee for earnings: This definition is deleted. Whether an individual can manage their full earned income should be considered as part of the individual's money management assessment.

## **Records Retention: (minimum)**

All documentation specified above must be retained for a period of at least four years, based on the requirements of benefit paying agencies.

Please contact your local [Revenue Support Field Office](#) with questions on this directive.