

**Addition of 14 NYCRR Subpart 636-3
Certified Residential Opportunities (CRO)**

Adopted Rulemaking Regulations

Effective Date: June 14, 2023

- **A new subpart 636-3 is added to read as follows:**

636-3.1 Applicability

- (a) This Subpart applies to all providers of residential facilities certified or operated by the Office for People With Developmental Disabilities (OPWDD) (referred to herein as “Residential Provider Agencies”).
- (b) This Subpart also applies to providers of OPWDD care management services, such as Comprehensive Health Home Care Management and Basic HCBS Plan Support.

636-3.2 Background and Intent

- (a) This Subpart contains requirements and processes for the provision of residential services to individuals with intellectual and developmental disabilities in residential facilities certified or operated by OPWDD (collectively “residential facilities”).
- (b) The most integrated and least restrictive housing options must be explored for all individuals seeking services in residential facilities.
- (c) Providers of care management services and Residential Provider Agencies must partner with OPWDD to facilitate the provision of residential services to individuals with intellectual and developmental disabilities, when appropriate.

636-3.3 Statutory Authority

- (a) Sections 13.01, 13.07, and 13.17 of the New York State Mental Hygiene Law authorize the commissioner of OPWDD to develop an effective, integrated, comprehensive system for the delivery of services to individuals with developmental disabilities.

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

- (b) Section 13.09 of the New York State Mental Hygiene Law grants the commissioner of OPWDD the authority to promulgate rules and regulations necessary and proper to implement any matter under their jurisdiction.
- (c) Sections 16.00 and 16.01 of the New York State Mental Hygiene Law enable the commissioner of OPWDD to regulate and assure the consistently high quality of services provided within the State to individuals with developmental disabilities.

636-3.4 Responsibilities of Residential Provider Agencies

- (a) Residential Provider Agencies must:
 - (1) notify OPWDD of any vacancies in residential facilities;
 - (2) timely review residential referrals;
 - (3) prioritize individuals for services in residential facilities who have been designated as having a higher need for such services;
 - (4) screen individuals referred for services in residential facilities to assess the appropriateness of the service needs of individuals referred for all available vacancies;
 - (5) submit screening reports to OPWDD following review of residential referrals and assessments; and
 - (6) adhere to all community placement and due process procedures in this Part for both internal and external moves (see e.g., section 633.12 of this Part).
- (b) Residential Provider Agencies must submit site profile information for all residential facilities to OPWDD and update site profiles whenever changes occur. Changes include, but are not limited to, instances when:
 - (1) a new residential facility is added to an agency's residential inventory; or
 - (2) there is a substantive change in the composition of the residents, staffing, or features of a residential facility.
- (c) Residential Provider Agencies must screen all individuals who appear appropriate for any of their current or anticipated vacancies, and all individuals specifically referred to them by OPWDD.

636-3.5 Responsibilities of Providers of Care Management Services

- (a) Prior to referring an individual for services in a residential facility, Care Managers must:

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- (1) ensure the individual has established OPWDD eligibility;
 - (2) ensure the individual has requested services in a residential facility;
 - (3) have fully explored with the individual and their guardian, family, or advocate, as applicable, the possibility of remaining in their current residence or other community living arrangement with additional supports and services.
- (b) For individuals who have an active referral for services in a residential facility, the Care Manager must ensure that OPWDD receives the individual's current information, including:
- (1) their Life Plan;
 - (2) all updates to clinical and medical documents, including at the time of the annual physical and any relevant clinical event;
 - (3) changes in the Care Manager and/or the provider of care management services;
 - (4) any changes in circumstances that might impact an individual's residential support category; and
 - (5) any other relevant information.

636-3.6 Levels of Need for Certified Residential Services

- (a) OPWDD will assess and determine whether an individual requires services in a residential facility and the individual's level of need.
- (b) Levels of need for services in residential facilities are designated by OPWDD to determine the prioritization of individuals for available opportunities in residential facilities.
- (c) Levels of need are determined by OPWDD and are based on factors including, but not limited to, level of care required due to an individual's developmental or intellectual disability, availability and adequacy of an individual's natural supports, and risk of harm associated with an individual's current situation.

636-3.7 Residential Referral Process

- (a) Residential Provider Agencies must attempt to fill any current or anticipated vacancies with individuals designated by OPWDD as having the highest level of need prior to considering other individuals for available residential services.
- (b) Residential Provider Agencies may only consider individuals designated as having lower levels of need upon receipt of prior approval from OPWDD.

636-3.8 Internal Moves

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

- (a) Internal moves are those that move an individual currently residing in a residential facility to another residential facility operated by the same Residential Provider Agency.
- (1) OPWDD must be notified prior to any internal move.
 - (2) OPWDD approval is required prior to any internal move that will result in the relocation of an individual outside of their current district.
 - (3) If an internal move will change the location of a vacancy that was previously announced, OPWDD must be notified of the new vacancy location.
- (b) Internal moves must comply with all applicable regulations and guidance relating to due process, including, but not limited to, section 633.12 of this Part and OPWDD's Community Placement Procedures.

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