



Office for People With
Developmental Disabilities

Occupancy Agreements for Home and Community Based Settings

July 2023



Plain Language

The Home and Community Based Services Settings Rule

HCBS stands for **H**ome and **C**ommunity **B**ased **S**ervices.

HCBS are services that people use to help them be healthy and successful in life.

OPWDD provides HCBS for people with developmental disabilities.

In 2014, the federal government made rules about the rights of people who get HCBS and about what HCBS settings – the places where HCBS are delivered – should be like.

These rules are called the **HCBS Settings Rule**.

In 2021, OPWDD made the same kind of rules for New York State.

The federal government said states must follow the rule by **March 17, 2023**.

The rule says that service providers that operate OPWDD group homes and Family Care Homes must have a written agreement with the people who live in those homes.

This agreement is called an **Occupancy Agreement**.

The service provider and the person will sign the Occupancy Agreement. A person's legal guardian or representative may sign for them.

A copy of the signed Occupancy Agreement is given to the person.



A Person's Rights

The HCBS settings rule says a person has the right to:

- **Privacy** in their bedroom including:
 - Lockable doors
 - Choice of roommates
 - Freedom to decorate their room how they want
- Control their own **schedule**
- Have **food** at any time
- Have **visitors** at any time
- Have a **home** that they can use



A service provider can limit these rights if they have to in order to keep the person safe and healthy.

Any changes to a person's rights have to be written in the person's Life Plan, behavioral support plan or staff action plan.



Before limiting a person's rights in any way, a service provider must:

- Say why the person needs their rights limited
- Say how the provider has tried to support the person without limiting their rights
- Keep track of how limiting a person's rights is helping the person stay safe and healthy
- Make a schedule for checking to see if the rights limitation is still needed
- Get the person's informed consent for limiting their rights.
- Be sure that limiting someone's rights will not hurt the person.



What the Occupancy Agreement Says

The Occupancy Agreement must say:

- The amount of the monthly rent and when it must be paid
- How the monthly rent is set
- How changes in a person's income will affect the amount of rent
- A person's rights and responsibilities
- The service provider's responsibilities
- What happens if a person or the service provider ends or wants to end an Occupancy Agreement



Occupancy Agreements should also say:

- What the rules are that talk about a person's rights
- The person can make a complaint about how the home is serving them.
- The service provider will give a written notice of any changes in the rent and explain how the rent was determined.
- The service provider will help the person pay the right amount of rent.



What the Occupancy Agreement does not say

Occupancy Agreements may not say anything that is against the rules or laws.

The Occupancy Agreement does not put the person's name on the lease for the home.



An Occupancy Agreement should not say anything about:

- A person's service plans
- Taking away or changing any rights including access to food and the right to have visitors when you want
- Not allowing a person to ask about landlord tenant laws in a legal proceeding
- The Occupancy Agreement ending if a person's needs increase
- Requiring a person to work or use a provider's programs
- Requiring a person to be out of their bedroom or out of the home at any time
- Not letting a person go out, for example by locking entrance doors without giving out keys
- Making people earn their rights or taking away their rights as a punishment

Ending the Occupancy Agreement

An Occupancy Agreement is in effect as long as the person lives at the home.

If a person's income changes, it does not affect the Occupancy Agreement.

If someone decides to move out of the home:

- The Occupancy Agreement will end when they leave.
- The person will work with their Care Manager to plan the move with staff at the home they are leaving.
- The provider will continue to serve the person at the home until the person moves out.

If the service provider wants to end the Occupancy Agreement:

The service provider will work with the person, their representatives and Care Manager to make a plan for the person to move out.

More Information

More information about the HCBS Settings rule is at www.opwdd.ny.gov.





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