

Background

- In 2014, the federal Centers for Medicare & Medicaid Services issued regulations that describe the rights of people who get Home and Community Based Services and what the places where these services are delivered should be like. These regulations are called **the HCBS Settings Rule**.
- OPWDD published HCBS settings regulations in October 2021 so that the federal rule would be followed for people with developmental disabilities in New York State.
- The federal government extended the deadline for state programs to follow the rule to March 17, 2023.
- The HCBS settings rule and OPWDD regulations require the service providers that operate OPWDD-certified group homes and Family Care Homes to have a written agreement with the people who live in those homes.
- This agreement is called an Occupancy Agreement. The Occupancy Agreement says how residents are protected during eviction just like landlord/tenant laws protect people.
- The service provider and the resident will sign the Occupancy Agreement. A resident's legal guardian or representative may sign for them.
- Service providers may not end or change someone's services because they do not sign an Occupancy Agreement.
- A copy of the signed Occupancy Agreement will be provided to the resident.

A Person's Rights

- The Home and Community Based Settings Rule says a resident has the right to:
 - Privacy in their bedroom including:
 - Lockable doors
 - Choice of roommates
 - Freedom to furnish and decorate their room as they wish
 - Control their own schedule

- Have food at any time
- Have visitors at any time
- Have a home that is accessible to them
- Any changes to restrict these rights can only happen if they are needed to help the person stay safe and healthy.
- Any changes to a resident's rights have to be written into the person's Life Plan or into other documents such as a behavioral support plan or staff action plan.

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

- Identify a need for the rights restriction that is based on the person's assessment
- List how the provider has tried to support the person to have all of their rights
- Describe why the person's rights must be restricted based on their assessed needs
- Keep track of how the rights restriction is helping to keep the person safe and healthy
- Have a schedule for checking to see if the rights restriction is still needed or if it can be ended
- Get the informed consent of the person to implement the restriction
- Be sure that the rights restriction will cause no harm to the person
- If the rights restriction affects another person living in the home, the service provider must:
 - Describe how it affects the other person
 - Describe how the provider has helped to support the other person
 - Get the informed consent of the other person

What the Occupancy Agreement Says

- The Occupancy Agreement must describe:
 - 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 resident's rights and responsibilities
 - The service provider's responsibilities
 - What happens if a resident or the service provider ends or wants to end an Occupancy Agreement

Occupancy Agreements should also say:

- What the regulations are that describe a resident's rights while living in the home

- The resident has a right to object to how the home is serving them.
- The service provider will give a written notice of any changes in the rent (room and board) and explain how the amount of rent was determined.
- The service provider will help the resident to pay the right amount of rent.

What the Occupancy Agreement does not say

- Occupancy Agreements may not include anything that violates regulation or law.
- The Occupancy Agreement does not put the resident's name on the provider's lease for the home.
- An Occupancy Agreement should not say anything about:
 - A resident's person-centered service plans
 - A resident giving up any rights
 - Changes to a resident's rights
 - A resident being unable to ask about state or local landlord tenant laws in a court or administrative proceeding
 - Restrictions or bans on the right to have visitors
 - The Occupancy Agreement ending if a resident's needs increase
 - Requiring a resident to work or participate in a provider's programs
 - Requiring a resident to be out of their bedroom or the home at any time
 - Removing locks on bedroom or bathroom doors
 - Limiting access to the community, for example by locking entrance doors without giving keys to residents
 - Requiring residents to earn their rights or denying their rights as a punishment or a negative consequence
 - Restricting access to food

Ending the Occupancy Agreement

- An Occupancy Agreement is in effect as long as the resident lives at the home.
- If a resident's income changes, it does not affect the Occupancy Agreement. The service provider will provide written notice of the new rent (room and board) amount and how it was determined.

- If a resident decides to move out of the home:
 - The Occupancy Agreement will end.
 - The resident will work with their Care Manager to plan the move with staff at the residence they are leaving.
 - The provider will continue to serve the resident at the home until the resident moves out.

- If the service provider decides to end the Occupancy Agreement or wants a resident to move out, the service provider will work with the resident (and his or her representatives) and the Care Manager to make a safe plan for a resident to move out.