

**Amendments to Person-Centered Planning:  
Care Management and  
Home and Community Based Services**

**Amendments to 14 NYCRR Subpart 636-1  
PROPOSED REGULATIONS**

**Effective Date: Upon Adoption**

- **Subdivision 636-1.1(a) is amended as follows:**
  - (a) This Subpart applies to:
    - (1) [OPWDD funded Home and Community Based Services (HCBS) Medicaid services; and] Medicaid Home and Community Based Services (HCBS) that are operated, certified, funded, or subject to oversight by OPWDD; and
    - (2) [OPWDD funded service coordination services,] Care Management, by whatever name known, [(e.g., Medicaid Service Coordination),] that is subject to oversight by OPWDD and provided to individuals who receive [OPWDD funded HCBS Medicaid services.] HCBS that are operated, certified, funded, or subject to oversight by OPWDD.
- **Subdivision 636-1.2(b) is amended as follows:**
  - (b) A person-centered planning process is required for developing the person-centered service plan (see section 636-1.3 of this subpart), including the HCBS Waiver service [habilitation] plan, with the individual and parties chosen by the individual. The person-centered planning process involves:
- **Subdivision 636-1.3(a) is amended as follows:**

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- (a) The person-centered service plan is created using the planning process described in section 636-1.2 of this subpart. The person-centered service plan may also be known as the individualized service plan (ISP, see definition in section 635-99.1 of this Title) or Life Plan.
- **Subdivision 636-1.3(b) is amended as follows:**
- (b) The individual's [service coordinator] Care Manager must develop a person-centered service plan with the individual. The plan must include and document the following:
- **Paragraph 636-1.3(b)(7) is amended as follows:**
- (7) if an individual resides in a certified residential setting, document that the residence was chosen by the individual, and document the alternative residential settings considered by the individual, including alternative residential settings that are available to individuals without disabilities (Note: The setting chosen by the individual is integrated in, and supports full access of individuals receiving services to the [greater] broader community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community [having] with the same degree of access [to] as the broader community [as individuals not receiving services]. The individual may choose service and support options that are available to individuals without disabilities for his or her residence and other areas of his or her life);
- **Subdivision 636-1.3(c) is amended as follows:**
- (c) The [service coordinator] Care Manager must develop the person-centered service plan in a way that is understandable to the individual and parties chosen by the individual. At a minimum, for the written plan to be understandable, it must be written in plain language and in a manner that is accessible to the individual, to the extent possible, and parties chosen by the individual.
- **Subdivision 636-1.3(e) is amended as follows:**
- (e) The [service coordinator] Care Manager must distribute the person-centered service plan to the individual and parties involved in the implementation of the plan.
- **Subdivision 636-1.3(f) is amended as follows:**

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(f) The individual, parties chosen by the individual, the service provider, and [service coordinator] Care Manager must review the person-centered service plan described in subdivision (b) of this section and [subdivisions 636-1.4(c) and (d)] paragraphs 636-1.4(a)(3) and (4) of this subpart, and the [service coordinator] Care Manager must revise such plan if necessary, as follows:

- **Subdivision 636-1.4(a) is amended as follows:**

- (a) Effective before October 1, 2021:

- (1) This section only applies to HCBS Medicaid Waiver services in settings certified by OPWDD. (Note: See section 633.16 of this Title for documentation requirements concerning person-centered behavioral intervention and section 633.4 of this Title for documentation requirements concerning modifications of rights of individuals receiving services that are not duplicated in subparagraphs [(b)(1)-(4)] 636-1.4(a)(2)(i)-(iv) of this section.)

- **Existing subdivisions 636-1.4(b) through 636-1.4(d) are renumbered to be paragraphs 636-1.4(a)(2) through 636-1.4(a)(4).**

- **Renumbered paragraph 636-1.4(a)(2) is amended as follows:**

- (2) Modifications to the rights identified in [paragraphs (1)-(4)] subparagraphs (i)-(iv) of this [subdivision] paragraph of an individual receiving services in a setting described in [subdivision (a)] paragraph (1) of this [section] subdivision must be supported by a specific assessed need and justified in the individual's person-centered service plan or other planning/service related document(s):

- (i) Each individual's residence is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under [the] applicable landlord/tenant law. For a residence [to] in which landlord/tenant laws do not apply, there must

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be a lease, residency agreement, or other form of written agreement for each individual that provides for eviction processes and appeals comparable to those provided under [the] applicable landlord/tenant law.

- (ii) Each individual [has] must have privacy in his or her [sleeping or living unit] residence and bedroom to the extent applicable.
  - (a) [Units] Residences and bedrooms within residences must have entrance doors lockable by the individual, with only appropriate [staff] parties having keys/access to doors as needed.
  - (b) The individual sharing a [unit has] residence or bedroom must have a choice of roommates in that setting.
  - (c) The individual [has] must have freedom to furnish and decorate his or her [sleeping or living unit] residence and bedroom within the lease or other agreement.
- (iii) Each individual [has the] must have freedom and support to control his or her own schedules and activities, and [has] must have access to food at any time.
- (iv) Each individual [is] must be able to have visitors of his or her choosing at any time.

- **Renumbered paragraph 636-1.4(a)(3) is amended as follows:**

- (3) The [service coordinator] Care Manager must ensure documentation of the following in the individual's person-centered service plan or other planning/service related document(s):

- **Existing paragraphs 636-1.4(c)(1) through 636-1.4(c)(8) are renumbered to be subparagraphs 636-1.4(a)(3)(i) through 636-1.4(a)(3)(viii).**
- **Renumbered paragraph 636-1.4(a)(4) is amended as follows:**

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- (4) In the event that a rights modification affects another individual receiving services in the setting who does not require a rights modification, the [service coordinator] Care Manager must ensure documentation of the following in such individual's person-centered service plan or other planning/service related document(s):
- **Existing paragraphs 636-1.4(d)(1) through 636-1.4(d)(3) are renumbered to be subparagraphs 636-1.4(a)(4)(i) through 636-1.4(a)(4)(iii).**
  - **A new subdivision 636-1.4(b) is added as follows:**
- (b) Effective beginning October 1, 2021:
- (1) This section applies to HCBS Medicaid Waiver services in settings operated or certified by OPWDD and in other provider owned or controlled residential and non-residential settings.
- (Note: Providers subject to section 633.16 of this Title must consult that section for additional documentation requirements concerning person-centered behavioral intervention. Providers subject to section 633.4 of this Title must consult that section for documentation requirements concerning modifications of rights of individuals receiving services that are not duplicated in subparagraphs 636-1.4(b)(2)(i)-(iv) of this section.)
- (2) Modifications to the rights identified in subparagraphs (i)-(iv) of this paragraph of an individual receiving services in a setting described in paragraph (1) of this subdivision must be supported by a specific assessed need and justified in the individual's person-centered service plan or other planning/service related document(s):
- (i) The individual's residence is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under applicable landlord/tenant law. For a residence in which landlord/tenant laws do not apply, there must be a lease, residency agreement, or other form of written agreement for

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the individual that provides for eviction processes and appeals comparable to those provided under applicable/landlord tenant law.

- (ii) The individual must have privacy in his or her residence and bedroom to the extent applicable.
  - (a) Residences and bedrooms within residences must have entrance doors lockable by the individual, with only appropriate parties having keys/access to doors as needed.
  - (b) The individual sharing a residence or bedroom must have a choice of roommates in that setting.
  - (c) The individual must have freedom to furnish and decorate his or her residence and bedroom within the lease or other agreement.
- (iii) The individual must have freedom and support to control his or her own schedules and activities, and must have access to food at any time consistent with the same or similar settings for the broader community.
- (iv) The individual must be able to have visitors of his or her choosing at any time consistent with the same or similar settings for the broader community.
- (3) The Care Manager must ensure there is documentation of the following in the individual's person-centered service plan or other service/planning related document(s):
  - (i) a specific and individualized assessed need underlying the reason for the modification;
  - (ii) the positive interventions and supports used prior to any modifications;
  - (iii) less intrusive methods of meeting the need that were tried but did not work;

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- (iv) a clear description of the condition that is directly proportionate to the specific assessed need;
  - (v) a regular collection and review of data to measure the ongoing effectiveness of the modification;
  - (vi) established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;
  - (vii) an assurance that interventions and supports will cause no harm to the individual; and
  - (viii) the informed consent of the individual and/or the party chosen by the individual to assist the individual in decision-making, except to the extent that decision-making authority is conferred on another by state law.
- (4) In the event that a rights modification affects another individual receiving services in the setting who does not require a rights modification, the Care Manager must ensure there is documentation of the following in the individual's person-centered service plan or other planning/service related document(s):
  - (i) the impact that the rights modification has on the individual;
  - (ii) the efforts taken to lessen the impact on the individual; and
  - (iii) the informed consent of the individual and/or the party chosen by the individual to assist the individual in decision-making, except to the extent that decision-making authority is conferred on another by state law.
- **Subdivision 636-1.5(a) is amended as follows:**
  - (a) The [service coordinator] Care Manager must give notice of the individual's right to a person-centered planning process in accordance with section 636-1.2 of this [S]subpart and to a person-centered plan in accordance with section 636-1.3 of

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this [S]subpart, and of the right to object to services pursuant to section 633.12 of this Title, to the individual and the person upon whom decision-making authority is conferred by state law (see [section] paragraph 636-1.2[a][1] of this subpart), if any, prior to the initiation of the person-centered planning process and development of the plan. [in the following manner:

- (1) for individuals who do not have an ISP in place on November 1, 2015, the service coordinator must give written notice prior to the initiation of the person-centered planning process and development of the plan; or
- (2) for individuals who have an ISP in place on November 1, 2015, the service coordinator must give written notice at the time of the individual's next ISP review.]

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