



Rules of
Department of Mental Health
Division 10—Director, Department of Mental Health
Chapter 5—General Program Procedures

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**Title 9—DEPARTMENT OF
MENTAL HEALTH**

**Division 10—Director, Department of
Mental Health**

**Chapter 5—General Program
Procedures**

**9 CSR 10-5.010 General Rules Applicable
for Foster Care Homes for the Mentally
Retarded Subject to Certification**

(Rescinded July 11, 1983)

AUTHORITY: sections 630.050 and 630.705, RSMo Supp. 1982. Original rule filed Dec. 17, 1975, effective Dec. 27, 1975. Rescinded: Filed Feb. 9, 1983, effective July 11, 1983.

9 CSR 10-5.020 Definitions

(Rescinded July 11, 1983)

AUTHORITY: sections 630.050 and 630.705, RSMo Supp. 1982. Original rule filed Dec. 17, 1975, effective Dec. 27, 1975. Rescinded: Filed Feb. 9, 1983, effective July 11, 1983.

**9 CSR 10-5.030 Application and Discus-
sion of Standards**

(Rescinded July 11, 1983)

AUTHORITY: sections 630.050 and 630.705, RSMo Supp. 1982. Original rule filed Dec. 17, 1975, effective Dec. 27, 1975. Rescinded: Filed Feb. 9, 1983, effective July 11, 1983.

9 CSR 10-5.040 Hearing Procedure

(Rescinded July 11, 1983)

AUTHORITY: sections 630.050 and 630.705, RSMo Supp. 1982. Original rule filed Dec. 17, 1975, effective Dec. 27, 1975. Rescinded: Filed Feb. 9, 1983, effective July 11, 1983.

**9 CSR 10-5.050 Admission Policies for
Foster Care Homes**

(Rescinded July 11, 1983)

AUTHORITY: sections 630.050 and 630.705, RSMo Supp. 1982. Original rule filed Dec. 17, 1975, effective Dec. 27, 1975. Rescinded: Filed Feb. 9, 1983, effective July 11, 1983.

**9 CSR 10-5.060 Education, Training and
Recreation**

(Rescinded July 11, 1983)

AUTHORITY: sections 630.050 and 630.705, RSMo Supp. 1982. Original rule filed Dec. 17, 1975, effective Dec. 27, 1975. Rescinded: Filed Feb. 9, 1983, effective July 11, 1983.

9 CSR 10-5.070 Records

(Rescinded July 11, 1983)

AUTHORITY: sections 630.050 and 630.705, RSMo Supp. 1982. Original rule filed Dec. 17, 1975, effective Dec. 27, 1975. Rescinded: Filed Feb. 9, 1983, effective July 11, 1983.

9 CSR 10-5.080 Resident Living

(Rescinded July 11, 1983)

AUTHORITY: sections 630.050 and 630.705, RSMo Supp. 1982. Original rule filed Dec. 17, 1975, effective Dec. 27, 1975. Rescinded: Filed Feb. 9, 1983, effective July 11, 1983.

**9 CSR 10-5.090 Construction of Physical
Plant Facilities**

(Rescinded July 11, 1983)

AUTHORITY: sections 630.050 and 630.705, RSMo Supp. 1982. Original rule filed Dec. 17, 1975, effective Dec. 27, 1975. Rescinded: Filed Feb. 9, 1983, effective July 11, 1983.

**9 CSR 10-5.100 Food Handling and
Sanitation**

(Rescinded July 11, 1983)

AUTHORITY: sections 630.050 and 630.705, RSMo Supp. 1982. Original rule filed Dec. 17, 1975, effective Dec. 27, 1975. Rescinded: Filed Feb. 9, 1983, effective July 11, 1983.

9 CSR 10-5.110 Fire Protection and Safety

(Rescinded July 11, 1983)

AUTHORITY: sections 630.050 and 630.705, RSMo Supp. 1982. Original rule filed Dec. 17, 1975, effective Dec. 27, 1975. Rescinded: Filed Feb. 9, 1983, effective July 11, 1983.

9-CSR 10-5.120 Medical and Health Care

(Rescinded July 11, 1983)

AUTHORITY: sections 630.050 and 630.705, RSMo Supp. 1982. Original rule filed Dec. 17, 1975, effective Dec. 27, 1975. Rescinded: Filed Feb. 9, 1983, effective July 11, 1983.

**9 CSR 10-5.130 Qualifications of Foster
Care Parents**

(Rescinded July 11, 1983)

AUTHORITY: sections 630.050 and 630.705, RSMo Supp. 1982. Original rule filed Dec. 17, 1975, effective Dec. 27, 1975. Rescinded: Filed Feb. 9, 1983, effective July 11, 1983.

**9 CSR 10-5.150 Individualized Habilita-
tion Plan Procedures**

(Moved to 9 CSR 45-3.010)

9 CSR 10-5.170 Residential Rate Setting

(Moved to 9 CSR 45-4.010)

9 CSR 10-5.180 Advance Directives

PURPOSE: This rule defines terms and establishes policies and procedures to be followed by all facilities operated by the Department of Mental Health and by other department-related facilities for assuring the rights of residents and patients to participate in and direct health care decisions affecting them.

(1) Terms defined in sections 630.005, 631.005, 632.005 and 633.005, RSMo are incorporated by reference for use in this rule. Also, as used in this rule, unless the context clearly indicates otherwise, the following terms shall mean:

(A) Adult—an individual eighteen (18) years of age or older;

(B) Advance directive—a written instrument, such as a living will or durable power of attorney for health care, relating to the provision of health care for an individual when that individual is in a terminal condition or is incapacitated;

(C) Attending physician—the physician selected by or assigned to an individual and who has primary responsibility for the treatment and care of the individual. If more than one (1) physician shares that responsibility, any of those physicians may act as the attending physician;

(D) Attorney-in-fact—an individual or corporation appointed to act as an agent of a principal (resident or patient) in a written



power of attorney for health care allowed under law;

(E) Competent—not having been adjudicated incapacitated;

(F) Death-prolonging procedure—any medical procedure or intervention that, when applied to an individual, would serve only to artificially prolong the dying process and where, in the judgment of the attending physician pursuant to usual and customary medical standards, death will occur within a short time whether the procedure or intervention is used. Death-prolonging procedures shall not include administration of medication or performance of a medical procedure considered necessary to provide comfort or care or to alleviate pain, or the performance of any procedure to provide nutrition or hydration;

(G) Decision-making capacity—ability to make choices that reflect an understanding of the nature and effect of treatment options as well as the consequences of choices;

(H) Department facilities—facilities operated by the department;

(I) Durable power of attorney for health care—a written instrument executed by a competent adult, notarized and expressly giving an agent or attorney-in-fact the authority to consent to or to prohibit any type of health care, medical care, treatment or procedures to the extent authorized in sections 404.800–404.865, RSMo;

(J) Health care—any treatment, service or procedure to diagnose or treat the physical or mental condition of a resident or patient;

(K) Health care facility—an individual or agency licensed, certified or otherwise authorized or permitted by law to administer health care in the ordinary course of business or professional practice;

(L) Incapacitated—unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to an extent that an individual lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness or disease is likely to occur;

(M) Living will—a written instrument executed by a competent adult under sections 459.010–459.055, RSMo and declaring direction for the withholding or withdrawal of death-prolonging procedures and becoming operative if the adult is in a terminal condition;

(N) Patient—an individual under observation, care, treatment or rehabilitation by any hospital or other mental health facility pursuant to the provisions of Chapter 632, RSMo;

(O) Resident—a person receiving residential services from a facility, other than a men-

tal health facility, operated by the department;

(P) Terminal condition—an incurable or irreversible condition that, in the opinion of the attending physician, is such that death will occur within a short time, regardless of the application of medical procedures; and

(Q) Voluntary resident or patient—a person who has willingly chosen or consented to receive services from the department and who is receiving services in a department facility, or a person for whom a guardian has been appointed under Chapter 475, RSMo and the guardian has been authorized to admit the resident or patient for services from the department.

(2) The department shall honor the right of all competent adult voluntary residents and patients to make decisions regarding their health care, including the right to accept or refuse medical or surgical treatment, except that if a Division of Comprehensive Psychiatric Services facility's clinical staff determines that an emergency exists because a resident or patient is likely to do physical harm or present life-threatening behavior to him/herself or other residents or patients, the staff may administer psychotropic medication without the resident's or patient's consent. All competent adult residents and patients shall have the right to execute advance directives without regard to their voluntary or involuntary status. No department facility shall condition the provision of care or treatment, or otherwise discriminate against a resident or patient based on whether the individual has executed an advance directive.

(3) Using materials prepared by the department, all department facilities shall provide staff and community education about advance directives and the department's policy on carrying out those directives by department facilities.

(4) Except as provided in sections (5) and (6), at the time an adult resident or patient is admitted to a department facility, the facility's staff shall—

(A) Provide written information about resident's or patient's rights to accept or refuse death-prolonging procedures and to execute advance directives;

(B) Provide written information about the department's policy on advance directives;

(C) Ask the resident or patient if s/he has executed an advance directive; and

(D) At his/her request, refer a competent adult resident or patient without an advance directive for assistance in completing one.

(5) If, at time of admission, department facility staff determine that a competent adult resident or patient lacks decision-making capacity, for example, due to intoxication or an acute episode of mental illness, the staff shall—

(A) If the resident or patient is accompanied by a friend, relative or guardian, discuss health care decisions and advance directives with that person as set out in section (4) of this rule; and

(B) Document the lack of decision-making capacity in the resident's or patient's medical record and the discussion of health care decisions and advance directives with the friend, relative or guardian rather than the resident or patient; or

(C) If the resident or patient is unaccompanied, delay a discussion of health care decisions and advance directives; and

(D) Document the lack of decision-making capacity in the resident's or patient's medical record and that a discussion of health care decisions and advance directives was delayed.

(6) For a resident or patient with whom department facility staff did not discuss health care decisions and advance directives at the time of admission as set out in section (4) because the resident or patient lacked decision-making capacity, when the staff determine that the resident or patient has regained decision-making capacity, the staff shall hold the discussion and document it in the resident's or patient's medical record, regardless of whether the resident or patient was accompanied at time of admission.

(7) Staff of department facilities shall document in each adult resident's or patient's medical record whether the resident or patient has executed an advance directive. If a resident or patient has executed an advance directive, staff shall presume the resident or patient was competent when the advance directive was executed and that the advance directive was properly executed unless a court determines otherwise. Upon permission of the resident or patient, guardian or attorney-in-fact, and if a copy of the advance directive is provided by the resident or patient, guardian or attorney-in-fact, staff shall place a copy of the advance directive in the resident's or patient's medical record.

(8) Because the department has a statutory mission to habilitate, treat or rehabilitate its residents and patients in department facilities, it shall not withhold or withdraw—

(A) Food, hydration, antibiotics or anti-seizure medication for the purpose of ending life;



(B) Psychotropic drugs essential to treatment of mental illness that are otherwise authorized by law or department rule; or

(C) Any medication, medical procedure or intervention that, in the opinion of facility staff, is necessary to prevent the suicide of a resident or patient.

(9) When it is determined that a resident or patient is incapacitated or in a terminal condition and that the resident or patient has an advance directive, department facility staff shall carry out the advance directive in the facility where the resident or patient resides unless—

(A) The resident's or patient's advance directive specifies procedures prohibited under the department policy set out in section (8);

(B) The resident's or patient's attorney-in-fact under a durable power of attorney for health care requests procedures prohibited under the department policy set out in section (8);

(C) The resident or patient is pregnant and has a living will that calls for withdrawing or withholding treatment; or

(D) The head of the facility determines that the facility is not equipped to provide acute and specialized medical care needed by the resident or patient.

(10) If based upon section (9) of this rule, the head of a department facility determines that the facility shall not carry out a resident's or patient's advance directive in the facility, the department facility staff, in conjunction with the resident or patient or the resident's or patient's guardian or attorney-in-fact, shall take all reasonable steps to transfer the resident or patient to a health care facility that is equipped and willing to carry out the resident's or patient's advance directive. At a minimum, these steps shall include, if necessary, assistance from department facility case managers in locating a health care facility that is equipped and willing to carry out the advance directive and case managers' assistance with transferring the resident or patient to the health care facility.

(11) If a resident or patient with an advance directive is transferred from a department facility to another health care facility at the request of the department, the department will pay for transportation to and care in the health care facility if all other resources available to the resident or patient have been exhausted.

(12) A resident or patient may revoke an advance directive at any time and in any man-

ner by which s/he is able to communicate, regardless of mental or physical condition. If an incapacitated resident or patient or a resident or patient in a terminal condition revokes an advance directive, department facility staff shall notify the resident's or patient's attorney-in-fact or legal guardian of the revocation and the manner by which the advance directive was revoked.

(13) If any resident or patient notifies department facility staff in any manner by which s/he is able to communicate that s/he wishes to revoke an advance directive, department facility staff shall immediately document the revocation in the resident's or patient's medical record and the manner by which the advance directive was revoked and shall notify orally any other staff known to be involved in the resident's or patient's health care.

(14) An advance directive also shall be revoked upon execution of a subsequent advance directive by the resident or patient.

(15) No department employee may recommend or otherwise suggest to a resident or patient that the resident or patient alter or revoke his/her advance directive.

(16) Department facility staff shall act upon a revocation of a resident's or patient's advance directive when the resident or patient is incapacitated or in a terminal condition and is not able to make treatment decisions if—

(A) The revocation is documented in the resident's or patient's medical record; or

(B) The staff member in charge of the resident's or patient's treatment at that time has actual knowledge of the revocation.

(17) Department facility staff shall periodically review the status of resident's and patient's advance directives as necessary or when requested by the resident or patient or the guardian or attorney-in-fact.

(18) Except to the extent the right is limited by the durable power of attorney for health care or any federal law, an attorney-in-fact under a durable power of attorney for health care has the same right as the resident or patient to receive information about health care proposed for the resident or patient, to receive and review the resident's or patient's medical records and to consent to disclosure of the medical records, except that the right of access to medical records is not a waiver of any evidentiary privilege.

(19) No employee of a department facility shall serve as an attorney-in-fact under a

durable power of attorney for health care for any resident or patient receiving care or treatment at the facility at which the employee works unless that employee is related by marriage or consanguinity within the second degree or unless the employee and resident or patient are members of the same community of persons who are bound by vows to a religious life and who conduct or assist in the conducting of religious services and actually and regularly engage in religious, benevolent, charitable or educational ministry, or the performance of health care services.

AUTHORITY: section 630.050, RSMo 1986. Original rule filed June 30, 1992, effective April 8, 1993.*

**Original authority: 630.050, RSMo 1980.*

9 CSR 10-5.190 Background Screening Requirements

PURPOSE: This rule establishes background screening requirements for staff and certain volunteers, students, and members of a provider's household in any public or private facilities, community residential facilities, day programs, or specialized service operated, licensed, certified, accredited, in possession of deemed status, or funded by the Department of Mental Health.

(1) Definitions. The following definitions apply to terms used in this rule:

(A) DMH—the Missouri Department of Mental Health;

(B) Members of the provider's household—persons age eighteen (18) or older whose permanent residence is the provider's household, or persons who visit the home on a frequent basis, or persons who spend the night in the home on a frequent basis such that direct, unsupervised contact with individuals served is likely to occur. For purposes of this rule, "frequent" means six (6) or more times over a rolling twelve- (12-) month period;

(C) Natural supports—supports provided by a person of the individual's choice that assist him or her in achieving his or her goals and facilitate his or her integration into the community. Natural supports are provided by persons who are not paid staff of an agency but may be initiated, planned, and facilitated in partnership with an agency;

(D) Staff (staff member, employee, personnel)—a paid employee or contractor providing services or supports on behalf of the agency on a full- or part-time basis who has



contact with individuals served by the agency;

(E) Student (student worker, student intern, practicum student)—a person who is not on the agency or provider payroll, but as part of his or her education or training has direct contact with individuals served;

(F) Visitor—a family member, friend, clergy, or other person invited by the individual served; and

(G) Volunteer—an unpaid person formally recognized by the agency to provide direct services or supports to individuals it serves.

(2) For the purposes of this rule, public or private facilities, community residential facilities, day programs, and specialized services (agencies) are divided into two (2) categories, as follows:

(A) Category I. Agencies that are certified or licensed exclusively by the Department of Mental Health (DMH) or, although not certified or licensed, are funded by DMH. Specifically this category includes:

- 1. All agencies certified by DMH;
- 2. Agencies that have contractual arrangements with DMH but are exempt from DMH’s licensing and certification process due to accreditation or other reason; and
- 3. Agencies that are licensed by DMH and do not have a license from another state agency; and

(B) Category II. Agencies that have a license or certificate from another state agency. Specifically, this category includes agencies licensed by the Children’s Division or the Department of Health and Senior Services; also included are intermediate care facilities/for individuals with intellectual or developmental disabilities (ICF/IDD). Agencies included in Category II are subject to rules regarding criminal record review as promulgated by the state agency that licenses or certifies them and are not subject to sections (4) through (7) of this rule, however, all other sections of this rule apply.

(3) This rule applies to—

(A) Paid and unpaid staff and volunteers of the agency, including student workers; and

(B) For residential services, members of the provider’s household, except children under the age of eighteen (18), who have contact with individuals served.

(4) Each agency defined under Category I above shall make the following inquiries for all new staff, volunteers, students, and members of the provider’s household, where applicable:

(A) An inquiry with the Department of Health and Senior Services to determine

whether the person having contact with individuals served is listed on the employee disqualification list of the Department of Social Services or the Department of Health and Senior Services;

(B) An inquiry with DMH to determine whether the person is on the DMH disqualification registry; and

(C) A criminal background check with the Missouri State Highway Patrol. The request for the background check does not require fingerprints and shall be in accordance with requirements of the Missouri State Highway Patrol under Chapter 43, RSMo. The agency may use a private investigatory agency to conduct this review.

(5) The criminal background check and inquiries required under section (4) of this rule shall be initiated within two (2) working days of hire for staff who will have contact with individuals served. The criminal background check and inquiries required under section (4) of this rule shall be initiated prior to a volunteer, student, or members of the provider’s household having contact with individuals served, where applicable. A criminal background check is not required for visitors, persons providing natural supports, students, or other persons who are job shadowing and do not have unsupervised contact with individuals served, or volunteers who do not have unsupervised contact with individuals served.

(6) Each agency included under Category I above shall require all new applicants for employment, volunteer positions, students, and members of the provider’s household, where applicable, who will have contact with individuals served to—

(A) Sign a consent form authorizing a criminal record review with the highway patrol, either directly through the patrol or through a private investigatory agency;

(B) Disclose his/her criminal history, including any conviction or a plea of guilty to a misdemeanor or felony charge and any suspended imposition of sentence, any suspended execution of sentence, or any period of probation or parole; and

(C) Disclose if s/he is listed on the employee disqualification list of the Department of Social Services or the Department of Health and Senior Services, or the DMH disqualification registry.

(7) Each agency shall develop policies and procedures regarding the implementation of this rule and the disposition of information provided by the criminal record review. At a minimum the policies and procedures shall

include:

(A) Procedures for obtaining the criminal record review;

(B) Procedures for confidentiality of records; and

(C) Guidelines for evaluating information received through the criminal record review which establish a clear boundary between convictions that by statute exclude an individual from service, and convictions that would not automatically exclude an individual.

(8) Offenses under section 630.170, RSMo, that disqualify a person from service are as follows:

(A) A person is disqualified from holding any position in the agency if that person—

1. Has been found guilty of or pleaded guilty to or *nolo contendere*, including having received a suspended imposition of sentence or suspended execution of sentence to any of the following offenses:

A. Abuse or neglect of an individual served as defined in section 630.155, RSMo;

B. Furnishing unfit food to an individual served as defined in section 630.160, RSMo; or

C. Vulnerable person abuse, as described in sections 565.210 to 565.214, RSMo, as those sections existed prior to January 1, 2017.

2. Is listed on the DMH disqualification registry; or

3. Is listed on the employee disqualification list of the Department of Health and Senior Services or Department of Social Services;

(B) A person who has been found guilty of or pleaded guilty to or *nolo contendere*, including having received a suspended imposition of sentence or suspended execution of sentence, to any of the offenses specified in section 630.170.2, RSMo, is disqualified from holding any position having contact with individuals served in the agency. For reference purposes, DMH maintains an updated list of disqualifying crimes under section 630.170, RSMo, at <http://dmh.mo.gov/about/employeesdisqualification/>.

1. A person who has been found guilty of or pleaded guilty or *nolo contendere*, including having received a suspended imposition of sentence or suspended execution of sentence, to a violation of section 577.010, RSMo or section 577.012, RSMo and who is alleged and found by the court to be an aggravated or chronic offender under section 577.023, RSMo, is disqualified from holding any position having contact with individuals served in the agency if the person is hired by the agency after January 1, 2014.



(9) Any person disqualified from employment under this rule may request an exception from the DMH Exceptions Committee in accordance with 9 CSR 10-5.210 Exceptions Committee Procedures.

(A) The right to request an exception under this subsection does not apply to persons who are disqualified due to being listed on the employee disqualification registry of the Department of Social Services or Department of Health and Senior Services, nor does it apply under section 630.170.4, RSMo, to persons who are disqualified due to any offenses pursuant to the provisions of Chapter 566 or sections 565.020, 565.021, 568.020, 568.060, 569.025, as that section existed prior to January 1, 2017, or 574.080, RSMo. For reference purposes, DMH maintains an updated list of disqualifying crimes not eligible for exception under section 630.170.4, RSMo, at <http://dmh.mo.gov/about/employment-disqualification/>.

(10) For the purposes of this rule, a verdict of not guilty by reason of insanity (NGRI) is not *per se* disqualifying. A suspended imposition of sentence (SIS) or suspended execution of sentence (SES) is disqualifying.

(11) Any person who has committed a disqualifying crime as identified in section (8) of this rule, unless the person has received an exception from DMH, is not eligible for hire by an agency. However, the agency retains the discretionary authority to deny employment to persons who—

(A) Have committed crimes not identified as disqualifying;

(B) Have received an exception from the Exceptions Committee; or

(C) Have received a verdict of Not Guilty by Reason of Insanity.

AUTHORITY: sections 630.170, 630.655, and 630.710, RSMo 2016, and section 192.2495, RSMo Supp. 2018. Emergency rule filed Aug. 15, 1997, effective Aug. 28, 1997, expired Feb. 26, 1998. Original rule filed Aug. 15, 1997, effective March 30, 1998. Amended: Filed Oct. 29, 1998, effective May 30, 1999. Amended: Filed Nov. 3, 2003, effective April 30, 2004. Amended: Filed March 29, 2004, effective Sept. 30, 2004. Amended: Filed Jan. 22, 2019, effective Aug. 30, 2019.*

**Original authority: 192.2495, RSMo 1996, amended 1997, 1998, 2003, 2014, 2016, 2018; 630.170, RSMo 1980, amended 1982, 1996, 1998, 2001, 2003; 630.655, RSMo 1980; and 630.710, RSMo 1980, amended 1996, 1998.*

9 CSR 10-5.200 Report of Complaints of Abuse, Neglect and Misuse of Funds/Property

PURPOSE: This rule prescribes procedures for reporting and investigating complaints of abuse, neglect, and misuse of funds/property in an agency that is licensed, certified, accredited, in possession of deemed status, and/or funded by the Department of Mental Health (department) as required by sections 630.135, 630.167, 630.168, 630.655, and 630.710, RSMo. The rule also sets forth due process procedures for persons who have been accused of abuse, neglect, and misuse of funds/property.

(1) The following words and terms, as used in this rule, mean:

(A) Agency: An organization that is licensed, certified, accredited, in possession of deemed status, and/or funded by the Department of Mental Health;

(B) Consumer: An individual (client, resident, patient) receiving department-funded services directly from an agency;

(C) Department: Department of Mental Health;

(D) Employee: A person employed by or contracted by an agency or a person serving as a volunteer or student for the agency;

(E) Misuse of funds/property: The misappropriation or conversion for any purpose of a consumer's funds or property by an employee or employees with or without the consent of the consumer or the purchase of property or services from a consumer in which the purchase price substantially varies from the market value;

(F) Neglect: Failure of an employee to provide reasonable or necessary services to maintain the physical and mental health of any consumer when that failure presents either imminent danger to the health, safety, or welfare of a consumer or a substantial probability that death or serious physical injury would result. This would include, but is not limited to, failure to provide adequate supervision during an event in which one consumer causes serious injury to another consumer;

(G) Physical abuse:

1. An employee purposefully beating, striking, wounding, or injuring any consumer;

2. In any manner whatsoever, an employee mistreating or maltreating a consumer in a brutal or inhumane manner; or

3. An employee handling a consumer with any more force than is reasonable for a consumer's proper control, treatment, or management;

(H) Sexual abuse: Any touching, directly or through clothing, of a consumer by an employee for sexual purpose or in a sexual manner. This includes, but is not limited to:

1. Kissing;

2. Touching of the genitals, buttocks, or breasts;

3. Causing a consumer to touch the employee for sexual purposes;

4. Promoting or observing for sexual purpose any activity or performance involving consumers including any play, motion picture, photography, dance, or other visual or written representation;

5. Failing to intervene or attempting to stop inappropriate sexual activity or performance between consumers; and/or

6. Encouraging inappropriate sexual activity or performance between consumers; and

(I) Verbal abuse: An employee making a threat of physical violence to a consumer, when such threats are made directly to a consumer or about a consumer in the presence of a consumer.

(2) This rule applies to any director, supervisor, or employee of any agency. Facilities, programs, and services that are operated by the department are regulated by the department's operating regulations and are not included in this rule.

(A) Any such person shall immediately file a written complaint if that person has reasonable cause to believe that a consumer has been subjected to any of the following while under the care of an agency:

1. Physical abuse;

2. Sexual abuse;

3. Misuse of funds/property;

4. Neglect; or

5. Verbal abuse.

(B) A complaint under subsection (2)(A) above shall be made to the head of the agency and to the department's regional office, supported community living placement office, or district administrator office. If the allegation results in an investigation, the head of the agency shall make reasonable arrangements with respect to the alleged perpetrator to assure the safety of all of the agency's consumers. Such arrangements may include, but are not limited to, leave with or without pay or transfer to a position where there is no client contact.

(C) The head of the agency shall forward the complaint to—

1. The Children's Division if the alleged victim is under the age of eighteen (18); or

2. The Division of Senior Services and Regulation if the alleged victim is a resident or client of a facility licensed by the Division



of Senior Services and Regulation or receiving services from an entity under contract with the Division of Senior Services and Regulation.

(D) Failure to report shall be cause for disciplinary action, criminal prosecution, or both.

(3) The head of the agency shall immediately report to the local law enforcement official if there is a reasonable suspicion that any of the following abuse or neglect has occurred—

(A) Sexual abuse; or

(B) Abuse or neglect that results in physical injury; or

(C) Abuse, neglect, or misuse of funds/property if the head of the agency has cause to believe that criminal misconduct is involved.

(4) If a complaint has been made under this rule, the head of the agency shall fully cooperate with law enforcement authorities and with department employees or employees from other agencies authorized to investigate the complaint. Failure to cooperate may result in contract termination or dismissal of the employee.

(5) A department investigator shall gather facts and conduct an investigation regarding the alleged abuse or neglect. The investigation shall be conducted in accordance with the procedures and time frames established under the department's operating regulations. Upon completion of the investigation, the investigator shall present written findings of facts to the head of the supervising facility.

(6) Within twenty (20) calendar days of receiving the final report from the investigator, if there is a preliminary determination of abuse, neglect, or misuse of funds/property, the head of the supervising facility or department designee shall send to the alleged perpetrator a letter summarizing the allegations and findings that are the basis for the alleged abuse/neglect/misuse of funds or property; the agency will be copied. The letter shall comply with the constraints regarding confidentiality contained in section 630.167, RSMo, and shall be sent by regular and certified mail.

(A) The alleged perpetrator may meet with the head of the supervising facility or department designee, submit comments, or present evidence; the agency may be present and present comments or evidence in support of the alleged perpetrator. If the alleged perpetrator wishes to have this meeting, s/he must notify the head of the supervising facility or department designee within twenty (20) calendar

days from the date of the letter.

(B) This meeting shall take place within twenty (20) calendar days from the date of the letter, unless the parties mutually agree upon an extension.

(C) Within twenty (20) calendar days of the meeting, or if no request for a meeting is received within twenty (20) calendar days from the date of the letter, the head of the supervising facility or department designee shall make a final determination as to whether abuse/neglect/misuse of funds or property took place. The perpetrator shall be notified of this decision by regular and certified mail; the agency will be copied. If the charges do not meet the criteria in section (10), the decision of the head of the supervising facility or department designee shall be the final decision of the department.

(D) If the charges meet the criteria in section (10), the letter shall advise the perpetrator that they have twenty (20) calendar days from the date of the letter to contact the department's hearings administrator if they wish to appeal a finding of abuse, neglect, or misuse of funds/property.

(E) If there is no appeal, the decision of the head of the supervising facility or department designee shall be the final decision of the department.

(F) The department's effort to notify the alleged perpetrator at his/her last known address by regular and certified mail shall serve as proper notice. The alleged perpetrator's refusal to receive certified mail does not limit the department's ability to make a final determination. Evidence of the alleged perpetrator's refusal to receive certified mail shall be sufficient notice of the department's determination.

(7) If an appeal is requested, the hearings administrator shall schedule the hearing to take place within ninety (90) calendar days of the request, but may delay the hearing for good cause shown. Hearings shall be conducted in accordance with the procedures set forth in 9 CSR 10-5.230.

(8) The decision of the hearings administrator shall be the final decision of the department. The hearings administrator shall notify the perpetrator, by certified mail, and the head of the supervising facility or department designee of the decision within twenty (20) calendar days of the appeal hearing; the agency will be copied.

(9) For those charges in section (10), an alleged perpetrator does not forfeit his/her right to an appeal with the department's hearings administrator when s/he declines to meet

with the head of the supervising facility under subsections (6)(A) and (6)(B) of this rule.

(10) If the department substantiates that a person has perpetrated physical abuse, sexual abuse, verbal abuse, neglect, or misuse of funds/property, the perpetrator shall not be employed by the department, nor be licensed, employed, or provide services by contract or agreement at an agency. The perpetrator's name shall be placed on the department Disqualification Registry pursuant to section 630.170, RSMo. Persons who have been disqualified from employment may request an exception by using the procedures described in 9 CSR 10-5.210 Exception Committee Procedures.

(11) In accordance with 9 CSR 10-5.190, no person convicted of specified crimes may serve in facilities or programs licensed, certified, or funded by the department.

(12) No director, supervisor, or employee of an agency shall evict, harass, dismiss, or retaliate against a consumer or employee because he or she or any member of his or her family has made a report of any violation or suspected violation of consumer abuse, neglect, or misuse of funds/property. Penalties for retaliation may be imposed up to and including cancellation of agency contracts and/or dismissal of such person.

(13) If an event deadline falls on a Saturday, Sunday, or legal holiday, the last day of the period so computed shall extend to the next calendar day that is not a Saturday, Sunday, or legal holiday.

AUTHORITY: sections 630.135, 630.168, 630.655, and 630.705, RSMo 2000 and sections 630.050, 630.165, 630.167, and 630.170, RSMo Supp. 2008. Original rule filed Oct. 29, 1998, effective May 30, 1999. Emergency amendment filed March 29, 2002, effective May 2, 2002, terminated Oct. 30, 2002. Amended: Filed March 29, 2002, effective Oct. 30, 2002. Amended: Filed May 5, 2003, effective Dec. 30, 2003. Emergency amendment filed Aug. 11, 2005, effective Sept. 16, 2005, expired Feb. 28, 2006. Amended: Filed Aug. 11, 2005, effective March 1, 2006. Amended: Filed Dec. 1, 2008, effective May 30, 2009.*

**Original authority: 630.050, RSMo 1980, amended 1993, 1995, 2008; 630.135, RSMo 1980; 630.165, RSMo 1980, amended 1996, 2003, 2007, 2008; 630.167, RSMo 1980, amended 1985, 1990, 1993, 1996, 1998, 2003, 2007, 2008; 630.168, RSMo 1980, amended 1987, 1996; 630.170, RSMo 1980, amended 1982, 1996, 1998, 2001, 2003, 2008; 630.655, RSMo 1980; and 630.705, RSMo 1980, amended 1982, 1984, 1985, 1990, 2000.*



9 CSR 10-5.206 Report of Events

PURPOSE: This rule prescribes procedures for documenting, reporting, analyzing and addressing certain events that affect individuals in residential facilities, day programs or specialized services that are licensed, certified or funded by the Department of Mental Health as required by sections 630.005, 630.020, 630.165, 630.167 and 630.655, RSMo.

(1) The following words and terms, as used in this rule, mean:

(A) Consumer, individual receiving department funded or contracted services directly from any program or facility;

(B) Corrective Action Plan, the document a provider submits to the department in response to the results of an event or events which outlines those measures that are intended to reduce the likelihood that the event(s) will recur or to remediate a deficiency. Such actions include but are not limited to: removal of an individual receiving services or staff from a provider; staff training; improvements in the physical plant; revision of operating procedures;

(C) Department, the Department of Mental Health's local regional center, district administrator, or supported community living office, depending on the division providing service;

(D) Guardian, individual who is legally responsible for the care and custody of the consumer;

(E) "On call" system, procedure of the specific regional department personnel being available to receive notification of events during nonbusiness hours. A telephone number is provided to verbally relay this information to the individual representing the specific region and division providing service;

(F) Provider—

1. A residential facility, day program or specialized service that is licensed, certified or funded by the Department of Mental Health;

2. Provider does not include facilities licensed by the Department of Health and Senior Services under Chapter 198, RSMo unless the facility is also licensed by the Department of Mental Health. In this case this rule applies only to consumers that have a primary diagnosis of mental illness and whose board and care are funded by the Department of Mental Health.

3. Duties of the provider under this rule are the responsibility of the chief administrative officer of the residential facility, day program or specialized service, or his/her designee;

(G) Reportable events, those specific incidents and medication errors identified on the applicable department report form dependent on the division providing service to the consumer; and

(H) Report form, Department of Mental Health form identifying reportable events and the timelines for reporting such events to the department. The form is used for data entry into the department Incident and Investigation Tracking System for statewide data collection. This form is identified as DMH-9719A (Divisions of Alcohol and Drug Abuse and Comprehensive Psychiatric Services) or DMH-9719B (Division of Mental Retardation/Developmental Disabilities), dependent on department division of service, which is included herein.

(2) This section applies to event notification and reporting requirements for employees of providers, as defined under section 630.005, RSMo. Facilities, programs and services that are operated by the Department of Mental Health are regulated by the department's operating regulations and are not included in this definition, because this rule does not apply to Department of Mental Health operated facilities.

(A) Providers must maintain written policies requiring their employees to report events under this regulation and those events identified in 9 CSR 10-5.200. The policies must make clear that administrative or disciplinary sanctions may result from failure to report. Providers must ensure that their employees and those who support the agency are educated about the department's notification and reporting requirements.

(B) It is the responsibility of the provider to—

1. Notify the department with a written or verbal report of all events reportable under this regulation involving consumers as identified on the report form. For those events requiring immediate notification, if a verbal report, it will be followed up in writing on the report form and faxed or otherwise transmitted to arrive within one (1) business day to the appropriate department office. All other events not requiring immediate notification shall be provided in writing on the report form in the time frame specified on the report form.

2. Notify the department using the department's "on call" system after 5:00 p.m. or on weekends/holidays for those events on the report form requiring immediate department notification, and any event resulting in extensive property damage or major disruption of the program or service the consumer receives; and

3. Within twenty-four (24) hours of knowledge of an event that requires immediate department notification, verbally notify the legal guardian or parent (if consumer is a minor) of the specifics regarding the event. The provider shall also communicate that the event has been reported to the department. The only exception to this verbal notification is if the parent(s) or legal guardian is the suspected primary person involved that forms the basis for the reported event. If the provider is unable to verbally contact the guardian/parent, the provider shall document on the report form all efforts made to comply.

(3) The provider shall ensure that patterns and trends of reportable events, specific to a consumer, are included and addressed in the consumer's personal/treatment plan upon approval by the planning team. To the extent that specific consumer issues are identified, the department staff may meet with the provider to discuss action steps to address and resolve issues, including submission of corrective action plans.

(4) The department may request a corrective action plan be provided by the provider based on the facts surrounding the event. This plan is subject to approval by the department within a time frame specified by the department. This plan must be carried out as specified.

(5) Programs licensed or certified by the Department of Mental Health must maintain internal records of similar events or information for individuals who do not receive department funded or contracted services, for purposes of quality review to assure that problems are identified and resolved. Non-identifying event records or non-identifying analysis of these events must be available for review by the department as needed for monitoring or licensure/certification activities. This section does not apply to facilities licensed under Chapter 198, RSMo.

(6) Failure to follow the above referenced regulations may result in administrative sanctions up to and including contract cancellation or licensure/certification revocation.



Department of Mental Health
Incident and Investigation Tracking System- Event Report Form
(Community Report Form —ADA/CPS)

DIVISION: [] Alcohol and Drug Abuse [] Comprehensive Psychiatric Services
Program/Service type regarding consumer/Event (CPR, CSTAR, etc.)

Consumer Name (Last) (First) (MI) AGE [] Male [] Female [] DMH ID# [] Medical Record # [] SSN#
[] Female (check one)

Address/Home

Person(s) who witnessed or have direct knowledge of the event: (attach additional page if necessary)

Table with 3 columns: Last Name, First Name, Relationship to Consumer

Event Date and Time Discovery Date and Time
Month Day Year Time : AM PM Month Day Year Time : AM PM

Event location or where discovered (be specific) Name of Provider Agency/Organization involved in event:

VENDOR NUMBER (REQUIRED):

Reporter's Name (Last, First, MI) Reporter's Phone Number Reporter's Employer (Agency/Facility/Admin. Agent)

Persons /Agencies Notified: (Check all that apply)

Table with 6 columns: Checkboxes for notification types (Family/Guardian, Physician, Law Enforcement, DSS, etc.), Name of Person Contacted, DATE, TIME, AM, PM

EVENT DESCRIPTION—(Describe what happened & attach additional page(s) if necessary)



Consumer Name _____

Event Date _____

REPORTABLE EVENTS

All events identified below shall be recorded on this form and faxed within one business day to the appropriate Division of Alcohol and Drug Abuse District Administrator or Division of Comprehensive Psychiatric Services Supported Community Living Office. Abuse and neglect requires an immediate verbal or written report according to 9 CSR 10-5.200.

- Consumer Death (Regardless of cause, including all known deaths of discharged consumers up to and including 30 days post-discharge from a residential program)
- Elopement/Unauthorized Absence (The timeframe for reporting shall be when this absence raises reasonable concern for the safety of the consumer or others, or concern that the consumer will not return. For the Division of Alcohol and Drug Abuse, this applies to adolescents and involuntary commitments only)
- Alleged or Suspected Abuse/Neglect:**
 - Alleged or Suspected Verbal Abuse
 - Alleged or Suspected Physical Abuse
 - Alleged or Suspected Sexual Abuse
 - Alleged or Suspected Neglect
- Alleged or Suspected Misuse of Consumer Funds/Property
- Medication Error** (Occurring in residential programs or programs in which medication is administered or self administration is observed by agency staff)
 - Moderate Medication Error: Treatment and/or intervention is needed in addition to monitoring or observation
 - Serious Medication Error: Life threatening and/or permanent adverse consequences
- Serious Injury (injury to a consumer requiring medical inpatient hospitalization)

IF DEATH, SUSPECTED MANNER:

- Accident
- Homicide
- Natural
- Suicide
- Unknown

INJURY TYPE:

- Accident
- Consumer Inflicted
- Other Inflicted
- Self-Inflicted
- Staff Inflicted
- Unknown

Signature of Reporter _____

MM / DD / YR
REPORT DATE

AM PM
REPORT TIME

TO BE COMPLETED BY DEPARTMENT OF MENTAL HEALTH STAFF

Action Taken:

- Inquiry
- Local Investigation
- Central Office Investigation
- No Investigation

Signature of ADA or CPS Staff: _____

Date: _____

INCIDENT TYPE (TO BE COMPLETED BY DMH STAFF)

- Consumer Rights
- Consumer Struck Object
- Consumer Self Harm
- Fall
- Fire
- Inappropriate language by staff toward consumer
- Medical Emergency
- Notification of death in the community
- Physical altercation-consumer & consumer
- Physical altercation-consumer & staff
- Property loss/destruction
- Possession of drugs not prescribed
- Possession of weapon
- Sexual conduct-consumer & staff
- Sexual conduct – consumer non-consensual
- Suicide Attempt
- Theft
- Vehicular accident
- Other _____

NOTES:

7/14/05

DMH-9719A



iITS #
DMH Use Only
7-14-09

Department of Mental Health
iITS- Community Event Report Form-MRDD

All events must be reported to the regional center immediately, unless otherwise specified on this form. The written event report form must be submitted the next working day, unless requested sooner by the regional center.

EVENT CATEGORY (CHECK ONE)	1. <input type="checkbox"/> INCIDENT	<input type="checkbox"/> MEDICATION ERROR	<input type="checkbox"/> DEATH
PROGRAM CATEGORY (CHECK ONE)	2. <input type="checkbox"/> COMMUNITY PLACEMENT	<input type="checkbox"/> PURCHASE OF SERVICE (POS)	<input type="checkbox"/> CASE MANAGEMENT

3. Event Date & Time ____/____/____ : ____AM ____PM Month Day Year	4. Discovery Date & Time ____/____/____ : ____AM ____PM (Complete this section only if different than event date/time)
---	---

INVOLVED

5. Consumer Name (Last) (First) (MI)	6. DOB	7. <input type="checkbox"/> Male <input type="checkbox"/> Female	8. Consumer ID
9. Address/Home Telephone Number		10. DMH/County Board Service Coordinator Name	

11. Event Location or where discovered (Name of agency or location)	12. Name of Provider Agency/Organization involved in event & VENDOR NUMBER
---	--

13. Persons who witnessed or have direct knowledge of the event		Relationship (CHOOSE FROM LIST BELOW)	Telephone Number
Last Name	First Name		

*Relationship to Consumer-consumer, parent/guardian, staff, visitor, volunteer, complainant, perpetrator, reporter, victim, witness, other -specify)			
14. NOTIFIED: Persons /Agencies (CHECK ALL THAT APPLY)	Name of Person Contacted	DATE	TIME
<input type="checkbox"/> DMH Regional Center			____:____ AM ____PM
<input type="checkbox"/> Family or Guardian			____:____ AM ____PM
<input type="checkbox"/> Physician			____:____ AM ____PM
<input type="checkbox"/> Law Enforcement			____:____ AM ____PM
<input type="checkbox"/> DSS Children's Division			____:____ AM ____PM
<input type="checkbox"/> Division of Senior Services			____:____ AM ____PM
<input type="checkbox"/> 911			____:____ AM ____PM
<input type="checkbox"/> Other			____:____ AM ____PM

15. **EVENT DESCRIPTION:** Describe what happened and interventions used by staff: - Refer to instruction sheet for items to be included in this section.

Attach additional pages if necessary



AUTHORITY: sections 630.005, 630.020 and 630.655, RSMo 2000 and 630.165 and 630.167, RSMo Supp. 2004.* Original rule filed March 1, 2005, effective Oct. 30, 2005. Amended: Filed Aug. 26, 2005, effective Feb. 28, 2006.

*Original authority: 630.005, RSMo 1980, amended 1981, 1982, 1990, 1993, 1995, 1996; 630.020, RSMo 1980; 630.165, RSMo 1980, amended 1996, 2003; 630.167, RSMo 1980, amended 1985, 1990, 1993, 1996, 1998, 2003; and 630.655, RSMo 1980.

9 CSR 10-5.210 Exceptions Committee Procedures

PURPOSE: This rule establishes procedures for requesting an exception from the administrative rules of the Department of Mental Health.

(1) Definitions. The following terms are defined as follows:

(A) Disqualifying incident, a crime which under 9 CSR 10-5.190 results in a person being disqualified from employment, or one (1) or more administrative findings of abuse, neglect or misuse of client funds which, under 9 CSR 10-5.200 leads to a person being listed on the Department of Mental Health disqualification registry;

(B) Exception, a decision by the department not to enforce an administrative rule under the individual circumstances described in the request for an exception and the conditions described in the approval. None of the following are subject matter of an exception:

- 1. A contention that the rule is not valid;
2. A contention that the provider is in fact in compliance with the rule; and
3. A request for an interpretation of a rule.

(2) Rules Subject to an Exception. Only the following rules may be the subject of an exception:

(A) Licensure rules for residential facilities and day programs promulgated under 9 CSR 40;

(B) Certification rules for alcohol and drug abuse programs and psychiatric programs promulgated under 9 CSR 10-7 and 9 CSR 30;

(C) Certification rules under 9 CSR 45 for programs serving persons who are developmentally disabled under the Community Based Waiver Program;

(D) Any other administrative rule promulgated by the Department of Mental Health that specifically allows for an exception; and

(E) Rules related to disqualification from employment under 9 CSR 10-5.190 and 9

CSR 10-5.200. In the context of employment disqualification the following apply.

1. A person may not request an exception until twelve (12) months have passed since the sentence of the court or since the department gave official notice of the person's name being added to the Department of Mental Health disqualification registry.

2. The exceptions option under this administrative rule does not replace or substitute for the appeal procedures afforded under Department Operating Regulation (DOR) 2.205 and 9 CSR 10-5.200 or any other administrative process. A person is not required to exhaust the appeal procedures as a prerequisite to requesting an exception; however, an exception will not be considered while an appeal is pending.

(3) Who may apply for an exception?

(A) A chief executive officer, or designee, on behalf of a residential facility, day program or specialized service, or an employee thereof.

(B) An individual may request an exception on his or her own behalf with respect to disqualification from employment under 9 CSR 10-5.190 and 9 CSR 10-5.200.

(C) A facility operated by the department on behalf of a residential facility, day program or specialized service licensed, operated or funded by the department.

(D) Any other person or entity affected by an administrative rule under subsection (2)(E) of this rule.

(4) How to request an exception.

(A) A person may request an exception by sending to the exceptions committee a written request which—

- 1. Cites the rule number in question;
2. Indicates why and for how long compliance with the rule should be waived; and
3. Is accompanied by supporting documentation, if appropriate.

(B) In addition, the following additional items must be part of a request under 9 CSR 10-5.190, related to disqualification from employment.

1. A letter from the disqualified person containing the following information:

- A. A description of the disqualifying incident;
B. When the disqualifying incident occurred;
C. If the disqualifying incident was a crime, the sentence of the court;
D. Mitigating circumstances, if any;
E. Activities and accomplishments since the disqualifying incident;

F. The names and dates of any relevant training or rehabilitative services;

G. The type of service and/or program the applicant wishes to provide for mental health clients;

H. Identification of the type of employment or position the applicant wishes to maintain or obtain and the name of the mental health program in which he or she wishes to work or continue working; and

I. Changes in personal life since the disqualifying incident (e.g., marriage, family, and education);

2. References, i.e., written recommendations from at least three (3) persons who verify the applicant's assertions; and

3. Work history, with particular emphasis on work in the mental health field.

(C) Request for exceptions should be sent to Exceptions Committee Coordinator, Office of Quality Management, Department of Mental Health, PO Box 687, Jefferson City, MO 65102.

(5) Response. Within forty-five (45) calendar days of receiving a request for an exception, the exceptions committee shall respond in writing. The committee may approve a request, approve the request with conditions, deny the request or defer a decision pending receipt of additional information.

(6) Decisions of the exceptions committee are not subject to appeal. However persons aggrieved by a decision may modify and repeat a request after ninety (90) days. Persons requesting an exception under 9 CSR 10-5.190 must wait twelve (12) months before repeating a request.

(7) Documentation. A recipient of an exception shall maintain documentation of all approved exceptions and make the documentation available for review upon request by authorized staff of the department.

(8) Expiration Date for an Exception.

(A) An exception becomes null and void without any further action by the department under any of the following circumstances.

- 1. An expiration date is announced in the letter of approval.
2. The subject for whom the exception was granted changes employment.
3. There are changes in other circumstances described in the request.

(B) If an exception expires under this section, it may be renewed by submission of a new request.



(9) Rescinding Decisions. The exceptions committee may rescind any exception if, in its judgment, any of the following occur:

(A) The provider failed to meet a condition of the exception, or to maintain documentation required under section (7);

(B) It is discovered that the request contained misleading, incomplete or false information; or

(C) The exception results in poor quality of care, or risk/harm to a client or resident.

(10) If the committee rescinds an exception, the committee shall provide all concerned parties with a notice of rescission with an effective date. There shall be no appeal of a rescission of an exception.

AUTHORITY: sections 630.050 and 630.656, RSMo 2000 and 630.170, RSMo Supp. 2003. Original rule filed Feb. 23, 2001, effective Sept. 30, 2001. Amended: Filed Nov. 3, 2003, effective April 30, 2004. Amended: Filed April 13, 2004, effective Oct. 30, 2004.*

**Original authority: 630.050, RSMo 1980, amended 1993, 1995; 630.170, RSMo 1980, amended 1982, 1996, 1998, 2001, 2003; 630.656, RSMo 1995.*

9 CSR 10-5.220 Privacy Rule of Health Insurance Portability and Accountability Act of 1996 (HIPAA)

PURPOSE: This rule alerts providers to the possible HIPAA Privacy Rule requirements if the provider has determined that it is a covered entity as defined by HIPAA. Once that is established, this rule lists policies and procedures that the HIPAA Privacy Rule requires for each covered entity.

(1) This rule applies to all programs licensed, certified or funded by the Department of Mental Health.

(2) Definitions.

(A) HIPAA: the Health Insurance Portability and Accountability Act of 1996 (45 CFR parts 160 and 164) as it relates to Privacy.

(B) Protected Health Information (PHI): As defined by HIPAA (45 CFR section 164.501), PHI is individually identifiable health information that is—

1. Transmitted by electronic media;

2. Maintained in any medium described in the definition of electronic media; or

3. Transmitted or maintained in any other form or medium.

(C) Individually identifiable health information: As defined by HIPAA (45 CFR section 160.103), individually identifiable health

information is any information, including demographic information, collected from an individual that is—

1. Created or received by a healthcare provider, health plan, employer, or healthcare clearinghouse; and

2. Related to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual, and which identifies the individual, or with respect to which there is reasonable basis to believe that the information can be used to identify the individual.

(D) Business associate: As defined by HIPAA (45 CFR section 160.103), a person who, on behalf of the covered entity or provider or of an organized healthcare arrangement in which the covered entity participates, but other than in the capacity of a member of the workforce of such covered entity or arrangement, performs, or assists in the performance of:

1. A function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or

2. Any other function or activity regulated by this subchapter; or provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for such covered entity, or to or for an organized healthcare arrangement in which the covered entity participates, where the provision of the service involves the disclosure of individually identifiable health information from such covered entity or arrangement, or from another business associate of such covered entity or arrangement, to the person.

(3) All providers who determine that they qualify as covered entities must comply with the provisions of the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). A covered entity is defined as a healthcare provider, who transmits any health information in electronic form in connection with a transaction covered by this subchapter (section 160.103 of 45 CFR part 160), a health plan or a clearinghouse. The effective date of the Privacy Rule is April 14, 2003. IF this provider is a covered entity, THEN HIPAA requires the appropriate policies and procedures be in

place to comply with the HIPAA Privacy Rule. HIPAA requires such policies and procedures to include, but not be limited to, the following topics: Notice of Privacy Practices, Amendment of Protected Health Information (PHI), Client Access to PHI, Accounting of Disclosures, Workforce Training, Verification, Authorization for Disclosures of PHI, HIPAA Complaint Process, Marketing (if applicable), Research (if applicable), Audit and Monitoring of HIPAA compliance, and Business Associates Agreements with those companies providing goods and services which require the disclosure of PHI, etc. Where existing confidentiality protections provided by 42 CFR part 2, related to the release of alcohol and drug abuse records, are greater than HIPAA, then the department anticipates that the provider will consider any such provision of 42 CFR part 2 as the guiding law.

AUTHORITY: section 630.050, RSMo 2000 and 45 CFR parts 160 and 164, the Health Insurance Portability and Accountability Act of 1996. Emergency rule filed April 1, 2003, effective April 14, 2003, expired Oct. 14, 2003. Original rule filed April 1, 2003, effective Oct. 30, 2003.*

**Original authority: 630.050, RSMo 1980, amended 1993, 1995.*

9 CSR 10-5.230 Hearings Procedures

PURPOSE: This rule sets out procedures for requesting and conducting hearings before the Department of Mental Health Hearings Administrator as provided for in 9 CSR 10-5.200.

(1) Requests for hearings shall be submitted in the following manner:

(A) All requests for hearings shall be made in writing by the appellant or his/her attorney to the hearings administrator within twenty (20) calendar days from the date of the final determination letter as set out in 9 CSR 10-5.200(6)(D). The request may be hand delivered or sent by mail or facsimile.

1. A request for hearing filed by hand delivery or mail is considered received on the date received by the office of the hearings administrator. Requests shall be sent to: Office of Hearings Administrator, Department of Mental Health, 1706 East Elm, PO Box 687, Jefferson City, MO 65102.

2. A request for hearing filed by facsimile is considered received at the time the office of the hearings administrator receives the request, provided that the original of the document is sent to the office of the hearings



administrator and received within ten (10) calendar days of the fax. If a request arrives by fax after 5:00 p.m., Central Standard Time, and before 12:00 a.m., Central Standard Time, or on a Saturday, Sunday, or legal holiday, it is considered filed on the next working day. Requests filed by facsimile shall be sent to the office of hearings administrator's designated line at (573) 751-8069.

A. The time controlling when a facsimile arrives at the office of the hearings administrator is the office of the hearings administrator's facsimile machine journal.

B. The person filing by facsimile bears the risk of loss in transmission, non-receipt, or illegibility. If the request for hearing is not received or is materially illegible, the request is not considered filed and is totally null and void for all purposes.

C. A party filing a request for hearing by facsimile shall notify the office of the hearings administrator in advance, if possible, of its intention to file the request by fax; and

(B) The request for a hearing shall set out the appellant's name, current address, and telephone number and that of his or her attorney, if applicable; the decision being appealed, the date of the decision, and the name of the person making the decision and a brief statement of the appellant's reason for appealing the decision.

(2) Appellants may represent themselves and handle their own cases, but shall have the right to be represented by a Missouri licensed attorney. A party to an appeal cannot be represented by anyone other than a duly licensed attorney. If either party is represented by an attorney, the attorney shall promptly notify the office of hearings administrator and enter his/her appearance.

(3) When a hearing has been requested, the hearings administrator shall schedule the hearing within ninety (90) calendar days of receiving the request for hearing, but may delay the hearing for good cause shown.

(4) The hearings administrator may schedule a pre-hearing conference with the parties. The hearings administrator may meet (in person, via telephone, or video conference) with the parties and their representatives at a pre-hearing conference to determine the facts at issue. At the pre-hearing conference, the parties may stipulate to mutually agreed matters or the appeal may be resolved by agreement of the parties. All parties are required to provide the hearings administrator with a current address and telephone number. If the appellant fails to provide the hearings administra-

tor with a current address or phone number and cannot be reached to schedule a pre-hearing conference or fails to participate in a pre-hearing conference after receiving written notice of the date and time of the conference, it shall be deemed that the appellant no longer wishes to proceed with the appeal and is withdrawing the appeal.

(5) The hearings administrator shall send written notice of hearing and prehearing dates to the parties and representatives no less than ten (10) calendar days before the scheduled date for such hearing, unless there is good cause to shorten the period to provide notice.

(6) The hearings administrator may grant continuances for good cause. A continuance must be requested no later than seventy-two (72) hours, excluding Saturdays, Sundays, and legal holidays, prior to the scheduled date and time of the hearing or prehearing. Absent exigent circumstances, requests for continuances received less than seventy-two (72) hours prior to the hearing or prehearing shall not be considered.

(7) Requests for subpoena shall be governed by the following requirements:

(A) A request for a subpoena for attendance at depositions or hearings shall be made in writing and specify the name of the persons, the address(es) where the person can be served with the subpoena, the deposition or hearing location, and the time the person is expected to appear at the deposition or hearing location;

(B) A request for a subpoena *duces tecum* shall be made in writing and specify the name of the person, the address(es) where the person can be served with the subpoena, the documents the person is to provide, a statement of what is intended to be proved by the documents, where he or she should bring the documents, and a date when the documents are to be provided;

(C) All subpoena requests shall be sent by regular mail or fax to the hearings administrator and opposing party at least five (5) working days before the hearing or deposition, unless there is good cause to shorten the period to request the subpoena;

(D) Any motions to quash a subpoena must be sent to the hearings administrator within three (3) working days of receiving the subpoena request;

(E) If no objection is sustained to a subpoena request, the hearings administrator shall prepare the subpoena and send the subpoena to the party who requested it. It is the responsibility of the person who requested

the subpoena to have it served. Service of the subpoena is to be effected in accordance with section 537.077, RSMo; and

(F) If a subpoena for a witness was not requested in accordance with this rule, good cause will not be found to continue the hearing for that witness's failure to appear.

(8) The appellant or his/her attorney may request copies of any documents referred to in the decision letter from the attorney representing the department. If the documents involve protected health information, the attorney shall request a protective order from the hearings administrator. The protective order shall provide that no documents containing protected health information shall be released to anyone except the appellant or his/her attorney, and the appellant or his/her attorney shall return any documents provided to him or her before the end of the hearing.

(9) All parties who are represented by an attorney shall submit a proposed order with every motion or request that is filed or presented to the hearings administrator.

(10) The hearing shall be conducted according to the following procedures:

(A) The hearing shall be conducted at the facility where the decision was made, unless the hearings administrator finds good cause to hold the hearing in another place;

(B) If the appellant or his/her attorney does not appear at the hearing and does not call the facility or the hearings administrator to provide notification of an exigent circumstance requiring a continuance within thirty (30) minutes of the time set out in the notice, it shall be deemed that the appellant no longer wishes to proceed with the appeal and is withdrawing the appeal;

(C) At the beginning of the hearing, the hearings administrator shall state the reason for the hearing and outline the hearing procedure;

(D) Both parties shall be given the opportunity to present opening statements. The department shall present its witnesses and exhibits first, then the appellant shall present his or her witnesses and exhibits. The department shall have the burden of proof by a preponderance of the evidence. Both parties shall be given the opportunity to present closing statements;

(E) All witnesses shall be sworn or affirmed. All witnesses are subject to cross-examination;

(F) The hearings administrator, at the request of either party or on his/her own motion, may order the witnesses to be separated so as to preclude any witness, other



than the parties, from hearing the testimony of other witnesses. When requested by the appellant, only one (1) person in addition to counsel may remain in the room to represent the department;

(G) A witness may testify by telephone or videoconference upon request from either party. The appellant or his/her attorney if represented or the attorney representing the department should submit a written request, with a copy to the other party, for the approval of the hearings administrator for a witness to testify by telephone or videoconference at least five (5) working days before the hearing, unless there is good cause to shorten the period. Objections to a witness testifying by telephone or videoconference should be submitted to the hearings administrator at least two (2) working days prior to the hearing, unless there is good cause to shorten the period;

(H) The formal rules of evidence shall not apply at these hearings. Parties may introduce any relevant evidence at the discretion of the hearings administrator;

(I) In all cases of allegations of abuse, neglect, or misuse of funds/property, the attorney representing the department shall offer the investigative report into evidence at the administrative hearing. In accordance with section 630.167.3(1), RSMo, the investigative report shall be admitted into evidence;

(J) The hearings administrator may exclude evidence that is purely cumulative;

(K) The hearings administrator may take administrative notice of department rules, department operating regulations, and facility policies without the necessity of an offer into evidence; and

(L) The hearing shall be recorded. After the hearings administrator issues his or her decision, a copy of the recording shall be made available to either party upon request. The department will not transcribe the recording from aural to written form. The cost of a transcription shall be borne by the requesting party.

(11) All requests shall be in writing and directed to the attention of the hearings administrator and copied to the other party. This includes such matters as requests for continuances, documents, recordings, remote witness testimony, subpoenas, protective orders, and copies of decision. Requests may be sent to the office of the hearings administrator at 1706 East Elm, PO Box 687, Jefferson City, MO 65102 or faxed to (573) 751-8069.

(12) The hearings administrator's decision is

final and is subject to judicial review in accordance with sections 536.100 to 536.140, RSMo. A motion for attorney's fees, if any, shall be filed with the office of the hearings administrator within thirty (30) calendar days of the date of the decision. The filing of a petition for judicial review does not stay the thirty (30)-day filing requirement.

AUTHORITY: sections 630.050 and 630.167, RSMo Supp. 2008. Original rule filed Dec. 1, 2008, effective May 30, 2009.*

**Original authority: 630.050, RSMo 1980, amended 1993, 1995, 2008 and 630.167, RSMo 1980, amended 1985, 1990, 1993, 1996, 1998, 2003, 2007, 2008.*

9 CSR 10-5.240 Behavioral Health Healthcare Home

(Moved to 9 CSR 10-7.035)

9 CSR 10-5.250 Screening and Assessment for Behavioral Changes

PURPOSE: This rule establishes guidelines for the screening and assessment of individuals receiving services from state owned or operated facilities to determine whether changes in behavior or mental status are caused by or associated with a medical condition.

(1) Definitions—

(A) Department—Department of Mental Health (DMH);

(B) Interdisciplinary team (IDT)—staff who know the individual well and possess the knowledge, skills, and expertise necessary to accurately identify a comprehensive array of the individual's needs and design a program responsive to those needs; and

(C) State owned or operated facilities—includes state Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) as defined in 42 CFR section 440.150, RSMo, psychiatric residential treatment facilities, and state operated home and community-based waiver services.

(2) The provisions of this rule do not apply to long-term care facilities licensed under Chapter 198, RSMo, hospitals licensed under Chapter 197, RSMo, or hospitals as defined in section 197.020, RSMo.

(3) Members of the IDT who are supporting individuals in state owned or operated facilities shall document and collect data.

(4) Based on a review of the data, the department shall first assess whether there is a relationship between a physiological event and/or

illness and behavior. If a medical condition is suspected as the possible cause of the behavior change, medical assessment and treatment shall be accessed. After treating the medical condition or ruling out a medical or physiological event, the department shall then take other actions regarding psychiatric consultation and treatment.

AUTHORITY: section 630.050, RSMo Supp. 2013, and section 630.108, RSMo Supp. 2014. Original rule filed Dec. 10, 2015, effective June 30, 2016. Amended: Filed May 13, 2016, effective Nov. 30, 2016.*

**Original authority: 630.050, RSMo 1980, amended 1993, 1995, 2008 and 630.108, RSMo 2014.*