



MISSOURI DEPARTMENT OF MENTAL HEALTH

MARK STRINGER, DEPARTMENT DIRECTOR



DEPARTMENT OPERATING REGULATION NUMBER
DOR
1.230

CHAPTER General Department	SUBCHAPTER Department Operations	EFFECTIVE DATE 6-20-16	NUMBER OF PAGES 4	PAGE NUMBER 1 of 4
SUBJECT Internal Regulation Process		AUTHORITY 536.014, 536.016, 536.025, 536.026 and 630.050 RSMo	HISTORY See below	
PERSON RESPONSIBLE Office of General Counsel			SUNSET DATE 7-1-19	

PURPOSE: Describes how the department will implement its authority to promulgate administrative rules and department operating regulations.

Application: Applies to the entire department (DMH).

(1) Definitions:

(A) **Administrative Rule:** A regulation that affects providers and other entities outside DMH and is published in the Code of State Regulations (CSR).

(B) **Department Operating Regulation (DOR):** A regulation that affects employees of DMH and facilities operated by DMH.

(C) **Executive Team:** Division directors and other senior administrative staff designated by the DMH director.

(D) **Fiscal Note:** A statement estimating the cost of a proposed regulation resulting from its implementation.

(E) **Regulation:** An administrative rule or department operating regulation.

(F) **Regulation Author:** A DMH employee who is responsible for writing a regulation.

(G) **Regulation Owner:** The program division or office with the primary responsibility for a regulation.

(H) **Regulatory Process Coordinator:** Staff within the Office of General Counsel designated to provide technical assistance, consultation, oversight, and quality improvement relative to regulation development.

(I) **Sunset:** The date on which a DOR expires unless renewed through the regulatory development process. The sunset date shall be the first day of July following thirty-six months after the effective date.

(2) Duties of the Regulatory Process Coordinator are as follows:

(A) Issuing regulation numbers;

(B) Preparing cover letters, affidavits and transmittal sheets for the filing of a rule or the departmental review of a DOR;

(C) Issuing alerts and reminders to regulation owners regarding filing timelines and requirements;

(D) Identifying the sunset date for each regulation;

(E) Providing technical assistance, consultation and review with respect to regulatory consistency, formatting, language, and style;

(F) Identifying and analyzing new regulatory issues (e.g. legislation, court decisions) to determine if changes to administrative rules or DORs may be needed;



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(G) Circulating information as may be appropriate to the executive team, the mental health commission, the governor’s office, and others to whom the information may be relevant;

(H) For administrative rules, filing the necessary paperwork with the Secretary of State’s Office and the Joint Committee on Administrative Rules, and when necessary, the Small Business Regulatory Fairness Board;

(I) For DORs, posting the DOR for comment on the DMH intranet, collecting comments and providing those comments to the Regulation Author, and obtaining the Director’s signature on the finalized DOR prior to official posting of the newly effective DOR; and

(J) Working with the Regulation Author to coordinate revisions to a proposed regulation in response to comments received.

(3) Each regulation owner shall assign staff for rule drafting and fiscal note development. Fiscal notes shall be developed in accordance with DOR 1.235.

(4) Responsibilities of the Regulation Author.

(A) Obtaining authorization from a Regulation Owner to write a regulation;

(B) Gathering empirical evidence as may be reasonably available to indicate that a regulation is necessary and retaining records of this evidence on file;

(C) Obtaining input regarding the content of the regulation from the following:

1. Staff who will be required to implement the regulation;
2. Consumers who will be affected by the regulation; and
3. Others who will be significantly affected by the regulation.

(D) Obtaining a regulation number from the Regulatory Process Coordinator;

(E) Working with the staff assigned by the Regulation Owner to develop a fiscal note for administrative rules, which shall be submitted to the DMH Division of Administration for review and approval in accordance with DOR 1.235;

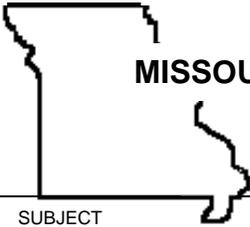
(F) Working with the Regulatory Process Coordinator to determine whether the proposed administrative rule affects small business; and if so, developing the small business impact statement pursuant to Section 536.300-536.303, RSMo; and

(G) Working with the Regulatory Process Coordinator to coordinate revisions to a proposed regulation in response to comments received.

(5) Regulation Review Criteria.

(A) The following criteria guide the deliberations and recommendations for both administrative rules and DORs.

1. The regulation is consistent with existing regulations and statutes.
2. The regulation is consistent with other DMH initiatives, its core mission, values and strategic plan.
3. The regulation is in the proper form (rule versus DOR, policy/procedure).



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4. The constituencies who will be affected by the regulation have been identified and have had the opportunity to provide input.

(5) The regulation reflects wise and legal use of public funds.

(6) The regulation is consistent with ethical conduct.

(B) If the regulation is a DOR, the Regulatory Process Coordinator and Regulation Owner shall collaborate to determine whether or not the DOR meets at least one of the following criteria:

1. The DOR is necessary to establish needed consistency across facilities, divisions and offices operated by DMH.

2. The DOR is necessary to meet requirements established by external accreditation or certification organizations.

3. The DOR is necessary to comply with a state or federal statute, administrative rule or an oversight review.

(C) If the regulation is an administrative rule, it must meet all of the following criteria.

1. There is statutory authority for the promulgation of the rule.

2. The rule is not in conflict with state law.

3. There is substantial evidence on the record that the rule is necessary to carry out the purpose of the statute that granted such rulemaking authority. The evidence must be empirical and reasonably available.

4. The rule does not result in substantial inequity as to be unreasonably burdensome on persons affected.

5. Fiscal notes have been approved.

6. A determination has been made whether a situation exists that justifies filing an emergency rule pursuant to Section 536.025, RSMo.

7. A determination has been made whether the administrative rule affects small business pursuant to Section 536.300, RSMo.

(6) Regulation Development, amendment and rescission.

(A) Administrative Rules

1. Administrative rules shall be developed and filed in accordance with the procedures set out in Section 536.021, RSMo.

2. At the request of a Regulation Owner, the Regulatory Process Coordinator shall coordinate efforts when an emergency exists requiring immediate action on an administrative rule to address an immediate danger or preserve a compelling governmental interest. Emergency administrative rules shall be developed and filed in accordance with Section 536.025, RSMo.

(B) Department Operating Regulations

1. Proposed revisions to DORs shall be posted by the Regulatory Process Coordinator on the DMH intranet. Once posted, an e-mail shall be sent department wide notifying staff that a DOR revision is open for comment.



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2. A comment period shall be open for no less than ten (10) working days, unless a shorter period of time is authorized in section (6)(B)4.

3. After the close of a comment period, the Regulatory Process Coordinator shall compile the comments received and provide those to the Regulation Author, who shall determine what if any changes to make to the proposed language in coordination with the Regulation Process Coordinator. After considering the comments, one of the following actions shall be taken:

(i) Finalize the DOR if no changes were made or only minor changes were made that do not substantively alter the DOR as proposed. Examples of minor changes include, but are not limited to, changes in format, grammar, spelling, syntax, and word clarification.

(ii) Re-post the DOR for comment if substantive changes were made to the DOR from what was previously posted. Each additional comment period shall be open for no less than ten (10) working days, unless a shorter period of time is authorized in section (6)(B)4.

(iii) The Regulation Owner may withdraw the proposed DOR amendment.

4. A DOR comment period may be less than ten (10) working days if:

(i) The proposed change is necessary to come into compliance with federal or state law.

(ii) The changes are not substantive. In this context, the following are considered not substantive:

- (a) Revisions in spelling, syntax, grammar;
- (b) Changes in formatting or paragraph organization;
- (c) Corrections of references to other documents; or
- (d) Revisions to reflect changes in staff titles or organizational restructuring.

History: Original effective date Aug. 15, 2001. Amendment effective July 15, 2002. Amendment effective January 1, 2004. Amendment effective July 1, 2007. Amendment effective July 1, 2010. Amendment effective May 1, 2013. On June 20, 2016 the sunset date was extended to July 1, 2019.