



MISSOURI DEPARTMENT OF MENTAL HEALTH

MARK STRINGER, DEPARTMENT DIRECTOR



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
7.370

CHAPTER Community Placement and Licensing	SUBCHAPTER Placement Appeal Procedures	EFFECTIVE DATE 6/20/16	NUMBER OF PAGES 4	PAGE NUMBER Page 1 of 4
SUBJECT Petition and Appeal Process When a Patient Refuses to Consent to Placement		AUTHORITY 630.050 RSMO	HISTORY See Below	
PERSON RESPONSIBLE Director, Division of Behavioral Health			SUNSET DATE 7/1/19	

PURPOSE: Prescribes the petition and appeal process if a patient, minor patient's parent or a patient's legal guardian refuses to consent to the proposed placement from a mental health facility.

APPLICATION: Applies to mental health facilities operated by the department.

(1) As used in this DOR, the following terms mean:

(A) Head of the Facility: the chief administrative officer, or his or her designee, of any mental health facility.

(B) Independent Review Panel: A three (3) person review panel appointed by the Chairperson of the State Advisory Council for Comprehensive Psychiatric Services.

(C) Mental Health Facility: Any private or public residential facility or hospital, which can provide evaluation, treatment and, inpatient care to persons suffering from a mental disorder or mental illness and which is recognized as such by the department or any outpatient treatment program certified by the department of mental health.

(2) If a patient, minor patient's parent or a patient's legal guardian refuses to consent to placement as described in section 630.635, RSMo, then the head of the mental health facility shall request the patient, parent or guardian to explain to the facility in writing the reasons for the refusal on the Refusal to Consent form.

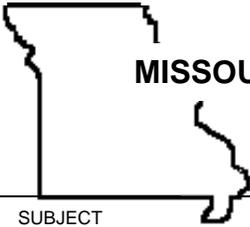
(3) If consent is not obtained, with or without specified reasons, the head of the mental health facility shall personally review the patient's file and reasons for the refusal, if given. The head of the facility may also consult with the same or another interdisciplinary team or other staff members regarding the appropriateness of the referral for placement.

(A) The head of the facility shall, within ten (10) working days of receipt of the Refusal to Consent form, either withdraw the referral for placement or request that the director of the division of behavioral health review the patient's file to determine whether the proposed placement is appropriate under the criteria set out in section (8) of this DOR.

(B) If the head of the facility petitions the division director, the head of the facility shall complete pertinent portions of the Appeal Flow Sheet and shall send the form with the request for review petition and a copy of the Refusal to Consent form to the division director.

(4) After personal review of the Refusal to Consent form and all other necessary documentation, the division director shall, within ten (10) working days of receipt of the request for review petition, determine whether the proposed placement is appropriate under the criteria set out in section (8) of this DOR. The division director shall dispose of the petition as follows:

(A) The division director shall either withdraw the referral or refer the petition and documentation to the chairperson of the State Advisory Council for Comprehensive Psychiatric Services ("Advisory Council") for review and recommendations by the Independent Review Panel.



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(B) If the petition is referred, the division director shall complete pertinent portions of the Appeal Flow Sheet and send it with the referral.

(C) If the petition is referred, the division director shall mail a notice of the institution of the appeal, a copy of the petition, and a copy of the documentation supporting the petition to the patient, minor patient's parent or patient's legal guardian.

(5) After the chairperson of the Advisory Council has received the referral, the chairperson shall appoint and convene an Independent Review Panel ("review panel") to conduct a hearing and recommend findings of fact, conclusions of law, and decision to the director of the department under the criteria set out in section (8) of this DOR. Hearings shall be scheduled to be held within forty-five (45) calendar days of receipt of the referral from the division director, but may be delayed for good cause.

(A) The chairperson of the Advisory Council shall appoint three (3) persons to the review panel. At least one (1) member of the review panel shall be a family member or guardian of a patient who resides in a department mental health facility. The remaining members of the review panel shall be persons:

1. who are from non-governmental organizations or groups concerned with prevention of mental disorders and evaluation, care and rehabilitation of persons affected by the same conditions as the patient the department seeks to place; and

2. who are familiar with services and service needs of patients in mental health facilities operated, licensed or funded by the department.

(B) No member of the review panel shall be an officer or employee of the department. The chairperson of the Advisory Council shall complete pertinent portions of the Appeal Flow Sheet to indicate the appointment.

(C) The department's Hearings Administrator shall serve as the legal advisor to the review panel.

(D) Hearings before the review panel shall be closed proceedings.

(6) The notice and procedure requirements for the hearing by the review panel shall be in accordance with Chapter 536, RSMo, including the following:

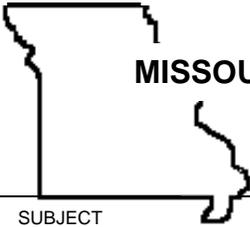
(A) The Hearings Administrator or designee shall assign a caption and number to the case.

(B) The Hearings Administrator or designee shall set the time and place for the hearing by coordinating this with the members of the review panel.

(C) The Hearings Administrator or designee shall mail a notice of hearing to the head of the facility and the patient, minor patient's parent or patient's legal guardian by certified mail, return receipt requested. The notice shall contain the date, time and place of the hearing and shall be mailed at least fifteen (15) calendar days before the date of the hearing. If an attorney has entered an appearance on behalf of the patient, minor patient's parent or patient's legal guardian, the division director, the Hearings Administrator or designee shall send a copy of the notice to the attorney.

(D) The head of the facility shall have the burden to demonstrate by a preponderance of evidence that the proposed placement is appropriate under criteria set out in section (8) of this DOR.

(E) The Hearings Administrator shall arrange to have the hearing electronically recorded for purposes of obtaining a transcript.



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(7) The review panel shall forward the recording, recommended findings of fact, conclusions of law and decision to the department director for review and consideration within twenty (20) working days of the conclusion of the hearing. The department director shall, within ten (10) working days of receipt of the review panel's recommendations, issue findings of fact, conclusions of law and decision ("Decision"). A copy of the Decision shall be sent to the head of the facility and the patient, minor patient's parent or patient's legal guardian by certified mail, return receipt requested.

(8) The criteria for determining whether the proposed placement is appropriate are as follows:

(A) As set out in section 630.610, RSMo, a comprehensive evaluation and individualized rehabilitation plan must indicate the following:

1. the person is affected by a mental disorder or mental illness, and
2. the person needs special care, treatment or rehabilitation services including room or board, or both.

(B) As set out in section 630.615, RSMo, the proposed placement meets the following criteria:

1. it is in the best interest of the patient;
2. it is the least restrictive environment for providing care and treatment consistent with the needs and conditions of the patient;
3. the individual degree of care and treatment which is required for the patient is of comparable quality to the existing care and treatment provided in the mental health facility based upon the department's investigation of the alternative placement and its program of care and treatment;
4. the placement would maintain relationships of the patient to family, guardian or friends and encourage their relationships and beneficial visits to the patient; and
5. the facility would provide enough security to protect the public safety, victims and witnesses if the client was committed pursuant to chapter 552, RSMo.

(C) As set out in section 630.620, RSMo, the facility has consulted with the patient, minor patient's parent, or patient's legal guardian and the proposed placement facility is one of the following:

1. A facility licensed by the Department of Health and Senior Services under Chapter 198, RSMo, and licensed or certified, or both by the department;
2. A facility licensed or certified, or both, by the department, or
3. The home of the patient.
4. The facility shall be secure if the patient was committed pursuant to Chapter 552, RSMo, unless a court order is entered allowing placement in a non-secure facility.

(9) The patient shall not be placed or discharged from the mental health facility until the Decision becomes final pursuant to Chapter 536, RSMo, except in the case of an emergency. As set out in Chapter 536 and section 630.635.5, RSMo, the patient, minor patient's parent, or legal guardian may appeal the Decision of the director.

(10) If the Decision determines that the patient should be placed, the patient shall be moved to the placement as set forth in the Decision. If the patient, minor patient's parent or patient's legal guardian does not consent to the placement once the Decision is final, the mental health facility shall discharge the patient and the administrative agent in the patient's service area shall offer support services.



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(11) If the director or court determines that the proposed placement is not appropriate under section 630.635, RSMo, the patient shall remain in the mental health facility until a change occurs in the patient's condition or the availability of appropriate placement facilities becomes available, at which time the mental health facility may initiate a new placement referral.

(12) The department shall not retaliate against any state employee as a result of the appeal of a good faith decision to place the patient including an employee who testifies during the hearing or otherwise provides information or evidence in regard to a proposed placement.

History: Original DOR Effective April 15, 2010. On June 15, 2013 the sunset date was extended to July 1, 2016. On June 18, 2013 the sunset date was extended to July 1, 2016. On June 20, 2016 the sunset date was extended to July 1, 2019.

**DEPARTMENT OF MENTAL HEALTH
DIVISION OF BEHAVIORAL HEALTH**

(Facility Director)

(Name of facility)

(Name of patient)

(Parent or Guardian if patient is a minor
or legally incompetent)

(Proposed placement or discharge)

(Date Refusal to Consent form received)

APPEAL FLOW SHEET

I. PETITION TO DIVISION DIRECTOR

Check items completed:

- _____ Request for review petition completed and signed by head of facility is attached.
- _____ Treatment Plan is attached.
- _____ Psychiatric and Social Work Assessments are attached.
- _____ Refusal to Consent Form is attached.
- _____ Aftercare Plan is attached.

Date

Signature of head of facility

II. DISPOSITION OF PETITION BY DIVISION DIRECTOR

_____ (Date request for review petition received)

Please check one of the following. After my review, I find:

_____ Placement to be appropriate and refer the following to the Chairperson of the State Advisory Council for Comprehensive Psychiatric Services:

- a) The request for review petition;
- b) Documentation, including Treatment Plan, Psychiatric and Social Work Assessments and Aftercare Plan;
- c) Refusal to Consent Form; and
- d) This flow sheet to the Chairperson of the State Advisory Council for Comprehensive Psychiatric Services for recommended decision.

*Note: The Division Director shall send the patient, minor patient’s parent, or patient’s guardian a copy of the petition and the documentation supporting it.

_____ I determine that placement in the proposed residential facilities is not appropriate, therefore, I return the petition and documentation to the facility along with this Appeal Flow Sheet.

Date

Signature of Division Director

III. APPOINTING AND CONVENING THE REVIEW PANEL

Under Section 630.635, RSMo, I appoint the following persons who have agreed to serve as the review panel to conduct a hearing and recommend findings of fact, conclusion of law, and decision to the Department Director:

Name

Name

Name

Date

Signature of Chairperson of State Advisory Council for
Comprehensive Psychiatric Services

IV. RECOMMENDATIONS OF REVIEW PANEL

Recommended findings of facts, conclusions of law, decision and tape recording of the hearing were forwarded to the Director of the Department of Mental Health on this date _____.

Signature of Department Hearings Administrator

V. NOTICE OF DECISION

I have notified the patient, minor patient's parent, or patient's guardian and the head of the above facility of my findings of fact, conclusions of law, and decision on this date _____.

Signature of Department Director

VI. COURT REVIEW

Court review was initiated on this date _____; or

Court review was not initiated within thirty (30) days of the notice within to the parties from the Department Director; thus, the appeal decision is final.

Date

Signature of Division Director or Designee