# 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(Rescinded July 11, 1983)


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(Moved to 9 CSR 45-3.010)

9 CSR 10-5.150 Individualized Habilitation Plan Procedures
(Moved to 9 CSR 45-4.010)

9 CSR 10-5.160 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 adjudicat-
ed 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 physi-
cian 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 perfor-

dnary to provide comfort or care or to alleviate pain, or the performance of any pro-
cedure 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 autho-

ized 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 deci-
sions 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 exe-
cuted by a competent adult under sections 459.010—459.055, RSMo and declaring direc-
tion for the withholding or withdrawal of death-prolonging procedures and becoming operative if the adult is in a terminal condi-
tion;

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

(O) Resident—a person receiving residen-
tial services from a facility, other than a men-
tal health facility, operated by the depart-
ment;

(P) Terminal condition—an incurable or irreversable 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 direc-
tives without regard to their voluntary or involuntary status. No department facility shall condition the provision of care or treat-
ment, or otherwise discriminate against a res-
ident or patient based on whether the indi-
vidual has executed an advance directive.

(3) Using materials prepared by the depart-
ment, all department facilities shall provide staff and community education about advance directives and the department’s policy on car-
ying out those directives by department facili-
ties.

(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 res-
ident’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 res-
ident or patient lacks decision-making capac-
ity, for example, due to intoxication or an acute episode of mental illness, the staff shall—

(A) If the resident or patient is accompa-
nied 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 deci-
sions and advance directives with the friend, relative or guardian rather than the resident or patient;
or

(C) If the resident or patient is unaccom-
pained, delay a discussion of health care deci-
sions 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 rega

ined 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 docu-
ment 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 attor-
ney-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 manner 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.


*Original authority: 630.050, RSMo 1980.

9 CSR 10-5.190 Criminal Record Review

PURPOSE: This rule establishes standards for obtaining a criminal record review for certain staff in residential facilities, day programs or specialized service operated or funded by the Department of Mental Health.

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

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

1. Agencies certified by the Department of Mental Health as community psychiatric rehabilitation programs (CPRP); and
2. Agencies certified by the Department of Mental Health in the community-based waiver certification program.

(B) Category II. Those that, in addition to a license or certificate from the Department of Mental Health, have a license or certification from another state agency. Specifically, this category includes facilities licensed by the Division of Aging, the Division of Family Services and the Department of Health; also...
included are intermediate care facilities/mental retardation (ICF/MR). Facilities and agencies included in Category II are subject to rules regarding criminal record review as promulgated by the state agency which licenses or certifies them and are not subject to sections (2) through (7) of this rule. However such agencies are subject to sections (8), (9), (10) and (11) regarding disqualifying crimes.

(2) This rule applies to—
(A) Staff;
(B) Volunteers who are recruited as part of an agency’s formal volunteer program and does not apply to volunteers who assist individuals as a friend would by providing assistance with shopping, transportation, recreation, etc.; and
(C) Members of the providers household who have contact with residents or clients, except for minor children.

(3) Each residential facility, day program or specialized service defined under Category I above shall make an inquiry with the Department of Social Services to determine whether any new employee or volunteer having contact with residents or clients is listed on the Division of Aging’s employment disqualification list.

(4) Each residential facility, day program or specialized service defined under Category I above shall conduct a criminal background check with the state highway patrol for new staff and volunteers who have contact with patients, residents or clients. The request for the background check shall not require fingerprints and shall be in accordance with requirements of the state highway patrol under Chapter 43, RSMo. The facility, program or service may use a private investigatory agency to conduct this review.

(5) The criminal background check and inquiry with the Department of Social Services shall be initiated not later than two (2) working days of hiring the employee or selecting the volunteer.

(6) In accordance with section 660.317, RSMo, each residential facility, day program and specialized service included under Category I shall require all new applicants for employment or volunteer positions involving contact with residents or clients 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) 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 those convictions which, by statute, must exclude an individual from service, and those convictions which would not automatically exclude an individual.

(8) Convictions which under sections 630.170 and 660.317, RSMo exclude a person from service are the following:

(1) A person who has been convicted of, found guilty of, pled guilty to or nolo contendere to any of the following crimes shall be disqualified from holding any position in the agency:
   1. Physical abuse or Class I Neglect of a patient, resident or client; or
   2. Furnishing unfit food to patients, residents or clients; and
   (B) A person who has been convicted of, found guilty to, pled guilty to or nolo contendere to any of the following crimes shall be disqualified from holding any position having contact with patients, residents or clients in the agency. These crimes are not disqualifying unless they are felonies, except for failure to report abuse and neglect to the Division of Aging, which is a Class A misdemeanor. The disqualifying crimes are:
      1. First or second degree murder;
      2. Voluntary manslaughter (includes assistance in self-murder);
      3. Involuntary manslaughter;
      4. First or second degree assault;
      5. Assault while on school property;
      6. Unlawful endangerment of another;
      7. First or second degree assault of a law enforcement officer;
      8. Tampering with a judicial officer;
      9. Kidnapping;
      10. Felony restraint;
      11. False imprisonment;
      12. Interference with custody;
      13. Parental kidnapping;
      14. Child abduction;
      15. Elder abuse in the first degree or the second degree;
      16. Harassment;
      17. Stalking;
      18. Forcible rape;
      19. First or second degree statutory rape;
      20. Sexual assault;
      21. Forcible sodomy;
      22. First or second degree statutory sodomy;
      23. First or second degree child molestation;
      24. Deviate sexual assault;
      25. First degree sexual misconduct;
      26. Sexual abuse;
      27. Endangering the welfare of a child;
      28. Abuse of a child;
      29. Robbery in the first degree or second degree;
      30. Arson in the first or second degree;
      31. First or second degree pharmacy robbery;
      32. Incest;
      33. Causing catastrophe;
      34. First degree burglary;
      35. Felony count of invasion of privacy;
      36. Failure to report abuse and neglect to the Department of Social Services as required under subsection 3 of section 198.070, RSMo; or
      37. Any equivalent felony offense.

(9) Any person disqualified from employment under this rule may appeal the disqualification to the department’s Exceptions Committee.

(A) The request shall be written and may not be made more than one (1) time every twelve (12) months.

(B) The request may be granted if a clear showing has been made that—
   1. The person will not commit any additional acts for which the person had originally been disqualified; and
   2. The person will not commit any other acts which would be harmful to a patient, resident or client of a facility, program or service.

(C) The Exceptions Committee may grant the appeal subject to conditions and failure to comply with such conditions may result in the person being again disqualified.

(D) The decision of the Exceptions Committee shall not be subject to appeal.

(E) The right to receive an exception under this subsection shall not apply to persons convicted of any of the following crimes:
   1. First or second degree murder;
   2. First or second degree statutory rape;
   3. Sexual assault;
4. Forcible sodomy;
5. First or second degree statutory sodomy;
6. First or second degree child molestation;
7. Deviate sexual assault;
8. Sexual misconduct involving a child;
9. First degree sexual misconduct;
10. Sexual abuse;
11. Incest;
12. First or second degree endangering the welfare of a child;
13. Abuse of a child;
14. First or second degree pharmacy robbery;
15. First degree burglary; or
16. Forcible rape.

(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) A provider shall not hire any person who has committed a disqualifying crime as identified in section (8) of this rule, unless the person has received an exception from the department. However, the provider 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.


9 CSR 10-5.200 Report of Complaints of Abuse and Neglect

PURPOSE: This rule prescribes procedures for reporting and investigating complaints of abuse and neglect in a residential facility, day program or specialized service that is licensed, certified or funded by the department as required by sections 630.135, 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 client funds/property.

(1) The following words and terms, as used in this rule, mean:
(A) Class I neglect, failure of an employee to provide reasonable and necessary services to maintain the physical and mental health of any client or resident when that failure presents either imminent danger to the health, safety or welfare of a client or resident, or a substantial probability that death or physical injury would result;
(B) Class II neglect, failure of an employee to provide reasonable or necessary services to a client or resident according to the individualized treatment or habilitation plan, if feasible, or according to acceptable standards of care;
(C) Misuse of client funds/property, the misappropriation or conversion of a client’s or resident’s funds or property for another person’s benefit;
(D) Physical abuse—
1. Purposefully beating, striking, wounding or injuring any client or resident; or
2. In any manner whatsoever mistreating or maltreating a client or resident in a brutal or inhumane manner. Physical abuse includes handling a client or resident with any more force than is reasonable or apparently necessary for a client’s or resident’s proper control, treatment or management;
(E) Sexual abuse, any touching, directly or through clothing, of the genitals, buttocks or breasts of a client or resident for sexual purpose. Sexual purpose means for the arousing or gratifying of anyone’s sexual desires. This definition includes—
1. Causing a resident or client to touch the employee for sexual purposes;
2. Promoting or observing for sexual purpose any activity or performance involving clients or residents including any play, motion picture, photography, dance, or other visual or written representation; or
3. Failing to stop or prevent inappropriate sexual activity or performance between clients or residents; and
(F) Verbal abuse, referring to a client or resident in the client’s or resident’s presence with profanity or in a demeaning, nontherapeutic, undignified, threatening or derogatory manner.

(2) This section applies to any employee, resident or client of any residential facility, day program or specialized service, 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.

(A) Any such employee who has reasonable cause to believe that a resident or client has been subjected to physical abuse, sexual abuse, Class I neglect, Class II neglect or verbal abuse while under the care of a residential facility, day program or specialized service that is licensed, certified or funded by the department shall immediately make a verbal or written complaint.
(B) A complaint under subsection (A) above shall be made to the head of the facility, day program or specialized service, and to the department’s regional center, supported community living placement office or regional administrator office.
(C) The head of the facility, day program or specialized service shall forward the complaint to—
1. The Division of Family Services if the alleged victim is under the age of eighteen (18); or
2. The Division of Aging if the alleged victim is a resident or client of a facility licensed by the Division of Aging or receiving services from an entity under contract with the Division of Aging.
(D) Failure to report shall be cause for disciplinary action, criminal prosecution, or both.

(3) The head of the facility, day program or specialized service that is licensed, certified or funded by the department shall immediately report to the local law enforcement official any alleged or suspected—
(A) Sexual abuse; or
(B) Abuse or neglect which results in physical injury.

(4) If a complaint has been made under this rule, the head of the facility or program and all employees of the facility, program or service 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 board of inquiry, local investigator assigned by the division, or the department’s central investigative unit 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 its investigation, the board of inquiry, local investigator or central investigative unit shall present its findings.
of facts to the head of the supervising facility.

(6) Within ten (10) calendar days of receiving the final report from the board of inquiry, local investigator or central investigative unit, the head of the supervising facility or department designee shall send to the provider and alleged perpetrator a summary of the allegations and findings which are the basis for the alleged abuse/neglect. The summary shall comply with the constraints regarding confidentiality contained in section 630.167, RSMo and shall be sent by certified mail.

(A) The provider and/or alleged perpetrator may meet with the head of the supervising facility or department designee, submit comments or present evidence. If the provider or alleged perpetrator wishes to have this meeting, s/he must notify the head of the supervising facility or department designee within ten (10) calendar days of receiving the summary.

(B) This meeting shall take place within ten (10) calendar days of notification, unless the parties mutually agree upon an extension.

(C) Within ten (10) calendar days of the meeting, the head of the supervising facility or department designee shall sustain or deny the allegations as to whether abuse/neglect took place. The provider and perpetrator shall be notified of this decision by certified mail.

(D) The letter shall advise the provider and perpetrator that they have ten (10) calendar days to contact the department’s hearing officer when s/he declines to meet with the head of the supervising facility under subsections (6)(A) and (B) of this rule.

(E) If there is no appeal, the department’s hearing officer apply also to providers and alleged perpetrators in an investigation of misuse of client funds/property.

(7) If an appeal is requested, the hearing officer shall notify the provider, perpetrator, and the head of the supervising facility or department designee by certified mail of the decision within fourteen (14) calendar days of the appeal hearing.

(9) The opportunities described in sections (6), (7) and (8) of this rule regarding a meeting with the head of the supervising facility and an appeal before the department’s hearing officer apply also to providers and alleged perpetrators in an investigation of misuse of client funds/property.

(10) A provider or alleged perpetrator does not forfeit his/her right to an appeal with the department’s hearing officer when s/he declines to meet with the head of the supervising facility under subsections (6)(A) and (B) of this rule.

(11) If the department substantiates that a person has perpetrated physical abuse, sexual abuse, Class I neglect, or conversion of client’s property and/or funds for his/her own use or the facility’s use, the perpetrator shall not be licensed, employed nor provide services by contract or agreement at a residential facility, day program or specialized service that is licensed, certified or funded by the department.

(12) If the department substantiates that a person has perpetrated verbal abuse or Class II neglect two (2) or more times in a twelve (12)-month period, the perpetrator shall not be licensed, employed, or provide services by contract or agreement at a residential facility, day program or specialized service that is licensed, certified or funded by the department.

(13) 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.


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) Definition. An exception is 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:

(A) A contention that the rule is not valid;

(B) A contention that the provider is in fact in compliance with the rule; and

(C) A request for an interpretation of a rule.

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

(A) Statutes and rules related to crimes that disqualify from employment under section 630.170, RSMo and 9 CSR 10-5.190;

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

(C) Certification rules for alcohol and drug abuse programs and psychiatric programs promulgated under 9 CSR 30;

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

(E) Any other administrative rule promulgated by the Department of Mental Health that specifically allows for an exception.

(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 criminal backgrounds under 9 CSR 10-5.190.

(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)(D) 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 or statutes 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 Criminal Record Review.
   1. A letter from the offender describing the crime and other factors under paragraphs 1. through 12. of this subsection;
   2. A description of the specific crime or crimes;
   3. When they occurred;
   4. Mitigating circumstances, if any;
   5. The sentence of the court, including conviction date, sentence status and release date;
   6. Activities and accomplishments since the crime;
   7. The names and dates of any rehabilitative services;
   8. The type of service and/or program the applicant wishes to provide for mental health clients;
   9. 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;
   10. Changes in personal life since the crime (e.g. marriage, family, and education);
   11. References, i.e., written recommendations from at least three (3) persons who verify the applicant’s assertions; and
   12. 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.
   (A) The committee may approve a request, approve the request with conditions, deny the request or defer a decision pending receipt of additional information.
   (B) An approved exception regarding criminal backgrounds under 9 CSR 10-5.190 becomes null and void if the subject changes employment or if there are other changes in the circumstances described in the request.

(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—
   (A) Maintain documentation of all approved exceptions and make the documentation available for review upon request by authorized staff of the department; and
   (B) Annually send to the exceptions committee documentation which—
   1. Addresses whether the exception has been implemented, the exception is still necessary and its effect on services;
   2. Is required under the terms and conditions announced in the letter of approval.

(8) The Department of Mental Health will review the approved exceptions at least annually to determine whether the exception has been properly implemented and whether its implementation is having the intended impact on services.

(9) 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.

(10) 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.

(11) 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.
