



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

Title	Page
9 CSR 10-5.010 General Rules Applicable for Foster Care Homes for the Mentally Retarded Subject to Certification (Rescinded July 11, 1983)	3
9 CSR 10-5.020 Definitions (Rescinded July 11, 1983)	3
9 CSR 10-5.030 Application and Discussion of Standards (Rescinded July 11, 1983).....	3
9 CSR 10-5.040 Hearing Procedure (Rescinded July 11, 1983)	3
9 CSR 10-5.050 Admission Policies for Foster Care Homes (Rescinded July 11, 1983)	3
9 CSR 10-5.060 Education, Training and Recreation (Rescinded July 11, 1983)	3
9 CSR 10-5.070 Records (Rescinded July 11, 1983).....	3
9 CSR 10-5.080 Resident Living (Rescinded July 11, 1983)	3
9 CSR 10-5.090 Construction of Physical Plant Facilities (Rescinded July 11, 1983)	3
9 CSR 10-5.100 Food Handling and Sanitation (Rescinded July 11, 1983).....	3
9 CSR 10-5.110 Fire Protection and Safety (Rescinded July 11, 1983)	3
9 CSR 10-5.120 Medical and Health Care (Rescinded July 11, 1983).....	3
9 CSR 10-5.130 Qualifications of Foster Care Parents (Rescinded July 11, 1983)	3
9 CSR 10-5.150 Individualized Habilitation Plan Procedures (Moved to 9 CSR 45-3.010).....	3
9 CSR 10-5.170 Residential Rate Setting (Moved to 9 CSR 45-4.010)	3
9 CSR 10-5.180 Advance Directives	3
9 CSR 10-5.190 Criminal Record Review	5
9 CSR 10-5.200 Report of Complaints of Abuse, Neglect and Misuse of Funds/Property.....	7
9 CSR 10-5.210 Exceptions Committee Procedures.....	8



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

**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(Rescinded July 11, 1983)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 Rescinded: Filed Feb. 9, 1983, effective July 11, 1983.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(Rescinded July 11, 1983)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 Rescinded: Filed Feb. 9, 1983, effective July 11, 1983.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(Rescinded July 11, 1983)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 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);

2. Agencies certified by the Department of Mental Health in the community-based waiver certification program;

3. Agencies certified by the Division of Alcohol and Drug Abuse;

4. Facilities that have contractual arrangements with the department but are exempt from the department's licensing and certification rules due to accreditation or other reason; and

5. Facilities and day programs which are licensed by the department and do not have a license from another state agency; and

(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) Disclose if s/he is listed on the employee disqualification list of the Division of Aging.

(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 guidelines shall address—

(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 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:

(A) 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. Felonious 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.

AUTHORITY: sections 630.170, 630.710 and 660.317, RSMo Supp. 1997 and 630.655, RSMo 1994. 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.*

**Original authority: 630.170, RSMo 1980, amended 1982, 1996, 1998; 630.655, RSMo 1980; 660.317, RSMo 1996, amended 1997, 1998; and 630.710, RSMo 1980, amended 1996.*

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 a residential facility, day program or specialized service that is licensed, certified or funded by the Department of Mental Health (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 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 consumer when that failure presents either imminent danger to the health, safety or welfare of a consumer, 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 consumer according to the individualized treatment or habilitation plan, if feasible, or according to acceptable standards of care. This includes action or behavior which may cause psychological harm to a consumer due to intimidating, causing fear or otherwise creating undue anxiety;

(C) Consumer, individual (client, resident, patient) receiving services directly from any program or facility contracted, licensed, certified or funded by the department;

(D) Misuse of funds/property, the misappropriation or conversion of a consumer's funds or property for another person's benefit;

(E) Physical abuse—

1. Purposefully beating, striking, wounding or injuring any consumer; or
2. In any manner whatsoever mistreating or maltreating a consumer in a brutal or inhumane manner. Physical abuse includes handling a consumer with any more force than is reasonable for a consumer's proper control, treatment or management;

(F) Sexual abuse, any touching, directly or through clothing, of a consumer 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; or
5. Failing to intervene or attempt to stop or prevent inappropriate sexual activity or performance between consumers; and

(G) Verbal abuse, using profanity or speaking in a demeaning, nontherapeutic,

undignified, threatening or derogatory manner in a consumer's presence.

(2) This section applies to any employee or consumer 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 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 consumer has been subjected to physical abuse, sexual abuse, misuse of funds/property, 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 Senior Services if the alleged victim is a resident or client of a facility licensed by the Division of Senior Services or receiving services from an entity under contract with the Division of Senior Services.

(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; or
- (C) Abuse, neglect or misuse of funds/property which may result in a criminal charge.

(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 written findings of facts to the head of the supervising facility.

(6) Within ten (10) working 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 alleged perpetrator a summary of the allegations and findings which are the basis for the alleged abuse/neglect/misuse of funds or property; the provider will be copied. The summary 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 provider 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 ten (10) working days of receiving the summary.

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

(C) Within ten (10) working days of the meeting, or if no request for a meeting is received within ten (10) working days of the alleged perpetrator's receipt of the summary, 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 provider will be copied.

(D) The letter shall advise the perpetrator that they have ten (10) working days following receipt 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.

(7) If an appeal is requested, the hearings administrator shall schedule the hearing to take place within thirty (30) working days of the request, but may delay the hearing for good cause shown. At the hearing, the head of the supervising facility or designee, or other department designee shall present evidence supporting its findings of abuse, neglect, misuse of funds/property, or all. The provider or perpetrator may submit comments or present evidence to show why the decision of the head of the supervising facility or department designee should be modified or overruled. The hearings administrator may obtain additional information from department employees as s/he deems necessary.

(8) The decision of the hearings administrator shall be the final decision of the department. The hearings administrator shall notify the perpetrator, and the head of the supervising facility or department designee by certified mail of the decision within fourteen (14) working days of the appeal hearing; the provider will be copied.

(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 hearings administrator apply also to providers and alleged perpetrators in an investigation of misuse of funds/property.

(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 (B) of this rule.

(11) If the department substantiates that a person has perpetrated physical abuse, sexual abuse, class I 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 a residential facility, day program or specialized service that is licensed, certified or funded by the department. The perpetrator's name shall be placed on the department Disqualification Registry pursuant to section 630.170, RSMo.

(12) If the department substantiates that a person has perpetrated two (2) counts of verbal abuse, or two (2) counts of class II neglect, or one (1) count of verbal abuse and one (1) count of class II neglect, within a twelve (12)-month period, the perpetrator shall not be employed by the department, nor 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. The perpetrator's name shall be placed on the department Disqualification Registry pursuant to section 630.170, RSMo.

(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.

(14) No director, supervisor or employee of a residential facility, day program or specialized service 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.

AUTHORITY: sections 630.050, 630.135, 630.165, 630.167, 630.168, 630.655 and 630.705, RSMo 2000 and 630.170, RSMo Supp. 2001. 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.

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

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.

AUTHORITY: sections 630.050, 630.170 and 630.656 RSMo 2000. Original rule filed Feb. 23, 2001, effective Sept. 30, 2001.*

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