

STATE OF OHIO



DEPARTMENT OF REHABILITATION
AND CORRECTION

SUBJECT: Psychiatric Hospitalization	Page 1 of 10
	NUMBER: 67-MNH-19
RULE/CODE REFERENCE: ORC 5120.17 & 5119.20; OAC 5122-14; AR 5120-9-211	SUPERSEDES: 67-MNH-19 dated 02/08/13
RELATED ACA STANDARDS: 4-4374; 4-4404	EFFECTIVE DATE: February 7, 2014
	APPROVED: 

I. AUTHORITY

This policy is in compliance with Ohio revised code 5120.01 which delegates to the Director of the Ohio Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as he prescribes.

II. PURPOSE

The purpose of this policy is to define and describe the process for psychiatric hospitalization of inmates.

III. APPLICABILITY

This policy applies to all persons employed by or under contract with the Department of Rehabilitation and Correction, except the Division of Parole and Community Services, and all inmates incarcerated in prisons operated by the Department.

IV. DEFINITIONS

Advocate for Retention - A mental health staff person employed by the psychiatric hospital where the inmate currently resides who presents the position of the hospital for retention at the hospital at the due process hearing.

Advocate for Transfer - A mental health staff person employed by the Ohio Department of Rehabilitation and Correction who presents the position of the institution for transfer to the hospital at the due process hearing.

Due Process Hearing - An administrative procedure conducted in an adversarial format before a Hospitalization Hearing Officer to protect the right of an inmate to object to hospitalization. Members may participate in this process via videoconferencing.

Emergency Transfer - The transfer of a mentally ill inmate to a psychiatric hospital when the inmate presents an immediate danger to self or others and requires hospital level of care.

Due Process Hearing Officer - A psychiatrist, psychologist, or attorney employed by or under contract with the Ohio Department of Rehabilitation and Correction, appointed by the Chief of Behavioral Health Services, or designee, who acts as an independent decision maker to conduct due process hearings for the purpose of hospitalization. The Hearing Officer shall not have had any prior treatment relationship with the inmate in the past and shall not have previously represented the inmate in any legal proceedings.

Mental Illness - A substantial disorder of thought, mood perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life.

Mentally Ill Person Subject To Hospitalization - A mentally ill person to whom any of the following applies because of the person's mental illness:

- a. The person represents a substantial risk of physical harm to self as manifested by the evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm.
- b. The person represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness.
- c. The person represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for his/her basic physical needs because of the person's mental illness and that appropriate provision for those needs cannot be otherwise made.
- d. The person would benefit from treatment in a hospital for the person's mental illness and is in need of treatment in hospital as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person.

Offender Representative - An individual chosen by the inmate to advise and assist the inmate at the due process hearing and appeal. The inmate shall select a representative upon notification of the due process hearing by the Advocate for Transfer from a list of Ohio Department of Rehabilitation and Correction's or psychiatric hospital mental health staff.

Psychiatric Hospital - All or part of a facility that is owned and managed by the Department of Mental Health and Addiction Services, the Department of Rehabilitation and Correction or a contractor within DRC, or a community entity that has contracted with DRC; as defined in ORC 5120.17(A)(3).

Uncontested Transfer - The transfer of a mentally ill inmate to a psychiatric hospital when the inmate has the mental capacity to consent to hospitalization and has waived a due process hearing.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction to provide a full range of mental health services that includes access to psychiatric hospitalization for those inmates requiring a more intensive level of care.

VI. PROCEDURES

There are three processes through which an inmate may be transferred to a psychiatric hospital for inpatient care: emergency transfer, uncontested transfer and as a result of a due process hearing. The

procedures for each type of transfer are detailed in the sections that follow. Any inmate in need of psychiatric hospitalization shall be housed in a safe cell and closely monitored during the hospitalization prescreening process unless an emergency exists and an immediate transfer is needed.

A. Emergency Transfer Process

1. The inmate may only be transferred to a psychiatric hospital under an emergency transfer order if the inmate is mentally ill, presents as an immediate danger to self or others, and requires a hospital level of care as determined by both a. and b. below:
 - a. The Chief of Psychiatry of the Bureau of Behavioral Health Services (BOBHS), or psychiatrist designee.

and

 - b. Either a psychiatrist employed or retained by DRC or the psychiatric hospital, or in absence of a psychiatrist, a psychologist employed or retained by DRC.
2. A psychiatrist employed or retained by DRC or the psychiatric hospital, or in absence of a psychiatrist, a psychologist employed or retained by DRC shall complete a Psychiatrist Examination for Hospitalization/Retention form (DRC5218).
3. The completed Psychiatric Examination for Hospitalization/Retention form (DRC5218) shall be faxed or scanned to the BOBHS Chief of Psychiatry or psychiatrist designee. The institutional staff must call the BOMHS Chief of Psychiatry or psychiatrist designee to confirm availability before faxing or scanning due to the time-sensitive nature of the request for emergency transfer.
4. The Psychiatric Examination for Hospitalization/Retention form (DRC5218) shall be reviewed and the BOBHS Chief of Psychiatry or psychiatrist designee shall determine whether the inmate is mentally ill, presents an immediate danger to self or others, requires hospital level of care and meets the criteria for an emergency transfer within four (4) hours of receipt of the fax or scan. No transfer may occur without this process being completed.
5. If the inmate is transferred to the psychiatric hospital as an emergency, within five (5) working days of the admission date, the Department shall hold a Due Process Hearing at the hospital for initial hospitalization in accordance with Section VI.C and hold subsequent hearings for continued hospitalization as outlined in Section VI. D.

B. Uncontested Transfer Process

1. For uncontested transfers, a psychiatrist must determine if:
 - a. The inmate has a mental illness or is a mentally ill person subject to hospitalization;
 - b. The inmate requires hospital care to address the mental illness;
 - c. The inmate has the mental capacity to make a reasoned choice regarding the inmate's transfer to a hospital; and

- d. The inmate agrees to a hospital admission.
2. The psychiatrist is required to complete the Waiver for Uncontested Transfer to a Psychiatric Hospital form (DRC5413) and have the form signed by the inmate.
3. The psychiatrist must complete a Psychiatrist Examination for Hospitalization/Retention form (DRC5218) if the psychiatrist determines that the inmate meets all of the criteria for uncontested transfers listed in VI.B.1., a – d. above and requires hospitalization.
4. The completed Psychiatric Examination for Hospitalization /Retention form (DRC5218) shall be sent to and reviewed for appropriateness upon receipt by the Chief of Psychiatry or psychiatrist designee with response as soon as possible but no later than 72 hours after receipt. If the uncontested transfer is approved, the inmate shall be transferred to the psychiatric hospital for admission.
5. While at the psychiatric hospital, the inmate may withdraw consent to transfer in writing at any time. This written request shall be submitted on the Waiver for Uncontested Hospital Admission form (DRC5413) to the Chief of Psychiatry or psychiatrist designee.
6. If the inmate withdraws consent for hospitalization, the hospital must:
 - a. Discharge the inmate, or
 - b. Hold an initial hearing for continued hospitalization within five (5) working days of the withdrawn consent in accordance with VI.C and continue subsequent hearings as required and necessary for continued stay.

C. Due Process Hearing Transfer Process

1. A psychiatrist shall examine the inmate for hospitalization and complete a Psychiatric Examination for Hospitalization/Retention form (DRC5218). The same psychiatrist shall be present in person or via videoconferencing in order to participate in the hearing process.
2. The Mental Health Administrator (MHA) or Mental Health Manager (MHM) shall review the psychiatrist-completed Psychiatric Examination for Hospitalization/Retention (DRC5218) for completeness and send it to the Chief of Behavioral Health Services.
3. The Chief of Behavioral Health Services shall appoint a Hearing Officer who shall schedule the Due Process Hearing to occur within five (5) working days of completion of the Psychiatric Examination for Hospitalization/Retention form (DRC5218).
4. At least 24 hours prior to the scheduled hearing, the inmate shall be provided with a written notice of the location, date and time, and his or her:
 - a. Right to be present at the hearing unless waived by the inmate and his/her representative;
 - b. Right to have a representative to explain the issues, review the documentation for transfer, and assist the inmate in objecting to transfer at the due process hearing;

- i. If the inmate shall not or is not able to choose a representative after he/she receives the hearing notification, a representative shall be appointed by the Hearing Officer.
 - ii. The inmate has the right to decline a representative and represent him or herself at the hearing subject to the approval of the Hearing Officer.
 - c. Right to be un-medicated, if requested by the inmate or representative on the day of the hearing. (Inmate completes the Request to Suspend Medication Form (DRC5228);
 - d. Right to review the documentation, Psychiatric Examination for Hospitalization/Retention Form (DRC5218) for transfer;
 - e. Right to present information by either the representative, or by the inmate, regarding objection to transfer. The length of the presentation may be limited by the Hearing Officer on the basis of relevancy.
 - f. Right to call witnesses on behalf of the inmate, subject to the limits imposed by the Hearing Officer on the basis of relevancy, security, admissibility of evidence and availability.
 - g. Right to cross-examine witnesses supporting the case for transfer, subject to the limits imposed by the Hearing Officer on the basis of relevancy, redundancy, and security. If institution staff members are to present evidence, they shall be present in person unless there is good cause for utilizing written statements and/or telephonic testimony.
 - h. Right to have a copy of the Hearing Officer Decision (DRC5229).
5. The duties of the Advocate for Transfer shall be:
- a. To schedule the due process hearing after receiving the psychiatric recommendation for transfer requiring a hearing.
 - b. To provide the inmate with a notice of hearing at least 24 hours prior to the hearing using Notice of Hearing Transfer/Retention (DRC5220).
 - c. To provide the inmate with a written list of Offender's Rights at least 24 hours prior to the hearing that includes, at minimum, the language written on the Notice of Hearing Transfer/Retention form (DRC5220) and document that the inmate has received it on the Notice of Hearing Transfer/Retention (DRC5220).
 - d. To ascertain the choice of the inmate for the inmate's representative.
 - e. To assist the inmate in contacting the inmate's representative for hearing.
 - f. To be familiar with the psychiatric documentation for transfer.
 - g. To notify and call witnesses supporting transfer.
 - h. To cross-examine witnesses opposing transfer.
 - i. To abide by the rulings of the Hearing Officer.
 - j. To notify the inmate of the Hearing Officer's decision.
 - k. To provide the inmate with a copy of the Hearing Officer Decision form (DRC5229).
6. The hearing shall be held at the sending institution.
7. The Due Process Hearing Officer shall have the following duties:

- a. To conduct the hearing in a fair, impartial, objective manner.
 - b. To ensure the presence of the inmate at the hearing unless there has been a waiver by the inmate and the inmate's representative.
 - c. To ensure the inmate has received a timely notice of the hearing sufficient for preparation.
 - d. To ensure that the inmate and/or the inmate's representative understands the nature and purpose of the hearing including the psychiatric documentation recommending transfer.
 - e. To ensure that the inmate has received a written notice of rights that includes, at minimum, the language written on the Notice of Hearing Transfer/Retention form (DRC5220).
 - f. To appoint an inmate representative.
 - g. To ensure that the inmate has had the opportunity to consult with the representative.
 - h. To rule on admissibility, relevancy, redundancy, and security regarding evidence.
 - i. To provide for decorum in the hearing process.
 - j. To render a hearing decision in writing regarding transfer within 24 hours of the hearing, except for good cause shown, leading to an additional 24 hours extension.
 - k. To ensure that an audiotape of the hearing is made and forwarded to the Chief of Psychiatry of the Bureau of Behavioral Health Services.
 - l. To arrange for the inmate to receive a copy of the hearing decision.
8. Due Process Hearing Officer Decision
- a. The Hearing Officer shall issue a written decision within 24 hours after the hearing. If legal consultation is necessary, the Hearing Officer shall contact the Bureau of Behavioral Health Services legal counsel.
 - b. The burden of proof for transfer shall be on the institution to prove by clear and convincing evidence that the inmate has been shown to have a serious mental illness, is a mentally ill person subject to hospitalization, and requires a hospital level of care.
 - b. If the decision is that the burden of proof has been met, the Hearing Officer shall notify the Advocate for Transfer of the decision to transfer. The Advocate for Transfer shall notify the Chief of Psychiatry, sending institution staff and the inmate of the decision, and coordinate the actual transfer to the psychiatric hospital.
 - c. The Hearing Officer's decision to transfer is valid for up to 30 days of treatment at the hospital commencing on the date of hospital admission.
 - d. A copy of the written decision of the Hearing Officer shall be retained in the mental health file.
 - e. If the decision is that the burden of proof has not been met, the Hearing Officer shall notify the Advocate for Transfer who shall in turn notify the inmate and the Residential Treatment Unit staff of the decision to retain the inmate at that institution.
9. The tapes of the Due Process Hearing are to be labeled, logged, and maintained in a locked file in accordance with the DRC Record Retention Schedule.
10. The following documents shall be filed in the inmate's mental health file under the probate or hospital information tab by the sending institution before transferring the inmate:

- a. Advocate for Transfer Retention Checklist (DRC5219)
- b. Notice of Hearing (DRC5220)
- c. Request to Suspend Medication (if utilized) (DRC5228)
- d. Hearing Officer Decision (DRC5229)
- e. Offender Representative (DRC5221)
- f. Waiver for Uncontested Psychiatric Hospital Transfer (if utilized) (DRC5413)

D. Continued Stay Hearing Procedure: Due Process Retention Hearings

1. Except as noted in VI. B. 6 under uncontested transfers, a due process retention or continuation hearing must be conducted prior to the expiration of 30 days hospitalization, 90 days later if hospitalization is still necessary, then at 180-day intervals as necessary.
2. All of the procedural elements spelled out in Section VI.C.1-10 above are required for each continued stay, Due Process Retention Hearing.
3. All original forms shall be filed in the mental health file. The psychiatric hospital may also retain a copy.

Related Department Forms:

Psychiatric Examination for Hospitalization/Retention	DRC 5218
Advocate for Transfer/Retention Checklist	DRC 5219
Notice of Hearing Transfer/Retention	DRC 5220
Inmate Representative Checklist Retention/Transfer	DRC 5221
Request to Suspend Medication	DRC 5228
Hearing Officer Decision	DRC 5229
Length of Stay/Clinical Response to Treatment/OCF	DRC 5398
Waiver for Uncontested Transfer to a Psychiatric Hospital	DRC 5413