

9544.0130 EXTERNAL PROGRAM REVIEW COMMITTEE.

Subpart 1. **Appointment.** The commissioner shall appoint members to an external program review committee to monitor the implementation of this chapter.

Subp. 2. **Membership.** The commissioner must select committee members based on their expertise and knowledge on the use of positive support strategies as alternatives to the use of restrictive interventions. The committee shall include an expert in positive support strategies; a mental health professional as defined in Minnesota Statutes, section 245.462; a licensed health professional as defined in Minnesota Statutes, section 245D.02, subdivision 14; and a representative of the Department of Health.

Subp. 3. **Duties and responsibilities.** The external program review committee shall monitor implementation of this chapter, make recommendations to the commissioner about policy changes related to the requirements in this chapter, and make recommendations to the commissioner to approve or deny requests for emergency use of procedures in accordance with Minnesota Statutes, section 245.8251, subdivision 4. The committee shall:

A. review requests made in accordance with the requirements of Minnesota Statutes, section 245D.06, subdivision 8, paragraph (b), for emergency use of procedures that have been part of an approved positive support transition plan when necessary to protect a person from imminent risk of serious injury as defined in Minnesota Statutes, section 245.91, subdivision 6, due to self-injurious behavior, and make a recommendation to the commissioner to approve or deny these requests. The committee must base its recommendation upon the determination that the provider has made a good faith effort to reduce the need for the procedure and that the emergency use of procedures is necessary to protect the person from imminent risk of serious injury. The committee must base its determination upon the documentation provided in accordance with Minnesota Statutes, section 245D.06, subdivision 8, paragraph (c). The committee must include in an approval the additional terms or conditions that the license holder must meet specific to that approval, if any;

B. review requests for use of a prohibited procedure that is not specifically permitted by part 9544.0050, or specifically prohibited by part 9544.0060, and make a recommendation to the commissioner to approve or deny these requests. The committee must base its recommendation upon the determination that the provider has made a good faith effort to reduce the need for a restrictive intervention and that the prohibited procedure is necessary to protect the person's health and safety for a limited time while positive support strategies are developed and implemented. Requests for use of a prohibited procedure must include the following:

(1) a copy of the person's current positive support transition plan, copies of each positive support transition plan review, if any, and data on the interfering behavior;

- (2) documentation of methods the provider has tried to reduce and eliminate the incidence of interfering behavior that have not been successful;
- (3) documentation of the assessments performed to determine the function of the behavior for which the interventions have been developed;
- (4) documentation of a good faith effort to eliminate the use of restrictive interventions currently in use;
- (5) documentation that the interfering behavior is unlikely to be prevented in the immediate future by a reasonable increase in staffing or the provision of other positive supports;
- (6) justification for the use of the procedure that identifies the imminent risk of serious injury due to the person's interfering behavior if the procedure were not utilized;
- (7) documentation of the persons consulted in creating and maintaining the current positive support transition plan;
- (8) documentation of approval by the person's expanded support team of the submission to the committee of the request for use of a prohibited procedure; and
- (9) additional documentation as requested by the committee.

The committee must base its determination upon the documentation provided in accordance with this chapter. The committee must include in an approval the additional terms or conditions that the license holder must meet specific to that approval, if any;

C. evaluate the programs and systems of a license holder making a request under item A or B to ascertain the license holder's overall capacity to serve persons who are the subject of the request;

D. review each reported emergency use of manual restraint and the license holder's response to the emergency use for the person. The commissioner must identify criteria that the external program review committee will use to evaluate the license holder's response. If the committee determines that a change is needed to reduce the frequency or duration of future emergency uses by the license holder, the external program review committee must provide guidance to the license holder about its response; and

E. assess the competency of qualified professional applicants to develop and implement positive support transition plans.

Subp. 4. **Number of external program review committees.** The commissioner may designate more than one external program review committee based on the number of requests for emergency use of procedures reviewed by the interim review panel under Minnesota Statutes, section 245.8251, subdivision 4. The criteria used to review requests according to subpart 3, items A and B, must be uniform across committees.

Statutory Authority: *MS s 245.8251*

History: *40 SR 179*

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