

5120-9-21.1

**Transfer of prisoner to inpatient mental health facility.**

(A) As used in this rule:

- (1) "Mental illness" means 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.
- (2) "Mentally ill person subject to hospitalization" means 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 the person 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 the person as manifested by evidence that the person is unable to provide for and is not providing for the person's basic physical needs because of the person's mental illness and that appropriate provision for those needs cannot be ~~otherwise~~ made immediately available in the correctional institution in which the inmate is currently housed.
  - (d) The person would benefit from treatment in a hospital for the person's mental illness and is in need of treatment in a hospital as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person.
- (3) "Psychiatric hospital" means a facility that is operated by the department of rehabilitation and correction, is designated as a psychiatric hospital, is licensed by the department of mental health pursuant to section 5119.20 of the Revised Code, and is in substantial compliance with the standards set by the joint commission on accreditation of healthcare organizations.
- (4) "Inmate patient" means an inmate who is admitted to a psychiatric hospital.
- (5) "Admitted" to a psychiatric hospital means being accepted for and staying at

least one night at the psychiatric hospital.

- (6) "Treatment plan" means a written statement of reasonable objectives and goals for an inmate patient that is based on the needs of the inmate patient and that is established by the treatment team, with the active participation of the inmate patient and with documentation of that participation. "Treatment plan" includes all of the following:
- (a) The specific criteria to be used in evaluating progress toward achieving the objectives and goals;
  - (b) The services to be provided to the inmate patient during the inmate patient's hospitalization;
  - (c) The services to be provided to the inmate patient after discharge from the hospital, including, but not limited to, housing and mental health services provided at the state correctional institution to which the inmate patient returns after discharge or community mental health services.
- (7) "Mentally retarded person subject to institutionalization by court order" has the same meaning as in section 5123.01 of the Revised Code.
- (8) "Emergency transfer" means 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 care.
- (9) "Uncontested transfer" means the transfer of a mentally ill inmate to a psychiatric hospital when the inmate has the mental capacity to, and has waived, the hearing required by paragraph (B) of this rule.
- (10) "Independent decision maker" means a person who is employed or retained by the department of rehabilitation and correction and is appointed by the chief or chief clinical officer of mental health services as a hospitalization hearing officer to conduct due process hearings.
- (a) An independent decision maker who presides over any hearing or issues any order pursuant to this section shall be a psychiatrist, psychologist, or attorney, shall not be specifically associated with the institution in which the inmate who is the subject of the hearing or order resides at the time of the hearing or order, and previously shall not have had any treatment relationship with nor have represented in any legal proceeding the inmate who is the subject of the order.

(B) Hearing procedure:

- (1) ~~If the warden of a state correctional institution~~ Except as provided in paragraph (C) or (D) of this rule, if the warden of a state correctional institution, or the warden's designee, believes that an inmate should be transferred from the institution to a psychiatric hospital, the department shall hold a hearing to determine whether the inmate is a mentally ill person subject to hospitalization. The department shall conduct the hearing at the state correctional institution in which the inmate is confined, and the department shall provide qualified and independent assistance to the inmate for the hearing. An independent decision-maker provided by the department shall preside at the hearing and determine whether the inmate is a mentally ill person subject to hospitalization.
- (2) ~~Prior to the hearing held pursuant to paragraph (B)(1) of this rule, the warden~~ Except as provided in paragraph (C) or (D) of this rule, prior to the hearing held pursuant to paragraph (B) of this rule, the warden or warden's designee shall give written notice to the inmate that the department is considering transferring the inmate to a psychiatric hospital, that it will hold a hearing on the proposed transfer at which the inmate may be present, that at the hearing the inmate has the rights described in paragraph (B)(3) of this rule, and that the department will provide qualified and independent assistance to the inmate with respect to the hearing. The department shall not hold the hearing until the inmate has received written notice of the proposed transfer and has had sufficient time to consult with the person appointed by the department to provide assistance to the inmate and to prepare for a presentation at the hearing.
- (3) At the hearing held pursuant to paragraph (B)(~~1~~) of this rule, the department shall disclose to the inmate the evidence that it relies upon for the transfer and shall give the inmate an opportunity to be heard. Unless the independent decision-maker finds a good cause for not permitting it, the inmate may present documentary evidence and the testimony of witnesses at the hearing and may confront and cross-examine witnesses called by the department.
- (4) If the independent decision-maker does not find clear and convincing evidence that the inmate is a mentally ill person subject to hospitalization, the department shall not transfer the inmate to a psychiatric hospital but shall continue to confine the inmate in the same state correctional institution or in another state correctional institution that the department considers appropriate. If the independent decision-maker finds clear and convincing evidence that the inmate is a mentally ill person subject to hospitalization, the decision-maker shall order that the inmate be transported to a psychiatric

hospital for observation and treatment for a period of not longer than thirty days. After the hearing, the independent decision-maker shall submit to the department a written decision that states one of the findings described in paragraph (A)(2) of this rule, the evidence that the decision-maker relied on in reaching that conclusion, and, if the decision is that the inmate should be transferred, the reasons for the transfer.

(C) The department may transfer an inmate to a psychiatric hospital under an emergency transfer order if the chief clinical officer of mental health services of the department or that officer's designee and either a psychiatrist employed or retained by the department or, in the absence of a psychiatrist, a psychologist employed or retained by the department determines that the inmate is mentally ill, presents an immediate danger to self or others, and requires hospital-level care.

(1) After an emergency transfer under paragraph (C) of this rule, the department shall hold a hearing for continued hospitalization within five working days after admission of the transferred inmate to the psychiatric hospital. The department shall hold subsequent hearings pursuant to paragraph (F) of this rule at the same intervals as required for inmate patients who are transported to a psychiatric hospital under paragraph (B)(4) of this rule.

(D) The department may transfer an inmate to a psychiatric hospital under an uncontested transfer order if both of the following apply:

(1) A psychiatrist employed or retained by the department determines all of the following apply:

(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.

(2) The inmate agrees to a transfer to a hospital.

(E) The written notice and the hearing required under divisions (B)(1) and (2) of this section are not required for an emergency transfer or uncontested transfer under division (C) or (D) of this section.

~~(F)~~ (F) The department shall hold a hearing for the continued hospitalization of an inmate patient who is transported or transferred to a psychiatric hospital pursuant to paragraph (B) or (C) of this rule prior to the expiration of the initial thirty-day period of hospitalization and, if necessary, at ninety-day intervals after the first hearing for continued hospitalization. The department shall hold any subsequent

hearings, if necessary, not later than ninety days after the first thirty-day hearing and then not later than each one hundred and eighty days after the closest prior hearing. An independent decision-maker shall conduct the hearings at the psychiatric hospital in which the inmate patient is confined. The inmate patient shall be afforded all of the rights set forth in this rule for the hearing prior to transfer to the psychiatric hospital. ~~A hearing for continued commitment is mandatory, and neither the department nor the inmate patient may waive the hearing.~~ The department may not waive a hearing for continued commitment. A hearing for continued commitment is mandatory for an inmate patient transported or transferred to a psychiatric hospital pursuant to paragraph (B) or (C) of this rule unless the inmate patient has the capacity to make a reasoned choice to execute a waiver and waives the hearing in writing. An inmate patient who is transferred to a psychiatric hospital pursuant to an uncontested transfer under paragraph (D) of this section and who has scheduled hearings after withdrawal of consent for hospitalization may waive any of the scheduled hearings if the inmate has the capacity to make a reasoned choice and executes a written waiver of the hearing.

~~(D)~~(G) If upon completion of the hearing the independent decision-maker does not find by clear and convincing evidence that the inmate patient is a mentally ill person subject to hospitalization, the independent decision-maker shall order the inmate patient's discharge from the psychiatric hospital. If the independent decision-maker finds by clear and convincing evidence that the inmate patient is a mentally ill person subject to hospitalization, the independent decision-maker shall order that the inmate patient remain at the psychiatric hospital for ~~another period not to exceed ninety days~~ continued hospitalization until the next required hearing.

~~(E)~~(H) If at any time prior to ~~the expiration of the ninety-day period, the warden of the psychiatric hospital or the warden's designee~~ next required hearing for continued hospitalization, the medical director of the hospital or the attending physician determines that the treatment needs of the inmate patient could be met equally well in an available and appropriate less restrictive state correctional institution or unit, ~~the warden or the warden's designee~~ medical director or attending physician may discharge the inmate to that facility.

Effective:

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Certification

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Date

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