

RIGHTS REGARDING HOSPITAL PRIVILEGES IN MASSACHUSETTS PSYCHIATRIC FACILITIES FOLLOWING DEPARTMENT OF MENTAL HEALTH PRIVILEGES POLICY

**Prepared by the Mental Health Legal Advisors Committee
March 2005**

The Department of Mental Health (DMH) Patient Privileges Policy, # 96-1, applies to adults and children at DMH operated inpatient facilities and at private inpatient units within state facilities. The policy also applies to any private inpatient facility which agrees by contract or other agreement with DMH to comply with it. This pamphlet describes the rights of patients in these facilities.

WHAT IS A PRIVILEGE?

A privilege is the level of freedom off the inpatient unit authorized for a patient. Privilege levels range from being restricted to the inpatient unit to being authorized to leave the buildings and grounds without escort for a specified period of time. Each inpatient facility must have a privilege policy, which is consistent with DMH Policy # 96-1 and provides a full range of privilege levels.

WHAT IS THE STANDARD FOR PRIVILEGES?

All patient privileges must be granted or withheld in a manner which provides the "most appropriate and least restrictive care and treatment consistent with safety, welfare, and legal rights of patients, staff and the public." Assignment of privilege level shall be based on the ability of the patient "to manage safely a given privilege level without unacceptable risk of serious harm to self or others."

Privileges may not be taken away as punishment. For example, privileges may not be withheld if a patient chooses to exercise his or her right to refuse treatment.

WHO DECIDES THE PRIVILEGE LEVEL?

The attending physician must assess the patient upon admission to determine the appropriate privilege level and must write an initial order regarding privileges. Within one business day following the initial order, not including Saturday, Sunday or holidays, the patient's attending physician, in consultation with the other members of the patient's treatment team, and input from the parent or guardian, will determine the privilege level. **Privilege level must be determined with as much participation from the patient as possible.** The attending physician must document in the patient's progress notes both the privilege level and the basis for its selection.

DMH Policy # 96-1 encourages the use of a point level system for child/adolescent patients to foster positive behaviors and support the patient in taking responsibility for his/her behaviors.

HOW IS THE PRIVILEGE LEVEL DETERMINED?

The following factors must be considered in determining privilege levels:

- Current risk of harm to self and/or others
- Ability to care for self
- History of significant harm to self or others
- Legal status
- Applicable legal issues
- History and/or current pattern of substance abuse
- Therapeutic goal(s) to be served by privilege level (*e.g.* autonomy, safety)
- Manner in which privilege status is consistent with the multidisciplinary treatment plan

The following factors must also be considered when determining privilege level for child or adolescent patients:

- Safety of home setting and ability of parent/guardian to provide appropriate supervision
- Ability to make sound judgments tied in with level of impulsivity
- Child or adolescent's demonstrated behaviors and conformance with the treatment plan

HOW DOES THE PRIVILEGE LEVEL CHANGE?

A patient's privilege level may only be changed after a review by the attending physician, in consultation with the treatment team. A change in the patient's privilege level will be made when necessary to meet the patient's individual needs. Adjustments to the patient's privilege categories must be considered at each treatment plan review, and, if necessary, more often. All changes in the patient's privilege level must be documented in the progress notes.

MAY STAFF MAKE CHANGES TO A PATIENT'S PRIVILEGE LEVEL?

Professional staff members other than the attending physician, who have been designated by the facility, may make changes in a patient's privilege level when necessary for safety reasons. The attending physician, in consultation with the treatment team, must review all such changes, no later than the next business day.

WHY WOULD STAFF SEEK A SPECIAL CLINICAL REVIEW?

A special clinical review is a review by the facility to ensure that the privileges granted to a patient do not contradict or violate the terms of any applicable court order confining the

patient to the facility.

Upon the request of the treatment team, each DMH operated facility will arrange for a special clinical review of the decision to grant privileges. The special clinical review process varies amongst DMH operated facilities. A facility's Human Rights Officer should be able to explain that facility's process. All special clinical reviews must be completed within one week of the request except when special circumstances arise.

WHAT IF THE PATIENT IS HOSPITALIZED AS A RESULT OF A CRIMINAL CHARGE?

A court may order that a patient enters a hospital during several stages of a criminal proceeding. At all DMH-operated and contracted adult inpatient facilities, units and beds, there is an additional process that a patient must go through before gaining unsupervised privileges.

Pursuant to DMH's Mandatory Forensic Review Policy, #00-1, hospital treatment teams who seek to authorize

- unsupervised privileges (either on or off-grounds),
- supervised off-grounds privileges, or
- discharge from the hospital

must refer the patient to the DMH's Division of Forensic Mental Health for a mandatory forensic review of the team's decision if:

- the patient's current admission originated with one of the violent or sexual criminal charges listed in the policy; or
- the patient's current uninterrupted period of hospitalization includes a period of commitment for treatment (as opposed to evaluation) at Bridgewater State Hospital. [The Division will determine whether or not a mandatory forensic review will be conducted for a patient referred in this category.]

A final written report of the Forensic Consultant who conducted the review and the letter from the Senior Reviewer must be completed and sent to the treatment team within 25 business days of the referral completion date.

HOW MAY A PATIENT REQUEST A CHANGE IN PRIVILEGE LEVEL?

A patient who wants to change his or her privilege level should first talk with the treatment team. The treatment team may consider a request for change during its regular treatment team meetings or during a periodic review. The patient should argue that he or she could safely manage a higher level of privileges without unacceptable risk of harm. If the patient is

unable to negotiate a change with the treatment team, the following three options are available.

Special clinical review

A patient may request a special clinical review if he or she disagrees with a privilege decision. The patient may obtain help in this process from the Human Rights Officer or legal advocate.

Modifying or appealing the patient treatment plan

As the patient moves through various privilege levels, the attending physician documents in the treatment plan the criteria necessary for achieving the next privilege level. Thus, privilege level is influenced by language in the treatment plan. A patient has the right to reject part or all of the content of any treatment plan. A patient who is unhappy with his or her privilege level may seek to modify or appeal the treatment plan. Such an appeal must be filed within 30 days of the action or decision being appealed. For example, the patient should appeal within 30 days of being informed either orally or in writing of the privilege status. If the treatment plan is rejected, but an appeal is not filed in a timely manner, the treatment plan is considered to be accepted. To make the appeal, the patient must write a letter to the DMH Area Director describing the matter and the reason for appeal.

Complaint

The patient may make a formal written or oral complaint pursuant to DMH complaint process regulations. The complaint shall go to the Person in Charge of the facility in which the person is confined or to an employee of the facility, who shall forward the complaint to the Person in Charge. The complaint should explain how the current privilege level constitutes "a condition that he or she believes to be dangerous, illegal, or inhumane," the standard set out in the regulations.