

253B.15 PROVISIONAL DISCHARGE; PARTIAL INSTITUTIONALIZATION.

Subdivision 1. **Provisional discharge.** The head of the treatment facility may provisionally discharge any patient without discharging the commitment, unless the patient was found by the committing court to be a person who is mentally ill and dangerous to the public, or a sexually dangerous person or a sexual psychopathic personality.

Each patient released on provisional discharge shall have a written aftercare plan developed which specifies the services and treatment to be provided as part of the aftercare plan, the financial resources available to pay for the services specified, the expected period of provisional discharge, the precise goals for the granting of a final discharge, and conditions or restrictions on the patient during the period of the provisional discharge. The aftercare plan shall be provided to the patient, the patient's attorney, and the designated agency.

The aftercare plan shall be reviewed on a quarterly basis by the patient, designated agency and other appropriate persons. The aftercare plan shall contain the grounds upon which a provisional discharge may be revoked. The provisional discharge shall terminate on the date specified in the plan unless specific action is taken to revoke or extend it.

Subd. 1a. **Representative of designated agency.** Before a provisional discharge is granted, a representative of the designated agency must be identified to ensure continuity of care by being involved with the treatment facility and the patient prior to the provisional discharge. The representative of the designated agency shall coordinate plans for and monitor the patient's aftercare program. When the patient is on a provisional discharge, the representative of the designated agency shall provide the treatment report to the court required under section 253B.12, subdivision 1.

Subd. 2. **Revocation of provisional discharge.** The designated agency may revoke a provisional discharge if:

(1) the patient has violated material conditions of the provisional discharge, and the violation creates the need to return the patient to a more restrictive setting; or

(2) there exists a serious likelihood that the safety of the patient or others will be jeopardized, in that either the patient's need for food, clothing, shelter, or medical care are not being met, or will not be met in the near future, or the patient has attempted or threatened to seriously physically harm self or others; and

(3) revocation is the least restrictive alternative available.

Any interested person may request that the designated agency revoke the patient's provisional discharge. Any person making a request shall provide the designated agency with a written report setting forth the specific facts, including witnesses, dates and locations, supporting a revocation, demonstrating that every effort has been made to avoid revocation and that revocation is the least restrictive alternative available.

Subd. 3. **Procedure; notice.** Revocation shall be commenced by the designated agency's written notice of intent to revoke provisional discharge given or sent to the patient, the patient's attorney, and the treatment facility. The notice shall set forth the grounds upon which the intention to revoke is based, and shall inform the patient of the rights of a patient under this chapter.

Subd. 3a. **Report to the court.** Within 48 hours, excluding weekends and holidays, of giving notice to the patient, the designated agency shall file with the court a copy of the notice and a report setting forth the specific facts, including witnesses, dates and locations, which (1) support revocation, (2) demonstrate that revocation is the least restrictive alternative available, and (3) show that specific efforts were made to avoid

revocation. The designated agency shall provide copies of the report to the patient, the patient's attorney, the county attorney, and the treatment facility within 48 hours of giving notice to the patient under subdivision 3.

Subd. 3b. **Review.** The patient or patient's attorney may request judicial review of the intended revocation by filing a petition for review and an affidavit with the committing court. The affidavit shall state specific grounds for opposing the revocation. If the patient does not file a petition for review within five days of receiving the notice under subdivision 3, revocation of the provisional discharge is final and the court, without hearing, may order the patient into a treatment facility. If the patient files a petition for review, the court shall review the petition and determine whether a genuine issue exists as to the propriety of the revocation. The burden of proof is on the designated agency to show that no genuine issue exists as to the propriety of the revocation. If the court finds that no genuine issue exists as to the propriety of the revocation, the revocation of the provisional discharge is final.

Subd. 3c. **Hearing.** If the court finds under subdivision 3b that a genuine issue exists as to the propriety of the revocation, the court shall hold a hearing on the petition within three days after the patient files the petition. The court may continue the review hearing for an additional five days upon any party's showing of good cause. At the hearing, the burden of proof is on the designated agency to show a factual basis for the revocation. At the conclusion of the hearing, the court shall make specific findings of fact. The court shall affirm the revocation if it finds:

(1) a factual basis for revocation due to:

(i) a violation of the material conditions of the provisional discharge that creates a need for the patient to return to a more restrictive setting; or

(ii) a probable danger of harm to the patient or others if the provisional discharge is not revoked; and

(2) that revocation is the least restrictive alternative available.

If the court does not affirm the revocation, the court shall order the patient returned to provisional discharge status.

Subd. 4. [Repealed, 1997 c 217 art 1 s 118]

Subd. 5. **Return to facility.** When the designated agency gives or sends notice of the intent to revoke a patient's provisional discharge, it may also apply to the committing court for an order directing that the patient be returned to a facility. The court may order the patient returned to a facility prior to a review hearing only upon finding that immediate return to a facility is necessary because there is a serious likelihood that the safety of the patient or others will be jeopardized, in that (1) the patient's need for food, clothing, shelter, or medical care is not being met, or will not be met in the near future, or (2) the patient has attempted or threatened to seriously harm self or others. If a voluntary return is not arranged, the head of the treatment facility may request a health officer or a peace officer to return the patient to the treatment facility from which the patient was released or to any other treatment facility which consents to receive the patient. If necessary, the head of the treatment facility may request the committing court to direct a health or peace officer in the county where the patient is located to return the patient to the treatment facility or to another treatment facility which consents to receive the patient. The expense of returning the patient to a regional treatment center shall be paid by the commissioner unless paid by the patient or the patient's relatives. If the court orders the patient to return to the treatment facility, or if a health or peace officer returns the patient to the treatment facility, and the patient wants judicial review of the revocation, the patient or the patient's

attorney must file the petition for review and affidavit required under subdivision 3b within 14 days of receipt of the notice of the intent to revoke.

Subd. 6. [Repealed, 1997 c 217 art 1 s 118]

Subd. 7. **Modification and extension of provisional discharge.** (a) A provisional discharge may be modified upon agreement of the parties.

(b) A provisional discharge may be extended only in those circumstances where the patient has not achieved the goals set forth in the provisional discharge plan or continues to need the supervision or assistance provided by an extension of the provisional discharge. In determining whether the provisional discharge is to be extended, the head of the facility shall consider the willingness and ability of the patient to voluntarily obtain needed care and treatment.

(c) The designated agency shall recommend extension of a provisional discharge only after a preliminary conference with the patient and other appropriate persons. The patient shall be given the opportunity to object or make suggestions for alternatives to extension.

(d) Any recommendation for extension shall be made in writing to the head of the facility and to the patient at least 30 days prior to the expiration of the provisional discharge. The written recommendation submitted shall include: the specific grounds for recommending the extension, the date of the preliminary conference and results, the anniversary date of the provisional discharge, the termination date of the provisional discharge, and the proposed length of extension. If the grounds for recommending the extension occur less than 30 days before its expiration, the written recommendation shall occur as soon as practicable.

(e) The head of the facility shall issue a written decision regarding extension within five days after receiving the recommendation from the designated agency.

Subd. 8. **Effect of extension.** No provisional discharge, revocation, or extension shall extend the term of the commitment beyond the period provided for in the commitment order.

Subd. 9. **Expiration of provisional discharge.** Except as otherwise provided, a provisional discharge is absolute when it expires. If, while on provisional discharge or extended provisional discharge, a patient is discharged as provided in section 253B.16, the discharge shall be absolute.

Notice of the expiration of the provisional discharge shall be given by the head of the treatment facility to the committing court; the petitioner, if known; the patient's attorney; the county attorney in the county of commitment; the commissioner; and the designated agency.

Subd. 10. **Voluntary return.** With the consent of the head of the treatment facility, a patient may voluntarily return to inpatient status at the treatment facility as follows:

- (1) as a voluntary patient, in which case the patient's commitment is discharged;
- (2) as a committed patient, in which case the patient's provisional discharge is voluntarily revoked; or
- (3) on temporary return from provisional discharge, in which case both the commitment and the provisional discharge remain in effect.

Prior to readmission, the patient shall be informed of status upon readmission.

Subd. 11. **Partial institutionalization.** The head of a treatment facility may place any committed person on a status of partial institutionalization. The status shall allow the patient to be absent from the facility for certain fixed periods of time. The head of the facility may terminate the status at any time.

History: 1982 c 581 s 15; 1983 c 251 s 16-18; 1986 c 444; 1988 c 623 s 9-14; 1997 c 217 art 1 s 74-82; 1998 c 313 s 14-19; 2002 c 221 s 26; 2010 c 300 s 23