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A. POLICY STATEMENT

State-operated residential programs have a rehabilitation and recovery-oriented focus. They operate with the expectation that improvement to a substantially better level of functioning can occur when individuals actively participate in programs and services that help them develop skills and supports that will enable them to live successfully in the environment of their choice. Thus, programs are expected to provide individual and group based goal-oriented services that address issues specific to an individual's transition to and integration into the community and, as appropriate, interventions directed at improving or maintaining skills necessary to live with others in community-based group housing. Consistent with the intent and services provided, state-operated residential programs are not intended to be permanent housing.

Discharge planning is critical to the successful delivery of continuity of care for individuals. It begins upon an individual's admission into a residential program and continues during the course of the individual's stay. A carefully developed discharge plan, produced collaboratively by the individual and program staff, identifies and matches the individual's needs and preferences with community resources. It provides the supports needed to sustain the progress in recovery achieved during treatment and assist the individual in building a fulfilling life. Inadequate or incomplete discharge planning may result in an interruption in care—a significant and, on occasion, insurmountable hindrance to establishing and maintaining a stable recovery.


As described herein, the process for the discharge of individuals from a state operated residential program follows a structure that aims to ensure timely and responsive actions by the involved parties, which may include the individual, the program provider, the Office of Mental Health, and/or advocates, as circumstances dictate. This policy directive, applicable to all State operated residential programs for adults, is intended to supplement the provisions of 14 NYCRR Part 595, the provisions of which such programs must also comply.

B. RELEVANT STATUTES AND STANDARDS


14 NYCRR Part 595

C. DISCHARGE PLANNING AND PROCEDURES


- (a) Each program shall ensure that a discharge planning process for each resident begins upon admission with the aim of developing a discharge plan that advances the individual's recovery and success in reaching his or her life vision. The discharge planning process shall continue throughout a resident's stay. The discharge planning process shall include, at a minimum, the following activities throughout the process:

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- (1) involvement of the resident, program staff, other community service providers, and collaterals as appropriate and agreed to by the resident;
 - (2) clinical assessment of the resident's psychiatric status as well as assessment of the resident's rehabilitation, physical, social, and residential needs and goals, conducted by clinical staff qualified by credentials, training and experience to conduct such assessments;
 - (3) provision to the resident of options for appropriate residential environments and other necessary services;
 - (4) completion of referrals to appropriate community service and residential providers; and
 - (5) arrangements for appointments, where the resident so agrees, with community service and residential providers.
- (b) A resident who is discharge-ready can be discharged. Discharge readiness requires three elements:
- (1) discharge planning activities have been fully followed;
 - (2) appropriate community services and alternative housing have been identified; and
 - (3) the resident is willing to relocate to such housing.
- (c) A resident who is not discharge-ready or who is no longer eligible for services can be discharged provided discharge planning activities have been followed to the extent practicable under the circumstances, and one of the following conditions applies:
- (1) the resident has permanently vacated the residence;
 - (2) the resident's condition has changed, as follows:
 - (i) the psychiatric or medical status of the resident has changed such that the resident requires inpatient hospital care; and/or
 - (ii) the resident's capacity for self preservation, as determined pursuant to 14 NYCRR Part 595.16, requires a level of care other than the residential program, or the resident is otherwise at risk because he or she requires additional medical or psychiatric services or supports not available within the residential program; or


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- (iii) the psychiatric status of the resident has changed such that the services or support required can be provided in a less restrictive setting, and a clinically-appropriate less restrictive setting has been identified and is available;
- (3) the resident fails to meet one or more material responsibilities for residency as described in the Residency Agreement that was provided to him or her pursuant to 14 NYCRR Section 595.10; or
- (4) the resident's behavior poses an immediate and substantial threat to the health, safety and well-being of the resident or other individuals or creates a serious and ongoing disruption of the therapeutic environment of the residential program.
- (d) A discharge under paragraph (c)(1) of this section requires that it has been determined that the resident has voluntarily left the residence with no apparent intent to return. If such determination cannot be made, the program shall treat the absence as an incident and fulfill the requirements of OMH Official Policy directive QA-510 and 14 NYCRR Section 595.13(a)(2). The provider shall hold the bed until such time as a determination is made regarding the resident's location. In such circumstances the bed shall not be held for more than 30 days.
- (e) A discharge under paragraph (c)(2) of this section requires that a clinical assessment be conducted by clinical staff qualified by credentials, training and experience to conduct such assessments. A determination that the services or support of the resident can be provided in a less restrictive setting must be made by a physician. If an individual is to be discharged because that individual is no longer capable of self preservation as determined pursuant to 14 NYCRR Section 595.16, or would be otherwise at risk due to requiring different or additional services, supports or physical environments not available within the residential program except to the extent required pursuant to the Federal Americans with Disabilities Act, the individual shall be notified in writing of the need for and intent to secure an appropriate alternative living arrangement.
- (f) A discharge under subparagraph (c)(2)(ii) or (iii) of this section, or a discharge under paragraph (c)(3) of this section requires the following:
- (1) The provider shall first make every reasonable effort to assist the resident in meeting the responsibilities of residency as agreed to by the resident and documented in the clinical record or facilitate the resident's ability for self preservation, as applicable.
 - (2) If those efforts are not successful, the provider shall conduct a clinical assessment and make every reasonable effort to identify a discharge plan to which the resident and provider mutually agree. The provider and the resident shall consult as needed with the local governmental unit or other appropriate entities in an effort to have any differences between the involved parties mediated or to obtain assistance in

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procuring appropriate residential and service alternatives, which shall include referral to a single point of access process (or a similar successor process), where such process has been established by the local governmental unit.

- (3) If efforts under paragraphs (1) and (2) of this subdivision are not successful, the provider must give the resident a written 30-day Preliminary Notice of the Intent to Terminate Residency. It shall provide the reason(s) for termination, any potential process for correcting the situation and alternative residential and service options. If requested by the local governmental unit, the provider shall send the written notice to the local governmental unit. If a discharge is predicated upon a resident no longer being capable of self preservation, that reason must be included in such notice. Such notice shall also identify the resident grievance procedure as required in 14 NYCRR Part 595, and shall advise the resident of the availability of the Mental Hygiene Legal Service.
- (4) If all preceding efforts in this subdivision are not successful, the provider shall give the resident a written Final Notice of the Intent to Terminate Residency in 30 days. It shall provide the reasons for termination, as well as alternative residential and service options which shall include referral to a single point of access process (or a similar successor process), where such process has been established by the local governmental unit. Such notice shall also advise the resident that he or she has the right to submit a written objection to the Office of Mental Health contact person, (who must be identified in the Residency Agreement in accordance with 14 NYCRR Section 595.10(a)(2)), within 5 days of the date of the written final notice of intent to terminate residency. If requested by the local governmental unit, the provider shall send the written notice to the local governmental unit.
- (5) If the resident elects to object to the determination, he or she must mail a written objection to the Office of Mental Health contact person, within 5 days of receipt of written notice of intent to terminate residency. Upon receipt of such written objection, the Office of Mental Health contact person or his/her designee shall offer the involved parties an opportunity to be heard, which shall include holding a meeting involving all relevant parties, unless waived by all parties. The meeting should be held within 10 days from the date of receipt of written notice to terminate residency, whenever possible. A written decision shall be issued to the involved parties within five days thereafter. An audio recording of the meeting shall be made. It shall be used, disclosed, and maintained in accordance with Federal and State laws and regulations governing the privacy of individually identifying health information. The Mental Hygiene Legal Service or other advocate chosen by the resident may assist the resident with the presentation of his or her objection.
- (6) If any party to the proceeding is not satisfied with the decision, a request may be made for an administrative review by the commissioner. The commissioner may

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designate an individual to conduct such administrative review and fulfill his or her responsibilities in accordance with this paragraph.

- (i) The request for administrative review shall be made within 5 days of the date of receipt of the written decision of the Office of Mental Health contact person. Such request may include a written detailed statement of the factual issues in dispute.
 - (ii) The Mental Hygiene Legal Service or other advocate chosen by the resident may assist the resident with the submission or may make a submission on his or her behalf. If the submission is not made by the resident, a duly executed authorization form permitting disclosure of information to the Mental Hygiene Legal Service or other advocate for the purpose of administrative review of the matter at hand must accompany such submission.
 - (iii) The commissioner will issue a final written decision to all parties within 10 days of receipt of the request for an administrative review. The decision shall be based on the meeting, the written submissions of the involved parties and any relevant documentation provided to the commission by the involved parties. The commissioner may, at his or her discretion, send the matter back to the relevant Office of Mental Health contact person for further review, which must take place within the 10 day period for the commissioner's review.
 - (iv) The determination after the commissioner's administrative review of the matter shall be final and is not subject to further administrative review.
- (7) During the period that an objection is undergoing administrative review:
- (i) the resident shall participate in all programming in which he or she agreed to participate, as set forth in the residency agreement; and
 - (ii) every effort feasible shall be made to maintain the resident in at least his or her current level of programming.
- (g) A discharge under paragraph (c)(4) of this section requires the following:
- (1) The provider of service must determine that the resident's behavior poses an immediate and substantial threat to the health and well-being of the resident or other individuals or creates a serious and ongoing disruption to the therapeutic environment of the residential program. This determination shall be documented in the clinical record. In such instance, nothing in this section shall preclude the provider of service from immediately arranging for the removal of the resident to a

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location which has been determined to be an appropriate location for the resident given the resident's current status, needs, and conduct. Such location shall have the capacity to provide reasonable safety for the resident. If less intrusive measures are not successful in removing the resident to the alternate location, such removal shall be conducted by a mental health crisis team, where available or, a police officer who is a member of an authorized police department or force, or a sheriff's department if necessary.

- (2) The provider of service may give the resident a written final notice of the intent to terminate residency within 30 days, or if subdivision (h) of this section applies, the period provided for therein. The written final notice shall set forth the reasons for termination, as well as alternative residential and service options. It shall also advise the resident that he or she has the right to submit a written objection to the Office of Mental Health contact person, (who must be identified in the Residency Agreement in accordance with 14 NYCRR Section 595.10(a)(2)), within 5 days of the date of the written final notice of intent to terminate residency. The notice shall also identify the resident grievance procedure as required in 14 NYCRR Section 595.10, and shall advise the resident of the availability of the Mental Hygiene Legal Service. If requested by the local governmental unit, the provider shall send the written notice to the local governmental unit.
- (3) The provider of service shall make diligent efforts to conduct a clinical assessment by clinical staff qualified by credentials, training and experience to conduct such assessments to either assist in the reentry of the resident to the program or to recommend discharge from the program. Such efforts shall be documented in the clinical record. The provider of service shall also make diligent efforts, in consultation with the local governmental unit, to make recommendations for appropriate residential and treatment alternatives and interventions available to the resident upon discharge from the program, which shall include referral to a single point of access process (or a similar successor process) where such process has been established by the local governmental unit. The recommendations for residential and treatment alternatives shall be identified in a written document provided to the individual.
- (4) If the resident elects to object to the determination, he or she must mail a written objection to the Office of Mental Health contact person, within 5 days of receipt of the final written notice of intent to terminate residency. Upon receipt of such written objection, the Office of Mental Health contact person or his/her designee shall offer the involved parties an opportunity to be heard, which shall include holding a meeting involving all relevant parties, unless waived by all parties. Such meeting should occur within 10 days of receipt of the resident's written objection, whenever possible. A written decision shall be issued to the involved parties within 5 days thereafter. An audio recording of the meeting shall be made. It shall be used, disclosed, and maintained in accordance with Federal and State laws and regulations governing the

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privacy of individually identifying health information. The Mental Hygiene Legal Service or other advocate chosen by the resident may assist the resident with the presentation of his or her objection.

- (5) If any party to the proceeding is not satisfied with the decision, a written request may be made for an administrative review by the commissioner. The commissioner may designate an individual to conduct such administrative review and fulfill his or her responsibilities in accordance with this paragraph.
- (i) The request for administrative review shall be made within 5 days of the date of receipt of the written decision by the Office of Mental Health contact person. Such request may include a written detailed statement of the factual issues in dispute.
 - (ii) The Mental Hygiene Legal Service or other advocate chosen by the resident may assist the resident with the submission or may make a submission on his or her behalf. If the submission is not made by the resident, a duly executed authorization form permitting disclosure of information to the Mental Hygiene Legal Service or other advocate for the purpose of administrative review of the matter at hand must accompany such submission.
 - (iii) The Commissioner will issue a final written decision to all parties with 10 days of receipt of the request for an administrative review. The decision shall be based on the meeting, the written submissions of the involved parties and any relevant documentation provided to the commissioner by the involved parties. The commissioner may, at this or her discretion, send the matter back to the relevant Office of Mental Health contact person for further review, which must take place within the 10 days period for the commissioner's review.
 - (iv) The determination after the Commissioner's administrative review of the matter shall be final and is not subject to further administrative review.
- (6) During the period that the matter is being review by the Office of Mental Health contact person, or by the Commissioner or his/her designee, nothing in this policy shall preclude a relocation or discharge of a person pending a final administrative decision. During the review period the resident shall be assured appropriate residency, and every effort shall be made to maintain the health and safety of all residents of the program, until the issuance of a final administrative determination.
- (i) The program shall hold the bed until such time as determination by the Commissioner is made, but in such circumstances the bed need not be held for more than 30 days.

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- (ii) In the event the final determination of the Commissioner or designee is that there lacked sufficient grounds to terminate the residency, the commissioner shall direct that the resident be permitted to re-enter the program, unless it is determined that it would be clinically inappropriate for the resident or others for such resident to return. In this event, prior to issuing his/her final determination within 10 days of receipt of the request for an administrative review in accordance with paragraph (5) of this subdivision, the Commissioner (or designee) must provide sufficient written notice to the resident and the program, and to any persons authorized by the resident to receive such notice, that relevant clinical information for consideration by the Commissioner may be submitted within 5 days from the date of such notice.
- (h) In the event that a resident is hospitalized, the provider shall consult with the hospital inpatient staff, the resident, and other appropriate service providers and significant others to plan for the return of the resident upon discharge from the hospital. The provider shall assure the resident continued residency for no less than 45 days of such hospitalization unless it is mutually agreed upon by the provider and the resident that the resident will not be returning to the program. The provider shall assure the resident continued residency for up to 90 days if the provider determines, based upon consultation with inpatient staff, the resident, and other appropriate providers and significant others, that the resident will return within that period of time. Former residents of the residential program who are discharged from a hospital, who do not meet the above 45- or 90-day bed hold criteria, shall be given priority consideration for readmission to an appropriate residence operated by the provider.
- (i) If an individual has been admitted to the residence pursuant to an agreement to provide crisis residential services or pursuant to an agreement with a managed care organization which is certified or approved by the Commissioner of the New York State Department of Health or other organization or entity approved by the Office of Mental Health, the provider is exempt from meeting the requirements of subdivision (f), paragraphs (g)(2) and (3), and subdivision (h) of this section. Beds utilized pursuant to these agreements shall be deemed temporary use beds. Temporary use beds are to be used for time limited stays of 60 days or less.
- (j) A local governmental unit may request that providers submit all written notices of intent to terminate residency pursuant to subdivisions (f) and (g) of this section, or it may, at its discretion, selectively request the submission of such notices in specific instances.