

External Program Review Committee Requests for approval subcommittee agenda

Date of meeting: 2-4 p.m. April 15, 2019

DSD liaison: Stacie Enders

Location: Elmer L. Andersen Human Services Building, Room 2223, 540 Cedar St., St. Paul 55101. Most members of the committee, however, will participate through an online video conference line.

Question-and-answer session

The public is welcome and encouraged to ask questions at the beginning of the meeting.

Discussion

- The committee will review the meeting minutes from the previous meeting and vote.
- The committee will review the attached manual, Reviewing and responding to requests for approval, to see if updates are needed.
- Committee members are welcome to bring up topics for discussion.

Closed session

The remainder of this meeting will be closed so that committee members may review requests and develop recommendations for the commissioner to approve or deny those requests. Committee members will also review updates from providers who have active approval and develop recommendations specific to each person. In addition, members will review methods for storing private information, which will include demonstrations of file systems and folders with private information. This meeting is closed as required by Minn. Stat. § 13D.05, subd. 2(a)(3), to conduct business requiring discussion of health, medical, welfare, or mental health data that is classified as not public under the Minnesota Government Data Practices Act.

Reviewing and responding to requests for approval

This manual is intended to help External Program Review Committee (EPRC) members work in unison when reviewing and responding to requests for approval to use prohibited procedures. This document is only meant to be a general guide. Committee members may use their professional judgment as needed.

If a committee member comes across a concern that cannot be addressed by the guidelines in this document, please contact the committee coordinator to add this concern to a meeting agenda.

EPRC members (as of April 2019)

Stephanie Schaefer
Melanie Eidsmoe
Michael Boston
Kim Frost
Laura Baker
Lindsay Nash

Danielle Bishop
Jodi Greenstein
Mary Piggott
Dan Baker
Stacy Danov
Barbara White

DHS support staff

Stacie Enders Committee coordinator positivesupports@state.mn.us

Commissioner's authorized representative

Jeff Schiff

Acronyms that might be used in this document

BIRF: Behavioral Intervention Report Form, [DHS-5148 \(PDF\)](#)
CABC: Context, antecedent, behavior, consequence
CCM: County case manager
DHS: Minnesota Department of Human Services
DSD: Disability Services Division
EPRC: External Program Review Committee
EUMR: Emergency use of manual restraint
FBA: Functional behavior assessment
HCBS: Home and community-based services
IRP: Interim Review Panel (predecessor to the EPRC)
MDH: Minnesota Department of Health
PS Manual: Guidelines for Positive Supports in DHS-Licensed Settings, [DHS-6810C \(PDF\)](#)
PSR: Positive support rule
PSTP: Positive Support Transition Plan, [DHS-6810 \(PDF\)](#)
RA or Request: Request for Authorization of the Emergency Use of Procedures, [DHS-6810D \(PDF\)](#)

What are EPRC members responsible for?

The external program review committee shall monitor implementation of [Minn. R. 9544.0130](#) and make recommendations to the commissioner to approve or deny requests for emergency use of procedures in accordance with [Minn. Stat. § 245.8251, subd. 4](#).

The committee shall:

A. review requests made in accordance with the requirements of [Minn. Stat. § 245D.06, subd. 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 [Minn. Stat. § 245.91, subd. 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 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 [Minn. Stat. § 245D.06, subd. 8, paragraph \(c\)](#);

B. review requests for the 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 prohibited procedure is necessary to protect the person's health and safety for a limited time while positive support strategies are developed and implemented;

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 people who are the subject of the request; and

D. include in an approval the additional terms or conditions that the license holder must meet specific to that approval, if any.

Getting started

The materials members need can be accessed in [SharePoint](#), the committee's shared folder or through email with the committee coordinator. The shared folder will contain any documents that are up for review, such as PSTPs, FBAs, person-centered plans, medical documents, etc. DHS will place the documents in the folder as soon as they are received, but no later than four business days before a subcommittee meeting. DHS will place files that are not currently up for review in a secure storage location, though members can access those files again by sending an email request to the coordinator. Nonprivate documents will be stored in SharePoint.

Workload

Members must thoroughly review every request submitted for approval, as well as any updates from providers. Only one or two members, however, will be assigned to provide feedback to each provider. The amount of time spent and the type of feedback provided varies from team to team and can take many forms, such as email,

phone or in-person. Members will have to use their professional judgment in deciding how much time to spend communicating with teams, though no member is to become a part of the person's expanded care team.

Initial review of the materials

DHS expects committee members to review each person's documentation in detail before the monthly meeting. This will ensure that members are making informed and accurate decisions. It also shows respect to the people who took the time to complete the work.

Before voting to approve or deny a request, members are required to thoroughly review any materials that are required under Minn. R. 9544.0130, as well as any materials requested by the committee or commissioner: Members may use their own professional judgment when deciding whether or not to review additional materials submitted by the provider. If a member is unable to review the materials for a request thoroughly, DHS expects that the member abstain from voting on the matter.

How will members evaluate a request?

Required paperwork for making a request (as stated in Minn. R. 9544.0130):

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 the procedure 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 will also require the following:

(10) a person-centered plan or description

How will the committee evaluate the quality of documents?

It is the expectation of the committee that the documentation submitted meets the professional standards of practice outlined in [Minn. R. 9544.0030, subp. 4.](#)

How will committee members determine their recommendation for the length of an approval?

The committee's recommendation for length of approvals for prohibited procedures will be determined by:

- What the committee is requesting and how much time is needed to do that task
- What is absolutely needed to help with phasing out the procedure
- Whether or not it is a long-standing behavior and if it is likely to change any time soon
- Provider efforts to reduce the need for the procedure and whether or not the provider complied with previous recommendations from the committee
- What type of procedure the committee is approving

Distinguishing the responsibilities of committee members from the responsibilities of Licensing

The committee will be responsible for enforcing the rules set in [Minn. R. 9544.0130](#) and any further guidelines outlined in this manual. All other rules and statutes are the responsibility of the Licensing Division or other designated authorities.

If a committee member learns that a provider is not complying with rule or statute, Licensing would like committee members to let the provider know and to help him or her come into compliance with guidelines. Licensing would only like to be contacted when either:

- We suspect abuse, neglect, maltreatment, exploitation, etc.
- Repeated attempts to help the provider have not resulted in compliance

The reasoning behind this decision is that we want providers to be open and honest with us, so that we are better able to help them. This is typically how Licensing handles reports of noncompliance – they focus on helping providers get into compliance, rather than relying solely on correction orders or other negative actions. Also, we do not want to punish unintentionally providers who are willing to support people who engage in challenging behaviors.

Definition of 'good faith effort'

- "Good faith" is an abstract and comprehensive term that encompasses a sincere belief or motive without any malice or the desire to defraud others ([West's Encyclopedia of American Law](#))
- Opposite of noncompliance

- Completing things required in rule or statute
- Responding to committee requests

Speaking to providers

When an EPRC member is new to making phone calls on behalf of the committee

To help promote consistency among team members, the following process may be used to teach a new EPRC member how to conduct calls. This is not the only way to introduce a new member to making calls, and the process below can be tailored to individual needs and circumstances.

- Partner an experienced member with the new member
- The two EPRC members will arrange for a time to discuss:
 - How to start a typical call
 - What is good to give for background and introductions
 - How to initiate the conversation based on the submitted information
 - Scheduling calls
- When making a call, the experienced EPRC member will lead the call with the new member participating by listening
- Following the call's conclusion, the two EPRC members will debrief on:
 - How the introduction worked
 - What worked about using the script and the method for starting the conversation based on the submitted information
 - What didn't work well during the call from both perspectives
 - What to do next time based on what worked and didn't work
- This process will continue for a minimum of one phone call and then the roles will switch with the new EPRC member taking the lead on the call with the experienced member listening
- The process for debriefing after the call will be the same as above
- The new EPRC member will lead a minimum of one phone call before making calls solo

Technical assistance calls

The following is an example of what a committee member could say when making a call. This exact language is not required and members should use their professional judgment when deciding what to say during a call.

Context: When making calls, start with who we are and why we are calling. Say, "My name is _____ and I am a member of the External Program Review Committee that is charged with reviewing requests for the emergency use of procedures. I'd first like to say... (point out some things the team is doing well)."

Ask the provider if he or she is currently working with any DHS staff on reducing the use of restraint and get names so that we may coordinate our efforts

Then ask, “Can you tell me a little bit about ... (state what the committee had concerns or recommendations for)?”

Your response will vary depending on what the provider says. You may need to explain how to improve the documentation. You might ask the provider to send more information to the committee. Or you might need to give details on how to find further information or assistance from a local specialist.

If you are not sure what to say, just let the provider know that you will find out and call back later. Remember, you may always ask for help when making calls from either another committee member or the committee coordinator. Providers may send any questions they have to positivesupports@state.mn.us.

Before ending the call, make sure to thank the provider for his or her time and offer your contact information for any follow-up questions he or she might have.

In-person technical assistance

EPRC members are not required to meet with every team in person. However, an in-person conversation might be appropriate in some cases. If the EPRC member is unsure, he or she may consult other members of the committee before arranging a meeting with the care team. Working in pairs is often helpful. We encourage members to invite another committee member and/or the committee coordinator to in-person meetings with service providers.

Below is a suggested outline for in-person meetings. Members may use their professional judgment when deciding how to conduct a meeting. As a general reminder, we encourage committee members to talk directly to the person and direct support professionals, as opposed to only speaking with management.

- Start with introductions (e.g. share names plus one thing everyone admires about the person)
- Explain your background and why you are there (Minn. R. 9544.0130)
- Ask the provider what is going well
- Ask the provider what he or she is concerned about
- Give feedback as the provider brings up topics
- If anything was missed, provide additional recommendations
- Ask the provider what type of additional assistance he or she would like and whether he or she would like to meet again
- Take notes and provide a follow-up email after the meeting. At a minimum, committee members should thank providers for meeting with them. Additional follow-up could include providing notes from the meeting, though that is not required.
- Continue to monitor to see how things are progressing over time
- Provide follow-up assistance as needed.

Monitoring

Recording work

EPRC members must keep detailed notes of work completed. Please fill out the Communication Tracking Sheets whenever you make contact with a provider. If the notes or documentation is too long for a spreadsheet, send an email to the committee coordinator, who will place the information in the person's history file.

Documents received

Please forward copies of any documents received to the committee coordinator. The coordinator will ensure they are saved in the person's file and, when appropriate, distributed to other state employees.

Other teams or resources that may be helpful to committee members

Positive supports lead at DHS

You may submit questions for this person by email to PositiveSupports@state.mn.us.

Regional resource specialists (RRS)

The RRS team provides training and technical assistance to lead agencies. There are three situations where the committee's work might lead to a connection with the RRS team:

- Committee members might refer to them when a provider has consulted with case management and the county or tribal nation is requesting further information. Committee members should encourage case managers to submit questions through the [Resource Center](#).
- The committee might want to consider connecting with the RRS team during policy change discussions – though it will depend on what is being discussed.
- If the committee has new training or support ideas for case managers related to [Minn. R. 9544](#), the RRS team could help provide that training.

Criteria for special meetings

A special meeting may be called when:

- There is a safety concern and;
- It will take more than one month to provide a response using the normal meeting schedule.

The quorum will be consistent with other requests for approval.