

"Giving Voice to Those Seldom Heard"

Revocation of Provisional Discharge Minn. Stat. §§ 253B.15 and 253B.18

1) For persons committed as a person at risk of harm due to mental illness, chemically dependent or developmentally disabled

Some people who have been committed may be discharged from the treatment facility, state-operated treatment program, or community-based treatment program on what is called a provisional discharge. This allows an individual to be discharged from a facility or program, but still remain on a commitment.

When an individual is placed on a provisional discharge, the facility or program must develop a written plan that states what the individual must do to avoid being returned to the facility along with what services are to be provided. This plan must be developed with input from the individual. The plan must also state when the provisional discharge is over and what may cause the county to revoke the provisional discharge. A copy must be provided to the patient, the patient's attorney and the county social services.

This fact sheet discusses the process for revoking the provisional discharge.

A. Reasons for Revocation

A provisional discharge may only be revoked if it is the least restrictive alternative and either:

- 1) The individual has violated a material condition of the provisional discharge and that violation creates the need to return the individual to a more restrictive setting or more intensive community services or
- 2) There is a serious likelihood that the safety of the individual or others are at risk in that;
 - a) the individual's need for food, clothing, shelter or medical care are not being met now or will not be met in the near future, or
 - b) the individual has attempted or threatened to seriously physically harm him/herself or others.

B. Process for Revoking a Provisional Discharge

There are two different procedures for revoking a provisional discharge. One is used when a person has violated the terms of the provisional discharge but does not show a danger to self or others. The other is used when a person shows a danger to self or others unless he/she is returned to the treatment facility or program.

Both procedures are started by the county either giving or sending a written notice of intent to revoke the provisional discharge to the individual, the individual's attorney, the facility or program that the individual was provisionally discharged from, and the current community services provider.

The notice must state the reasons for the county's intention to revoke the provisional discharge. It must also inform the individual of his or her rights.

If you receive a notice, contact your attorney right away if you disagree with the intent to revoke the provisional discharge. Inform your attorney why you feel you did not violate the provisional discharge. If you feel that other people have not assisted you with meeting the provisions of your plan, let your attorney know.

For cases where the individual does not present a danger to self or others:

The county must send a copy of the notice to the court within 48 hours. The county must also file a report with the court that contains specific facts that support the revocation, show that this is the least restrictive option available, and what specific efforts were made to avoid revocation. This report must include any witnesses, the date of alleged violations, and locations where they occurred.

The individual and his or her attorney may request that the court review the intended revocation. To do this, the attorney must file an affidavit stating why the revocation is being opposed and file a petition for a hearing. This must be done within five (5) days of receiving the notice.

If the court finds that a genuine issue exists opposing the revocation, they must hold a hearing within three (3) days. The court may continue the hearing for up to five (5) more days if there is good cause. This hearing must be held before the individual can be returned to a treating facility. The county must show the court that the individual violated the provisional discharge.

The court must uphold the revocation if it finds that:

- 1) the individual violated material conditions of the provisional discharge that creates a need for the individual to return to a more restrictive setting or more intensive community services, or
- 2) there is a probable danger of harm to the individual or others if the provisional discharge is not revoked, and
- 3) the revocation is the least restrictive option available.

If the facts do not support the need for the revocation, the court will return the individual to the provisional discharge.

If the attorney and individual do not file the petition and affidavit, or, the court finds that no genuine issue exists, the court may, without a hearing, order the individual returned to the facility or program.

For cases where the individual presents a danger to self or others:

The county may petition the court for an order to immediately return the individual to a treatment facility or program prior to a hearing if there is a serious likelihood that the safety of the individual or others will be jeopardized if not immediately returned due to:

- 1) The individual's needs for food, clothing, shelter or medical care is not being met or will not be met in the near future, or
- 2) The individual has attempted or threatened to seriously harm him/herself or others.

If the court orders the individual to be immediately returned to a facility, the individual and his/her attorney have 14 days to file the affidavit and petition to oppose the revocation with the court. The process for everything else is the same as above.

2) For persons committed as a person who has a mental illness and is dangerous to the public.

A. Revocation Process

The head of the treatment facility or state-operated treatment program from which the individual was provisionally discharged may revoke a provisional discharge if any of the following occur:

- 1) the individual has not followed the conditions set out in the provisional discharge plan,
- 2) the individual is exhibiting signs of mental illness which may require in-hospital evaluation or treatment, or
- 3) the individual is exhibiting behavior which may be dangerous to self or others.

The revocation is started by the treatment facility or program serving notice of intent to revoke the provisional discharge on the patient. This notice must also be served on the patient's attorney and the county social service agency.

This notice must state the reasons why the treatment facility or program recommends revoking the provisional discharge. It must include the specific facts which require the revocation and inform the individual of his or her rights.

In non-emergency situations, before a provisional discharge can be revoked, the head of the treatment facility or program shall obtain a report from the county social service agency which outlines the reasons for requesting the revocation. The report must contain the facts upon which the request is based.

In an emergency situation, the head of the facility or program may revoke the provisional discharge without first serving notice. In this case, the report documenting the reasons by the county social services must be submitted to the treatment facility or program within seven (7) days of the individual's return. An emergency is usually based on an individual being considered dangerous to self or other. The head of the facility or program may, either orally or in writing, order that the individual be immediately returned to the treatment facility or program.

B. Return to Facility or Program

After the revocation, the head of the treatment facility or program may request the individual to return voluntarily or request a health or peace officer to return the individual.

If a voluntary return is not arranged, the head of the treatment facility or program must inform the committing court. The court must direct a health or peace officer in the county where the individual is located

to return the individual to the treatment facility or program or to another treatment facility or program willing to accept the person.

C. Appeal of Revocation

Any individual whose provisional discharge has been revoked, or any interested person, may petition the Special Review Board for a review of the revocation. The petition must be filed within seven (7) days, not including Saturday, Sunday and legal holidays. The hearing must be scheduled within 30 days.

The Special Review Board shall recommend whether or not the revocation should be upheld to the Commissioner of Human Services. This may include recommending a new provisional discharge. The commissioner makes the final decision.

Staff at the treatment facility must assist the patient with petitioning for a Special Review Board hearing.

D. Voluntary Readmission

An individual committed as a person who has a mental illness and is dangerous to the public who is on provisional discharge may voluntarily return to a treatment facility or program with the consent of the head of the facility or program.

The return may be for up to 30 days or, if the county social service agency consents, it may be for up to 60 days. In this case, the provisional discharge remains in effect.

If the individual isn't returned to provisional discharge within 60 days, the provisional discharge is revoked. If this happens, the individual has 15 days to request a review of the revocation with the Special Review Board.

All of the terms and conditions of the provisional discharge remain in effect if the individual is discharged from the treatment facility or program within 60 days. The Special Review Board only needs to review this if there is a substantial change to the plan such as a change in residence.

ADA Statement: If you have a disability and want this notice in a different format or if you want more detailed information on the commitment process, contact the Office of the Ombudsman for Mental Health and Developmental Disabilities, 121 7th Place E., Suite 420 Metro Square Bldg, St. Paul, Minnesota 55101, <https://mn.gov/omhdd/> Voice: 651-757-1800 or Toll Free: 1-800-657-3506.