

# Revocation of Provisional Discharge Fact Sheet

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## I. For persons committed as Mentally Ill, Chemically Dependent or Developmentally Disabilities

Some people who have been committed may be discharged from the treating facility on what is called a provisional discharge. This allows an individual to be discharged from a facility, but still remain on a commitment.

When an individual is placed on a provisional discharge, the facility 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.

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 by the county if:

1. The individual has violated a material condition of the provisional discharge and that violation requires the individual to be in a more restrictive setting. This means that the person has not done what is in the provisional discharge plan, 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 future, or
  - b) the individual has attempted or threatened to harm him/herself or others, and
3. Revoking the provisional discharge is the least restrictive option available. This means that all other options should be looked at first.

### 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 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. The process is as follows:

Both procedures are started by the county either giving or sending a notice of intent to revoke the provisional discharge to the individual. This notice must also be sent to the individual's attorney and the treatment facility.

The notice must state the reasons for revoking 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 revocation. 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:**

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 and show that this is the least restrictive option available. 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. Either the individual violated material conditions of the provisional discharge that creates a need for the individual to return to a more restrictive setting, or
2. There is a probable danger 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.

**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 treating facility prior to a hearing if there is a serious likelihood that the individual presents a danger to him/herself 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 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.

## **II. For persons committed as Mentally Ill and Dangerous, as a Psychopathic Personality or as a Sexually Dangerous Person**

### **A. Revocation Process**

The head of the treatment facility [from where the discharge occurred] may revoke a provisional discharge if any of the following occur:

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

The revocation is started by the treatment facility 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 recommends revoking the provisional discharge. It must include the specific facts which require the revocation and inform the patient of his or her rights.

The head of the treatment facility shall obtain a report from the county social service agency which outlines the reasons for requesting the revocations. The report must contain the facts upon which the request is based. This must be done before revoking the provisional discharge in non-emergency situations.

In an emergency situation, the head of the facility 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 within seven (7) days of the patient's return. An emergency is usually based on a patient being considered dangerous to self or other. The head of the facility may either orally or in writing, order that the patient be immediately returned to the treatment facility.

### **B. Return to Facility**

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

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

## C. Appeal of Revocation

Any patient 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

A person committed as mentally ill and dangerous, a sexual psychopathic personality or a sexually dangerous person who is on provisional discharge may voluntarily return to a treatment facility with the consent of the head of the facility.

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

If the patient isn't returned to provisional discharge within 60 days, the provisional discharge is revoked. If this happens, the patient 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 patient is discharged from the treatment facility 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.



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