

Medication Over Objection Appeal Process

First Level Appeal

1. If an individual chooses to appeal a medication over objection decision, a written appeal should be submitted. The individual may request assistance from an external advocate or other staff member to assist with the appeal request. The appeal request will flow to the hospital's chief medical officer (CMO) or designee, within five (5) business days of the medication over objection decision. Any appeal received after 30 days of a medication over objection decision shall be dismissed as untimely filed.
2. Upon receipt of the written request for appeal, the CMO, or designee shall convene a Standing Medication Rights Review Committee (SMRRC) to conduct a first-level appeal review. The review will occur within five (5) working days. The CMO shall determine the appropriate members. At a minimum, the committee will include the CMO, or designee, a psychiatrist, and another medical professional licensed in the Commonwealth of Pennsylvania (none of whom are directly involved in the decisions regarding the individual's medications). The SMRRC shall select a chairperson to lead the review prior to the beginning of proceedings.
3. The SMRRC chairperson shall provide written notification to the individual and other interested parties identified by the individual of the date, time, and place of the appeal review proceeding. Notification shall also be given to the treatment team leader or other appropriate persons as determined by a review of the medication over objection decision.
4. A first-level appeal review shall be conducted as follows:
 - A. A review proceeding shall be held promptly to allow sufficient time for a written decision to be rendered within five (5) working days of the CMO's or designee's notification of the appeal request. Time limits may be waived with the written consent of the individual filing the appeal.
 - B. The review proceeding shall be conducted in an informal manner without strict adherence to the rules of evidence. The testimony provided in a review proceeding shall focus on: 1) the individual's diagnoses; 2) the specific medication(s) and co-medications to address side effects as well as any testing required based upon administration of specific psychotropic medication being recommended; 3) the rationale for the recommendation (including an explanation of the individual's likelihood of serious harm to self or others due to non-compliance); 4) formulations and dosage ranges of the proposed medication(s); 5) and less restrictive alternatives, attempted or ruled out the medications,

including the objections, if any, expressed by the individual to the medication(s). The panel shall record the review proceeding in writing in the form of notes recorded by the panel members or someone designated as a proceeding stenographer. An audio recording or court reporter transcription is not required.

- C. The chairperson shall administer an oral affirmation to "tell the truth regarding the subject at hand" to witnesses appearing before the SMRRC.
- D. The individual has the right to be present at the review proceeding.
- E. The review proceeding shall be closed except to the attending psychiatrist or certified registered nurse practitioner (CRNP), the individual, the external advocate if the individual requests the external advocate's presence, and the involved staff comprising the panel. If the individual chooses to have legal counsel, the cost of legal counsel shall be paid for by the individual. Other persons may be present if the SMRRC believes their presence will expedite the review process. Upon objection to the presence of other persons by any party, the review proceeding shall be closed unless those persons are called to testify. Objections to the presence of other persons may be overruled by a majority decision of the SMRRC.
- F. The chairperson shall conduct the review proceeding in an orderly fashion, manage the conduct of the participants, limit repetitive questioning and not allow abusive questioning. If the SMRRC determines the need for more extensive participation of the individual filing the appeal or other parties, committee members shall be permitted to ask additional questions and call additional witnesses.
- G. The SMRRC shall take an active role in the review proceeding and may independently investigate and question any witness regarding the allegations named in the appeal or related issues during the review. Documentation from the individual's record may be reviewed by the SMRRC.
- H. The individual and the panel may ask questions, present testimony, review records referenced during the proceeding, and call witnesses concerning the medication over objection decision by the treating psychiatrist.
- I. The SMRRC's deliberations on reaching a decision by majority vote shall be closed and limited to its members. The content of these deliberations shall not be documented as part of the review proceeding record.
- J. The decision of the SMRRC shall be in writing. The SMRRC decision shall contain the following information: 1) the disposition; 2) the names of the witnesses presented; 3) a list of the evidence presented; 4) a summary of the individual's position and objections to the proposed medication; 5) if the medication at issue in the proceeding was not authorized, what alternative

treatment(s) the panel believes should be attempted, if any; 6) if the panel determined to authorize the medication over the objection of the individual, why the medication is necessary to treat the individual to avoid the likelihood of dangerousness or harm to self, others or property and why the medication is essential to the current treatment plan; 7) whether or not the individual has requested any modifications or will consent to other types of medication; 9) the formulation and dosage of the medication(s) authorized by the panel; and 10) signatures, names, and titles of the SMRRC panel members confirming the decision.

A copy of the decision shall be provided to the individual, the CMO of the facility, and shall be filed in the individual's electronic health record (EHR) within three (3) working days of the review proceeding. The decision must address with specificity all issues raised in the appeal and must include specific recommendations as appropriate regarding medications.

- K. The attending psychiatrist or CRNP is responsible for implementing the decision reached by the SMRRC. The CMO, or designee, shall distribute the decision of the SMRRC to involved parties through the supervisory chain of command.

Second Level Appeal Review:

1. Within 10 working days of issuance of the written decision, the individual or the hospital's CEO may appeal the decision of the SMRRC in writing to the OMHSAS Medical Director or designee. This second level appeal shall set forth the specific objections to the previous decision. Following submission of a second level appeal, the individual shall be provided access to notes of the first level appeal proceeding and documentation from the EHR related to the first appeal. If the individual is unable to submit the necessary information, the facility shall assist in doing so.
2. The OMHSAS Medical Director, or designee, will be the medical professional who reviews the first-level appeal decision and all other submitted documentation to render a decision on a second-level appeal review. The second level appeal review is intended to occur through a review of the record from the first level review proceeding although, the Medical Director may obtain further evidence as deemed appropriate.
3. The OMHSAS Medical Director or designee may consult with a psychiatrist or other medical professional from another state hospital as deemed beneficial or warranted. Any such consultation will occur with staff from a state hospital external to where the appealing individual is being served. Should consultation occur, that fact will be included in the final determination document noted in #5 below.
4. The OMHSAS Medical Director, or designee, shall conduct the second-level appeal review of the first level appeal documentation within five (5) working days of

receiving it. If the Medical Director determines that additional testimony or other records are necessary, a second level review proceeding will be scheduled, and the individual and the hospital's CEO shall be notified. Any subsequent review proceeding, at the discretion of the second-level appeal reviewer, will be held by the OMHSAS Medical Director or designee and will be conducted consistent with the procedures set forth for the SMRRC panel in the first-level review.

5. The final determination shall be made in writing and submitted to the individual, the hospital's CMO and CEO within 10 days after conclusion of the second level review. A copy of the OMHSAS Medical Director's final determination shall be provided to the individual, the CMO of the facility, and filed in the individual's EHR within three (3) working days of the decision.

Subsequent Appeal

The final determination of the OMHSAS Medical Director is not subject to further appeal. An individual's failure to file a timely appeal of either the medication over objection decision or the SMRRC first level review decision, render the unappealed decision to be the final determination. Any change in medication to which the individual objects, creates a new right to appeal that newly prescribed medication.