

## 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, and committee members may use their professional judgement as needed.

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

### EPRC Members (as of April 2022)

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### Acronyms that might be used in this document

BIRF: Behavioral Intervention Report Form, [DHS form 5148](#)

CABC: Context, Antecedent, Behavior, Consequence

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 form 6810C](#)

PSR: Positive Support Rule

PSTP: Positive Support Transition Plan, [DHS form 6810](#)

RA or Request: Request for Authorization of the Emergency Use of Procedures, [DHS form 6810D](#)

## 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 Minnesota Statutes, section [245.8251, subdivision 4](#).

Committee members on the requests for approval subcommittee shall:

- A. review requests made in accordance with the requirements of Minnesota Statutes, section [245D.06, subdivision 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 Minnesota Statutes, section [245.91, subdivision 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 Minnesota Statutes, section [245D.06, subdivision 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 persons 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 currently up for review, such as PSTPs, FBAs, person-centered plans, medical documents, etc. Documents will be placed in the folder as soon as they are received, but no later than four business days before a subcommittee meeting. Files that are not currently up for review will be placed in a secure storage location, though members can access those files again by sending an email request to the coordinator. Non private documents will be stored in SharePoint.

## Workload

Members must thoroughly review every request submitted for approval, as well as any updates from providers. However, only two or three members 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 judgement 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.

## Reviewing materials

Committee members are expected 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 judgement when deciding whether or not to review non-required materials submitted by the provider. If a member is unable to thoroughly review the materials for a request, it is expected that the member abstain from voting on the matter.

Providers who make requests to the subcommittee must be afforded due process. Minn. R. 9544.0130 requires that the subcommittee "base its recommendation upon the documentation provided in accordance with Minnesota Statutes, section 245D.06, subdivision 8, paragraph (c)." Additional information shared with committee members should be done so with the provider's knowledge and participation. Committee members should avoid discussing one provider with other service providers or external groups/people without giving the provider an opportunity to respond to the outside information. For example, an employee that was recently fired by a provider may email a committee member to complain about that provider, and it may or may not be true.

If a complaint is shared with a committee member, they should notify the coordinator within one week's time and should not share that information with the rest of the committee. The committee coordinator will route the complaint to other DHS representatives as needed, depending on the nature of the report. If the complaint is closely tied to committee recommendations for a person receiving services, the committee member may individually share the complaint with the provider and request more information, but the information from the provider must be used as the basis for the subcommittee's recommendation (as opposed to basing the recommendation on the complaint).

## How will members evaluate a request?

Committee members will use the determination forms, for subparts 3A and 3B, to evaluate requests.

## 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 anytime soon
- Provider efforts to reduce the need for the procedure and whether or not the provider completed any of the 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 happens to learn that a provider is not complying with other parts of rule or statute, Licensing would like committee members to let the provider know and to help them come into compliance with guidelines. Licensing would only like to be contacted when either:

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

The reasoning behind this decision is that it is important for providers to be open and honest with the committee, so that members 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 unintentionally punish 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
- Opposite of noncompliance
- Completing things required in rule or statute
- Responding to committee requests

## Criteria for special meetings

A special meeting may be called when:

- There is a safety concern
- 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.

## 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 prior to 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 they are currently working with any DHS staff on reducing the use of restraint and get names so that we can 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 them know that you will find out and call them back later. Remember, you can always ask for help when making calls from either another committee member or the committee coordinator, and providers can send any questions they have to [positivesupports@state.mn.us](mailto:positivesupports@state.mn.us).
- Before ending the call, make sure to thank them for their time and offer your contact information for any follow-up questions they might have.

## In-person technical assistance

EPRC members are not required to meet with every team in-person. However, an in-person conversation may be appropriate in some cases. If the EPRC member is unsure, they have the option to consult other members of the committee before arranging a meeting with the care team. Working in pairs is often helpful. Members are encouraged 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 judgement when deciding how to conduct a meeting. As a general reminder for throughout the meeting, committee members are encouraged 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 they are concerned about
- Give feedback as they bring up topics
- If anything was missed, provide additional recommendations
- Ask the provider what type of additional assistance they would like and if they 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 and must fill out the Communication Tracking Sheets whenever contact is made 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.

### *Records retention*

- The committee will keep all person-specific information related to the EPRC for 10 years (such as the closed portion of the written meeting minutes and audio recordings).
- The committee will keep all information that is not person-specific for 5 years (such as the open portion of the written meeting minutes).
- The committee will delete information posted online that is older than 3 years, but that information will be kept in our internal records for 5 years.

For further information about records retention, see the [DSD-specific guidelines](#).

### Documents received

Members must 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

Questions for this person can be submitted by email at [PositiveSupports@state.mn.us](mailto: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 may lead to connecting with the RRS team:

- Committee members may refer to them when a provider has consulted with case management and the county or tribe is requesting further information. Committee members should encourage case managers to submit questions through the [Resource Center](#).
- The committee may 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.
- If a case manager is interested in joining a Community of Practice, details can be provided by the regional RRS team member through the Resource Center.

## Mental health services

The Behavioral Health Division does not have a centralized calling system like Disability Services, so they recommend contacting them via this email address and they will route from there:

[MN DHS amhi.dhs@state.mn.us](mailto:MN_DHS_amhi.dhs@state.mn.us).

Website information: [Adult Mental Health Initiatives / Minnesota Department of Human Services](#)