

Chapter 229 Recommended changes

From 2010 Court Mental Health Workgroup

I. Definitions

Change “Chemotherapy” to “Prescriptive Medical Therapy.” Or Change “Chemotherapy to “Medication Treatment”.

Change Chief Medical Officer to other language such as “Attending physician/Psychiatric Advanced Registered Nurse Practitioner (ARNP) since no hospital has a chief medical officer that deals with the commitment process. Change the wording of chief medical officer throughout the code to this language. Or omit Chief Medical Officer.

Add a definition of custody as it pertains to law enforcement, emergency rooms, hospitals, courts. There is currently confusion over **when** someone is in custody.

Modify definition of “Serious Mental Impairment” 229.15(a) to include “as evidenced by a recent overt act, attempt or threat.”

Define “Alternate Placement” as Department of Inspection and Appeals licensed facility and requires reporting by the respondent’s identified CMO.

In 229.13 Change “Chief Medical Officer” to “Treating Physician” (Do so in entire document).

Omit Chief Medical Officer in 229.14B and state “hospital or facility.”

In 229.15(1) omit Chief Medical Officer and replace with “hospital”.

In 229.15(2) omit “the medical director of the facility.”

In 229.15(5a) omit Chief Medical Officer and replace with treating physician.

In 229.21(4) change next secular day to next work day. Change Chief Medical Officer to treating physician.

In 229.22 (3) delete Chief Medical officer of the...shall examine and. Replace with “the hospital may detain and”

229.29(1) delete chief medical officer may transfer and change to the person may be transferred. Delete Chief Medical officer and insert hospital or facility shall notify the court....

II. Mental Health Advocates

Change 229.19 (a) Move Advocates under an existing department (excluding DHS) in the Executive or Legislative Branch and model after long-term Ombudsman.

Change 229.19 (b) to appoint Advocates to Respondents in county covered by the court of commitment.

Clarify in 229.19(c) that Advocates may attend hearing & receive compensation for attending.

Change 229.19(d) to add language which mandates Advocates to follow any job description or directives adopted by Judicial Council.

Change 229.19(3) to modify compensation to bi-weekly or monthly rather than quarterly.

In 229.19(1a) add "an individual has a minimum of two years post-secondary education in a human services or related field or alternatively two years experience working with individuals with mental illness or disabilities". At the end of this section add "Any advocate currently serving who does not meet the above qualifications as of the effective date of this amendment shall be grandfathered into service, but is not eligible to be appointed to serve as an advocate in additional counties".

In 229.19c add "In addition to attending hospitalization hearings pursuant to section 229.9A, the advocates' specific responsibility with respect to any patient...."

In 229.19d (6)3 add "The compensation may include additional reasonable expenses as specifically adopted by the supreme court through guidelines. These guidelines shall include tie establishment of official domicile, transportation, lodging and meal reimbursement policies, provision for training of advocates, and benefits eligibility. The compensation shall be based upon the reports filed by the advocate with the court and be paid by the **court**. Delete "The advocate's compensation shall be paid by the count in which the court is located either on order of the court or, if the advocate is appointed by the county board of supervisors, the advocate is a employee of the county for purposed of chapter 670". In the next several sentences change board (of supervisors) to court.

229.19 provides that an advocate's responsibilities begin when the appointed counsel reports he/her service are not longer required. Advocates want to be present. Some counties object to paying both the advocate and the attorney for the same hearing. Needs to be clarified.

The language changes in this section up to subsection 3 came from discussions in the Court Administrators/Advocate Committee convened in 2008. Subsections 3 changes are a recommendation by ISAC to remove the costs of paying the Advocate from the counties, since they are technically State employees. This could be budget neutral because I think ISAC would agree to have the costs identified in county expenditure reports for advocates withheld from Property Tax Relief and transferred to the Judicial Budget.

III. Reporting

Change Physician's report at hearing to include revision of Form 8 that includes all criteria to determine "serious mental impairment".

Create an alternative to immediate custody by creating 229.11A which specifies in Code under what condition and time frames that an outpatient evaluation can be ordered to be completed by a CMHC or Alternative Diagnostic Facility.

Change Physician's report at discharge in section 229.14 to Report that provides medical information on legal issues to that the court can make the determination if Respondent continues to meet legal criteria to require continued commitment. Forms 18 and 19.

Change Physician's periodic reports in section 229.15 and delete language which restricts treatment and reporting authority of ARNPs. Include language that allows ARNPs to complete treatment without a psychiatrist needing to examine the Respondent annually and complete the report.

Change reporting authority in 229.15(4) to include CMO or ARNP as responsible for submitting periodic reports in alternative placements.

Change reporting time frame in 229.15 (4) from every 6 months-annual to every 90 days.

229.16(1) Change "is such that in the opinion of the chief medical officer the patient no longer requires treatment or care for serious mental impairment, the chief medical officer shall tentatively discharge the patient and immediately report.....to "is such that in the opinion of the treating physician, the patient no longer requires involuntary treatment of care for serious mental impairment, the treating physician shall immediately report..." The changes here gets at our discussion last month about whether discharging from commitment is the same as discharging from treatment, which we agreed was not.

IV. Roles/Responsibilities

Change 229.17 and 119.21 (4) to allow Respondent to be released from the hospital when recommended by the CMO during the appeal. (When appeal from magistrate to district court and District Court to Supreme Court.)

Change code language in 229.22(1) and 229.22(2)a to mandate judge to verify that individual is refusing treatment.

In 229.27 add language that provides judicial discretion to terminate a commitment if the Respondent has been appointed a guardian

Change 229.6 to recognize modern technology, add a 3.d Hospital based professionals may file this application with the clerk of court in the person's county of residence through fax.

Clarify 229.11 Part of the confusion about who finds the beds has to do with the language about "designated through the CPC process". The intent was that the facilities would be under contract with the CPC, or designated in the County Management Plan. This whole section is a court procedure, but since this is confusion it might help to be very specific about who finds the beds. This included emergency hold and actual commitments. It can be phrased so that communities that already have a cooperative/collaborative system can keep doing what they are doing, but in counties where there is disagreement they specify who will find placement. When a medical facility calls for an emergency commitment, it is the medical facility and not the Judicial Officer that must locate a bed for the Respondent.

Add in 229.11(2) indicating the clerk shall be responsible for finding a suitable hospital or facility to accept the person in accordance with paragraph 1.b and 1.c

Add in 229.12 both Physician Assistance with Psychiatric training and Psychiatric ARNPs as they should be allowed an expanded role in the mental health process.

Change 229.12 3b to shall. Currently states, "The court may allow the licensed physician or the qualified mental health professional to testify by telephone". This language should be

changed to “the court shall allow” to leave the option of traveling some distance for a court appearance up to the practitioner, not the magistrate. Many hearings are held in counties far away from the magistrate. Omit 229.14a (9) because it doesn’t make sense to require the process to use the CPC plan, and then say whatever the Judge decides qualifies as having used the plan.

In 229.23 (2) it permits the next of kin to consent to chemotherapy and shock therapy over the patient’s objection. It is better to see a court order than to rely on next of kin consent. The code is specific that a committal is not a finding of incompetency. Take next of kin out of the statute and replace with language that a court order be required to medicate over the refusal of the respondent.

229.25 (2) Medical Records to be confidential---Exceptions. Change “When the chief medical officer deems it to be in the best interest of the patient and the patient’s next of kin to do so, the chief medical officer may release appropriate information if requested by the patient’s next of kin” to “When the treating physician deems it to be in the best interest of the patient and the patient’s next of kin to do so the treating physician may release administrative information as defined in section 22.1 if requested by the patient’s next of kin”.

(Administrative information may be released for insurance purposes and it seems knowing that parents often have some anxiety about the welfare of their young adult offspring; it ought to be permitted to at least let them know that their offspring is being treated, even if the client has not signed a release form. As we move into Affordable Health Care, young adults will increasingly be covered by their parents’ insurance anyway, and the parents ought to know if there will be claim filed.)

229.25 (2) Recommend to strike the last paragraph which allows release of health information to next of kin, which seems to be in conflict with HIPAA.

V. Changes affected by Regional System

Change 229.9A if we move away from counties paying Advocates

Change 229.13(a) Central Point of Coordination process” to “Central Point of Coordination management plan”. (Do so in entire document).

Require the CPC or his/her designee to attend the hearing so that the CPC office will have firsthand knowledge of the Respondent’s needs.

Amend 229 to allow the Respondent’s District Court to order transport (at the expense of the County of Legal Settlement) of the Respondent by a Sheriff of another county when it will save costs.

VI. Voluntary Admission

Omit 229.2 Application for Voluntary Admission—Authority to Receive Voluntary Patient. This is an outdated process. People now go to E.R. for voluntary treatment. In any case, we can no longer get people into MHIs who have been committed, let alone on a voluntary basis.

Omit 229.3,4,5 as they also deal with voluntary.

Delete 229.41 and 229.4 as they are references to voluntary admissions.

VII. Other

Add Licensed Mental Health Counselors (LMHC), Licensed marriage and Family Therapist (LMFT) and Family ARNPs with experience in the treatment of mental disorders to the "Qualified mental health professional" listing.

In 229.25 remove requirement for a written waiver for court appointed attorney or Advocate and allow access to all Respondent's charts and records.

Add a definition for Physician Assistants which would include training, educational requirements, experience which would be necessary to allow them to testify at hearings like mental health professionals.

Omit 229.2A Dual Filings. There should not be a need for dual filings. The goal should be to combine Chapter 229 and 125 in to one document and fund the care of these patients in one funding stream. The majority of patients are co-occurring and this is a state wide initiative to care for co-occurring patients.

Rewrite 229.10. If we think ahead to some type of pre-screening, the language would go here. Needs work. Payment ought to be consistent with other commitment costs (i.e. 230.1)

Change 229.11(b) to the nearest hospital which has been capacity to serve the person

229.18 Status of Respondent if Hospitalization is delayed. Change "and no suitable hospital can immediately admit the respondent, the respondent shall remain in custody as previously ordered by the court, the time limit stated in section 229.11 notwithstanding until a suitable hospital can admit the respondent" to "and no suitable hospital can immediately admit the respondent, the respondent shall be admitted to the nearest State Mental Health Institute, until a suitable hospital can admit the respondent" Custody needs to be clearly defined. Law enforcement and hospitals interpret custody differently when no suitable bed can be found and the respondent shall remain in custody until a suitable hospital can admit the patient.

229.28 (1) b Omit

229.43 Delete "If the patient was involuntarily hospitalized".

Revise 229 to provide that while the Respondent can testify if he or she wished, the Respondent cannot be required to testify.