

**SAMPLE POLICY:
Holding a Patient Against Their Will for Mental Health Care
("24-Hour Mental Holds")**

Policy

Competent, adult patients generally have the right to refuse care; however, in the case of an adult person who is gravely disabled due to mental illness or the person's continued liberty poses an imminent danger to that person or others, a medical staff member or a law enforcement officer may initiate a 24-hour "mental hold" to detain the patient while court proceedings are initiated to authorize evaluation and, if indicated, hospitalization of the patient for mental health care.

Comment [KS1]: Some prosecutors maintain that the 24-hour mental hold only applies to adults and emancipated minors. For unemancipated minors, the hospital should follow the process in Idaho Code 16-2411. The hospital may want to confirm the position of its local prosecuting attorney.

Procedure

1. **Initiating Mental Hold.** An involuntary mental hold may be initiated by the following:
 - a. **By Physician, Physician Assistant ("PA"), or Advanced Practice Registered Nurse ("APRN")** with privileges at HOSPITAL may initiate an involuntary mental hold if the following conditions are satisfied:
 - The patient presented or was brought to HOSPITAL for medical or mental health care;
 - The physician, PA, or APRN has reason to believe that either:
 - The patient is **gravely disabled** due to **mental illness**, i.e., the patient suffers from a substantial disorder of thought, mood, perception, orientation, or memory, which grossly impairs the patient's judgment, behavior, or capacity to recognize and adapt to reality, thereby requiring the patient to receive care and treatment at an appropriate facility; and, as a result, the patient is in danger of serious physical harm due to the person's inability to provide for any of his or her basic needs for nourishment, essential medical care, shelter or safety; or
 - The patient's continued liberty poses an **imminent danger** to the patient or others due to the patient's mental illness, e.g., the patient threatens or attempts to commit suicide or inflict physical harm to himself, herself or others; and
 - The patient (or, if the patient lacks capacity to make health care decisions, the patient's surrogate decision-maker) **refuses to consent to appropriate care** on a voluntary basis.
 - b. **By a Law Enforcement Officer.** A law enforcement officer may take a person into custody and place the person in a mental hold at HOSPITAL if the officer has reason to believe that either the patient is **gravely disabled** due to mental illness, or the patient's continued liberty poses an **imminent danger** to the patient or others.
2. **Process During Mental Hold.** Upon initiating a mental hold, HOSPITAL personnel shall do the following:
 - a. **Implement Appropriate Care.** Upon initiating a mental hold, HOSPITAL personnel shall immediately initiate appropriate care for the patient, including an appropriate medical

screening exam, stabilizing treatment, and/or an appropriate transfer to another facility as required by EMTALA. (See Policy No. ____, EMTALA). The care may include appropriate restraints or seclusion as described below. To the extent practicable and if medical intervention is indicated, the providers should seek appropriate consent for treatment from the patient's legally authorized surrogate decision-makers. (See Policy No. ____, Consent for Treatment). If the patient or authorized surrogate decision-makers refuse necessary treatment, HOSPITAL personnel should ask the county prosecutor to request that the court authorize appropriate care when the county prosecutor files the petition for temporary custody as described below.

- b. **Notify [Charge Nurse or Other Appropriate Supervisor].** The physician, PA, or APRN initiating a mental hold shall immediately notify the **[Appropriate Supervisor]**.
- c. **Notify County Prosecutor.** The **[Appropriate Supervisor]** shall immediately contact the county prosecutor to advise them of the mental hold so that the county prosecutor may file a petition for a temporary custody order to hold the patient while a designated examiner conducts a mental evaluation of the patient. During business hours, the county prosecutor may be contacted at _____. After normal business hours and on weekends, the county prosecutor may be reached at _____.
- d. **Notify Designated Examiner.** The **[Appropriate Supervisor]** shall also contact a qualified designated examiner to arrange for an evaluation of the patient. The Emergency Department shall maintain a list of qualified designated examiners.
- e. **Notify Family Members.** The **[Appropriate Supervisor]** shall promptly notify the patient's immediate relatives of the patient's physical location and the reasons for initiating the mental hold.
- f. **Restraints.** As appropriate, HOSPITAL personnel may use chemical or physical restraints or seclusion if necessary for the patient's safety or the safety of others. The restraints or seclusion shall be utilized consistent with HOSPITAL's restraint and seclusion policy. (See Policy No. ____, Restraint and Seclusion).
- g. **Transfer of Patients.** If HOSPITAL lacks capacity, capability, or licensure to provide the mental or medical health care required by the patient, HOSPITAL should transfer the patient to another facility consistent with EMTALA standards. HOSPITAL personnel shall comply with HOSPITAL's policy concerning transfers. (See Policy No. ____, EMTALA). HOSPITAL shall immediately notify the county prosecutor and, if they have been contacted, the designated examiner and appropriate family member, of the transfer.
- h. **Court proceedings.** The purpose of the mental hold is to allow HOSPITAL to hold a patient until a mental health examination can occur and, if indicated, give local authorities time to initiate court proceedings for the continued care of the patient. The timeline for court proceedings concerning the patient is as follows:
 - (1) Within 24 hours after initiating the mental hold, the county prosecutor shall file the petition for temporary custody with the applicable court.
 - (2) If the court finds that the patient is gravely disabled or imminently dangerous, the court shall grant the order allowing HOSPITAL to hold the patient and requiring an examination by a designated examiner within 24 hours after entry of the order.

- (3) The designated examiner shall conduct the exam within 24 hours after the order authorizing the exam. Within 24 hours after completing the examination, the designated examiner shall submit a report to the court.
 - (4) If the designated examiner concludes that the patient is mentally ill and is either gravely disabled or likely to injure himself or herself or others, the county prosecutor shall file a petition for continued detention pending commitment proceedings within 24 hours after the examination. If no petition is filed within 24 hours of the examination, the patient shall be discharged unless consent is obtained for continued treatment as described below.
 - (5) Upon receipt of the prosecutor's petition, the court shall order continued detention for while a hearing takes place. The hearing shall take place within five days of the examination.
- i. **Court Order.** If the court grants the petition for temporary custody or otherwise orders continued treatment, HOSPITAL personnel should comply with the order. If the order needs clarification or modification concerning specific modalities of treatment or otherwise, HOSPITAL personnel should work with the county prosecutor to obtain such modification.

3. **Termination of Mental Hold.** The mental hold may be terminated as follows:

- a. **Court Failure or Refusal to Authorize Continued Care.** If the court declines to issue a temporary custody order or otherwise authorize continued care at HOSPITAL, or if the time for such an order expires, HOSPITAL personnel shall document the facts and circumstances and discharge the patient unless HOSPITAL can otherwise obtain valid consent for the patient's continued care. Holding the patient contrary to the court's determination and without lawful authority may expose HOSPITAL and practitioners to liability. If HOSPITAL personnel believe that new circumstances or additional facts have developed that make continued detention appropriate and such circumstances or facts were not considered by the court, the personnel should immediately contact the county prosecutor or HOSPITAL's legal counsel to discuss the same.
- b. **Resolution of Mental Health Issue.** If, at any time, the physician, PA, or APRN who initiated the mental hold or other HOSPITAL personnel conclude that the patient is no longer gravely disabled or imminently dangerous, they should discuss the matter with the county prosecutor and, if indicated, terminate the mental hold. HOSPITAL personnel shall immediately document the facts and circumstances that justify the termination of the mental hold, including the change in the patient's condition that warrants termination of the mental hold.

4. **Mental Hold NOT Appropriate.** A mental hold pursuant to this policy is generally not appropriate in the following situations:

- a. **Minors.** In most cases, unemancipated minors who require continued evaluation, care or treatment should be detained long enough to contact the patient or legal guardian so that the minor may either be turned over to the parent or guardian or consent may be obtained for continued evaluation or treatment. (See Idaho Code § 16-2411(2); Policy No. _____, Shelter Care for Minors). If the parent or guardian refuses care and HOSPITAL personnel believe continued care is required, HOSPITAL personnel may contact local police and request that the police initiate protective custody pursuant to Idaho Code § 16-2411(1), or, if the refusal to authorize care constitutes neglect,

HOSPITAL personnel may be required to contact Child Protective Services. (See Policy No. _____, Reports of Child Abuse or Neglect).

- b. **Voluntary Care.** A mental hold should not be initiated if the patient or their legally authorized surrogate decision-maker consents to appropriate care at HOSPITAL. In that case, HOSPITAL may provide the care under Idaho's general consent laws, Idaho Code § 39-4501 *et seq.*, and there is no need to initiate a mental hold. A mental hold may be required if the patient or their surrogate subsequently refuses necessary care.
 - c. **Medical Clearance.** As a general matter, a mental hold should not be initiated if the patient has a pending medical condition that would interfere with the mental evaluation by the designated examiner. The designated examiner may not be able to perform an evaluation if the patient's medical condition interferes with the evaluation. Accordingly, to the extent that they are able to do so, HOSPITAL personnel should wait until the medical condition has resolved or stabilized sufficiently to allow an appropriate examination before initiating the mental hold. However, if the mentally ill patient and/or the authorized surrogate refuse necessary care and threaten to leave, the physician may need to initiate a mental hold even if the medical conditions have not been completely resolved.
 - d. **Not Mentally Ill.** Under Idaho law, a person is not considered to be "mentally ill" so as to justify a mental hold just because the person is epileptic, mentally deficient, mentally retarded, impaired by chronic alcoholism or drug abuse, or aged, unless in addition to such condition, the person is mentally ill as defined above
5. **Immunity.** Idaho law generally protects providers who participate in a mental hold so long as they perform their duties in good faith, without gross negligence, and consistent with the procedures set forth in this policy.

Related Policies: Policy No. ____, EMTALA
Policy No. ____, Consent for Treatment
Policy No. ____, Restraint and Seclusion
Policy No. ____, Shelter Care for Minors
Policy No. ____, Reporting Child Abuse or Neglect

References: Idaho Code § 16-2411
Idaho Code §§ 39-4503 and 39-4504
Idaho Code §§ 66-317, 66-324, 66-326, 66-339B, 66-341, 66-345