§ 67.08 Patient transfer to foreign nation.

(a) The commissioner, or his or her designee, shall have the sole and absolute authority to approve or disapprove a patient application for transfer to a foreign nation pursuant to the Council of Europe Convention on the Transfer of Sentenced Persons (COE) or other applicable international treaty, where:

(1) Such applicant has been committed to and placed in the custody of the department upon a verdict of not responsible by reason of mental disease or defect pursuant to section 330.20 of the criminal procedure law;

(2) Such applicant has indicated a willingness and desire for transfer to a foreign nation in writing on a form prescribed by the commissioner or, the commissioner at the request of a patient's legal guardian or attorney can indicate a desire for transfer if the patient is unable to indicate their willingness and desire on their own; and

(3) The transfer nation is either a "treaty nation" under the COE or any other nation with which the United States has a prisoner transfer treaty that permits the transfer of persons committed to psychiatric institutions after a verdict of not responsible by reason of mental disease or defect.

(b) If a request for transfer is approved by the commissioner, or his or her designee, facility staff shall assist in the preparation and submission of all materials and forms necessary to effectuate the person's request for transfer to the United States department of justice for purposes of finalization of the transfer process, including a verification proceeding before a United States district court judge, United States magistrate or other appointed United States official to assure and document the applicant's voluntary request for transfer.

(c) The commissioner shall promulgate rules and regulations setting forth the procedures to notify patients and where applicable, their legal guardian or attorney, of their rights under this section and the procedure by which a patient may apply to be considered for transfer to a foreign nation. Nothing herein shall be construed to confer upon a patient a right to be transferred to a foreign nation.