

GENERAL DISTRIBUTION

**WEST VIRGINIA
DIVISION OF CORRECTIONS
& REHABILITATION**

NUMBER: 410.05

EFFECTIVE DATE: 02 August 2023

**SUBJECT: INVOLUNTARY
PSYCHOTROPIC
MEDICATION
ADMINISTRATION**

POLICY DIRECTIVE

PURPOSE:

To provide procedures that protect the due process rights of inmates whose mental illness may require the delivery of treatment without the consent of the inmate in some circumstances where treatment can be reasonably provided at a Division of Corrections and Rehabilitation facility.

REFERENCE:

WV Code §§27-1-1 *et seq.*; and *Washington v. Harper*, 494 U.S. 210, 110 S. Ct. 1028 (1990).

RESPONSIBILITY:

No additional written instructions on this subject are required.

CANCELLATION:

Any previous written instruction on the subject including DOC Policy Directive 410.05, dated 01 January 2004.

APPLICABILITY:

All adult facilities within the Division of Corrections and Rehabilitation (DCR). This Policy is available for general distribution.

DEFINITIONS:

Inmate Advisor: A psychologist, psychology assistant, behavior technician, psychiatric nurse, or social worker who is appointed by the presiding member of the Mental Health

Committee, who understands the inmate's rights and the hearing process, and has an understanding of the psychiatric diagnosis and clinical issues that the inmate's situation may present. The Inmate Advisor shall assist the inmate in presenting his/her case and shall not be a member of the inmate's treatment team.

Likely to Cause Serious Harm: As defined in WV Code §27-1-2, when an individual is exhibiting behaviors consistent with a medically recognized mental disorder or addiction, excluding, however, disorders that are manifested only through antisocial or illegal behavior and as a result of the mental disorder or addiction:

- 1) The individual has inflicted or attempted to inflict bodily harm on another.
- 2) The individual, by threat or action, has placed others in reasonable fear of physical harm to themselves.
- 3) The individual, by action or inaction, presents a danger to himself or herself or others in his or her care.
- 4) The individual has threatened or attempted suicide or serious bodily harm to himself or herself; or
- 5) The individual is behaving in a manner as to indicate that he or she is unable, without supervision and the assistance of others, to satisfy his or her need for nourishment, medical care, shelter or self-protection and safety so that there is a substantial likelihood that death, serious bodily injury, serious physical debilitation, serious mental debilitation or life-threatening disease will ensue unless adequate treatment is afforded.

In making the "likely to cause serious harm" determination, judicial, medical, psychological and other evaluators and decisionmakers should utilize all available information, including psychosocial, medical, hospitalization and psychiatric information and including the circumstances of any previous commitments or convalescent or conditional releases that are relevant to a current situation, in addition to the individual's current over behavior. The rules of evidence shall be followed in making the "likely to cause serious harm" determination except that hearsay evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

Mental Illness: As defined in WV Code §27-1-2, a manifestation in a person of significantly impaired capacity to maintain acceptable levels of functioning in the areas of intellect, emotion and physical well-being.

Physician: As defined in WV Code §27-1-2, a person licensed under the laws of the State of West Virginia to practice medicine or a medical officer of the government of the United States while in this state in the performance of his official duties.

Psychiatrist: As defined in WV Code §27-1-2, a physician licensed under the laws of this state to practice medicine who has completed training in an accredited program of post-graduate education in psychiatry.

Psychologist: As defined in WV Code §27-1-2, any person licensed under the laws of this state to engage in the practice of psychology, or any other psychologist not a resident of

this state who engages in the practice of psychology in this state and who holds a license or certificate to engage in the practice of psychology issued by another state with licensing or certification requirements comparable to the licensing requirements of this state, as may be determined by the state board of examiners of psychologists.

Psychotropic Medications: Medication that affects the central nervous system and which is employed to treat symptoms of mental illness. These medications may influence thinking, mood and behavior and include medications classified as antipsychotics, antidepressants, anti-anxiety agents, sedative hypnotics, psychomotor stimulants, lithium and anticonvulsants prescribed to control mood fluctuations. These medications include any medications approved by the Food and Drug Administration (FDA) for the treatment of psychiatric illness as well as those medications commonly used in the private sector for treatment of psychiatric illness.

POLICY:

- I. In an emergency psychiatric situation when, in the judgment of a psychiatrist, the inmate must be medicated to prevent serious physical harm to him or herself or others, if medication is not immediately provided, the psychiatrist may administer such medication as is necessary to end the emergency psychiatric situation.
 - A. In circumstances where medication is sought to be administered involuntarily, the Superintendent or designee will be immediately notified by a member of the mental health staff, who will document this notification in the inmate's mental health record. The Superintendent or designee shall promptly convene the Mental Health Committee. The inmate has the right to refuse psychotropic medication until after the hearing unless an emergency psychiatric situation is present.
 - B. Whenever the Mental Health Committee determines by clear and convincing evidence that an inmate suffers from a mental illness and is likely to cause serious harm to him or herself or others, and a psychiatrist determines that an inmate should be treated with psychotropic medications and the inmate refuses to consent to the administration of psychotropic medications the Mental Health Committee may order the involuntary treatment of the inmate.
 - C. Prior to convening the Mental Health Committee, an Involuntary Medication Request Form must be completed and documented by a physician, psychiatrist or psychologist in the inmate's mental health record. The documentation shall include:
 1. A psychiatric examination which documents the inmate's mental condition.
 2. The inmate's diagnosis in accordance with the current edition of the Diagnostic and Statistical Manual of Mental Disorders.
 3. Indications that the inmate is likely to cause serious harm to him or herself or others.

4. A description of the methods used to motivate the inmate to accept medication voluntarily and the inmate's responses to these efforts.
 5. The consideration and rejection of less intrusive alternatives along with the rationale for resorting to involuntary medication.
 6. Any recognized religious objection to medication.
 7. The proposed type, dosage range and route of administration of the medication, including injectable and oral alternatives.
 8. Any history of side effects, including severity, from the proposed involuntary medication.
 9. That the gains anticipated from the proposed medication outweigh potential side effects.
- D. After reviewing the case, the Mental Health Committee shall provide written notice to the inmate at least twenty-four (24) hours prior to any involuntary medication hearing. This notice must include:
1. Date and time the involuntary medication hearing will be held.
 2. The mental health diagnosis.
 3. The factual basis for such a diagnosis.
 4. The basis on which it has been determined that there is a necessity for involuntary treatment.
 5. The type, dosage range and route of administration of proposed involuntary psychotropic medication.
 6. Identification of the inmate advisor.
- E. The inmate has the right to refuse psychotropic medication until after the hearing unless an emergency psychiatric situation is present.
- II. Each Superintendent shall create a Mental Health Committee whose function is to determine the need to administer psychotropic medications to inmates who are not willing to consent to the same as recommended by their treating psychiatrist.
- A. The Mental Health Committee shall be composed of a psychiatrist and psychologist, whom at the time of the hearing may not be involved in the inmate's treatment or diagnosis for which the medication is sought. The Associate Superintendent of Programs or designee, or Unit Manager in facilities without an Associate

- Superintendent of Programs, shall also be a member of the Committee and preside over the proceedings. He or she shall also be responsible for maintaining all written documents and evidence relative to this proceeding, keeping an electronic recording of the proceeding, opening the proceeding and ruling upon evidentiary matters.
- B. The inmate has the right to be present and to be heard in person at the hearing and to present relevant evidence in his or her behalf including evidence objecting to the basis on which it has been determined that there is a necessity for involuntary treatment, and to the type, dosage range, route of administration and side effects of the proposed involuntary psychotropic medication. The inmate may present alternatives to the proposed involuntary medication.
 - C. The inmate has a right to present testimony through his own witnesses and to cross-examine witnesses that are called by the facility. Witnesses may be limited in the same manner and for the same reasons as are set forth in DCR Policy Directive 325.00.
 - D. When facility staff members are to present evidence, this shall be in person unless there is good cause for utilizing their written statement.
 - E. The Chair of the Mental Health Committee may limit the inmate's right to be present at the hearing or limit the inmate's right to present testimony and cross examine witnesses at the hearing for reasons including, but not limited to, relevance, redundancy, possible reprisals or reasons related to facility security and order.
 - F. If the inmate chooses not to be present at the hearing; or the inmate is precluded from attending by the Chair; or if the testimony presented by the inmate or his or her witnesses in opposition to the proposed medication; or the inmate's cross examination of the facility's witnesses is substantially limited or disallowed, the Chair of the Mental Health Committee shall document reasons for the absence of the inmate or restrictions in testimony or cross examination in writing and incorporate it into the final decision.
 - G. The inmate shall have an Inmate Advisor, as defined above, to assist the inmate during the process. If the inmate is absent or removed from the hearing, the Inmate Advisor will exercise the rights of the inmate on the inmate's behalf, to the best of the Inmate Advisor's ability and judgment.
 - H. After the presentation of evidence, the Committee shall immediately deliberate and render a decision on whether there is clear and convincing evidence to believe that the inmate is mentally ill; that the inmate is likely to cause serious harm to him or herself or others; that the Committee concurs in the administration of psychotropic medication. If the psychiatrist and at least one other member of the Committee agree that the inmate is mentally ill and likely to cause serious harm to him or herself or others and agree with the administration of psychotropic medication, then the Committee shall affirm the decision to administer psychotropic medication. Medication can only be ordered if the psychiatrist concurs with at least one other member of the Committee. Each member of the Committee shall document his or her decision within the scope of his or

her licensed professional practice in the inmate's mental health record. The Committee shall advise the inmate in writing of his right to appeal to the Superintendent.

- I. An initial finding by the Committee to permit the involuntary administration of psychotropic medication shall be in effect for fourteen (14) consecutive days, including holidays and weekends. During this initial fourteen (14) day period, the inmate shall be housed in an area (cell, room, etc.) where staff are present (e.g., medical or mental health unit) to observe the inmate. If the treating psychiatrist subsequently recommends that initial involuntary medication continue longer than fourteen (14) consecutive days, a subsequent Involuntary Medication Request must be completed. The Mental Health Committee will conduct a second hearing on or before the fourteenth (14th) day following the initial hearing in accordance with the procedures set out above. The inmate's housing shall be reevaluated at that time.
 - J. At this second hearing, the Committee shall make a limited decision as to approval or disapproval of continued medication for up to a maximum time of thirty (30) days. At or near the conclusion of the thirty (30) day order, another hearing may be held to consider continuation of involuntary medication for an additional one hundred and eighty (180) day period. This process, following the procedures of this policy, may be repeated every one hundred and eighty (180) days as long as the medication is clinically indicated, and the inmate meets the criteria for administration of involuntary psychotropic medication and refuses to consent to such medication. The inmate's housing will be reevaluated at each of these hearings.
- III. When the Committee permits involuntary medication, the psychiatrist shall:
- A. Order medication according to the accepted medical standard of care.
 1. Involuntary medication may be temporarily suspended as clinically indicated without affecting the validity of the existing order.
 2. An inmate may remain on the involuntary medication status while given a temporary trial period of voluntary medications.
 - B. Order appropriate blood work, which may be collected via venipuncture (involuntarily if necessary) to monitor therapeutic medication levels and or to detect adverse reactions to medications.
- IV. The inmate shall thereafter have twenty-four (24) hours in which to appeal a decision to administer medication to the Superintendent of the facility. The Superintendent shall review the appeal immediately upon receipt and affirm the Committee's decision or reverse the Committee's decision. The scope of the Superintendent's review shall be to determine if substantial procedural errors resulted in a denial of due process or whether the decision of the Committee is so plainly wrong in light of the evidence that the result would be shocking to a lay person. It is not the function of the Superintendent to merely second-guess the medical judgments of the psychiatrists. If the inmate's appeal to the

Superintendent is denied, then medication shall be administered. Thereafter, if the inmate desires to halt the administration of medication the inmate shall have available the ordinary administrative remedies following the inmate grievance procedure. However, the mere filing of grievance shall not stay or otherwise halt the administration of medication.

- V. The contractual mental health provider shall develop forms to ensure the proper documentation as required by this policy.

ATTACHMENT(S):

None.

APPROVED SIGNATURE:  08/02/2023
William K. Marshall, III Commissioner Date