Psychiatric Evaluation and Treatment

/s/
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1. PURPOSE AND SCOPE

§ 549.40 Purpose and scope.

(a) This subpart describes procedures for voluntary and involuntary psychiatric evaluation, hospitalization, care, and treatment, in a suitable facility, for persons in Bureau of Prisons (Bureau) custody. These procedures are authorized by 18 U.S.C. Chapter 313 and 18 U.S.C. § 4042.

(b) This subpart applies to inmates in Bureau custody, as defined in 28 CFR part 500.

Inmates are defined as all persons in the custody of the Federal Bureau of Prisons or Bureau contract facilities, including persons charged with or convicted of offenses against the United States; D.C. Code felony offenders; and persons held as witnesses, detainees, or otherwise.

(c) Summary of Changes

Directive Rescinded:
P6010.01 Psychiatric Treatment and Medication, Administrative Safeguards for (9/21/95)

Federal Regulations from 28 CFR are shown in this type.
Implementing instructions are shown in this type.
Inmates may be hospitalized at any institution that capably meets their psychiatric needs.

The practice of transferring an inmate to a suitable facility for examination to determine if hospitalization is necessary without providing the procedural safeguards that accompany hospitalization has been specifically codified in regulation as permissible and in compliance with applicable law, as indicated in § 549.43 of this part.

Involuntary hospitalization procedures differ in accordance with the legal basis under which the inmate is held in Bureau custody, as indicated in § 549.45 of this part.

Involuntary administration of medication for the sole purpose of restoring competency to stand trial can only be administered pursuant to an order by a court of competent jurisdiction.

d. Program Objectives. The expected results of this program are:

- Psychiatric medications will be administered only when there is a diagnosable psychiatric disorder or symptomatic behavior for which such medication is accepted treatment.
- Inmates who voluntarily submit to psychiatric care or treatment or voluntarily take psychiatric medication will be properly informed of their rights, and their competence to give consent will be properly documented.
- Persons covered by Title 18 U.S.C., Chapter 313, may only be involuntarily hospitalized pursuant to a court order.
- Any decision to involuntarily hospitalize any person not covered by Title 18 U.S.C., Chapter 313, for psychiatric care or treatment will be made at an administrative hearing that complies with proper due process procedures.
- Except for psychiatric emergencies, proper due process procedures will be provided to every inmate before psychiatric medication is involuntarily administered.
- During a psychiatric emergency, appropriate psychiatric medication will be administered only when alternatives are not available, not indicated, or would not be effective. When clinically possible, long-acting psychiatric medications will be avoided.
- When staff are confronted with a situation which requires the authorized use of force to gain control of an inmate who is undergoing psychiatric evaluation, care or treatment, staff shall follow the procedures indicated in the Program Statement Use of Force and Application of Restraints.

e. Pretrial/Holdover Procedures. Procedures required in this Program Statement apply to pretrial and holdover inmates. However, deciding whether particular procedures apply to individual inmates requires an analysis of the legal basis under which the inmate is held in Bureau custody. Staff are encouraged to contact legal staff for assistance.

2. HOSPITALIZATION IN A SUITABLE FACILITY

§ 549.41 Hospitalization in a suitable facility.

As used in 18 U.S.C. Chapter 313 and this subpart, “hospitalization in a suitable facility” includes the Bureau’s designation of inmates to medical referral centers or correctional institutions that provide the required care or treatment.
“Hospitalization in a suitable facility” does not require the inmate to be placed in a Medical Referral Center (MRC). Inmates who are medically compliant may not require housing at a MRC if an institution can capably meet their psychiatric needs.

“Hospitalization” refers only to the designation of an inmate for psychiatric care or treatment. Psychiatric care or treatment does not refer to either the voluntary or involuntary use of psychiatric medication.

3. USE OF PSYCHIATRIC MEDICATIONS

§ 549.42 Use of psychiatric medications.

Psychiatric medications will be used only for treatment of diagnosable mental illnesses and disorders, and their symptoms, for which such medication is accepted treatment. Psychiatric medication will be administered only after following the applicable procedures in this subpart.

Psychiatric medication is generally not designed for, and must not be used as, a method of chemical control for behaviors unrelated to mental illness. Psychiatric medication may be administered on a voluntary basis for a medical purpose other than treatment of a psychiatric disorder; e.g., disease for which appropriate treatment includes drugs classified as psychiatric. Psychiatric medication is prescribed by a physician specifically for mood-altering, mind-altering, or impulse control purposes. It does not include sleeping medication or minor tranquilizers.

4. TRANSFER FOR PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION

§ 549.43 Transfer for psychiatric or psychological examination.

The Bureau may transfer an inmate to a suitable facility for psychiatric or psychological examination to determine whether hospitalization in a suitable facility for psychiatric care or treatment is needed.

The transfer of an inmate to a suitable facility for the purposes of psychiatric or psychological examination does not encompass hospitalization as defined in Section 2, nor does the transfer alone require staff to comply with procedural protections in Sections 6 or 7.

5. VOLUNTARY HOSPITALIZATION IN A SUITABLE FACILITY FOR PSYCHIATRIC CARE OR TREATMENT, AND VOLUNTARY ADMINISTRATION OF PSYCHIATRIC MEDICATION

§ 549.44 Voluntary hospitalization in a suitable facility for psychiatric care or treatment, and voluntary administration of psychiatric medication.
(a) **Hospitalization.** An inmate may be hospitalized in a suitable facility for psychiatric care or treatment after providing informed and voluntary consent when, in the professional medical judgment of qualified health services staff, such care or treatment is required and prescribed.

(b) **Psychiatric medication.** An inmate may also provide informed and voluntary consent to the administration of psychiatric medication that complies with the requirements of § 549.42 of this subpart.

(c) **Voluntary consent.** An inmate’s ability to provide informed and voluntary consent for both hospitalization in a suitable facility for psychiatric care or treatment, and administration of psychiatric medications, will be assessed by qualified health services staff and documented in the inmate’s medical record. Additionally, the inmate must sign a consent form to accept hospitalization in a suitable facility for psychiatric care or treatment and the administration of psychiatric medications. These forms will be maintained in the inmate’s medical record.

Informed consent requires educating the inmate on the symptoms of the illness, potential benefits of treatment, potential risks and side effects, appropriate use of medication, when to notify staff of problems, consequences of noncompliance, and alternative treatments (including no treatment) and associated risks.

To assess an inmate’s ability to provide informed consent, staff must determine whether he/she understands the reasons for admission, the recommended treatment, his/her right to object to treatment at any time, and the means by which he/she may object.

The inmate’s medical record must include documentation that, before giving written consent, he/she was informed and found competent to consent. Staff document an inmate’s medical record using form BP-A0801, “Consent to Admission for Mental Health Treatment,” to show an inmate’s consent to hospitalization. Staff document an inmate’s voluntary administration of psychiatric medication through a consent form to use psychiatric medication (form varies per medication).

6. **IN VOLUNTARY HOSPITALIZATION IN A SUITABLE FACILITY FOR PSYCHIATRIC CARE OR TREATMENT**

§ 549.45 Involuntary hospitalization in a suitable facility for psychiatric care or treatment.

(a) **Hospitalization of inmates pursuant to 18 U.S.C. Chapter 313.** A court determination is necessary for involuntary hospitalization or commitment of inmates pursuant to 18 U.S.C. Chapter 313, who are in need of psychiatric care or treatment, but are unwilling or unable to voluntarily consent.
Inmates covered by this subsection include:

- Individuals found to be suffering from a mental disease or defect that renders them mentally incompetent to stand trial (18 U.S.C. § 4241(d)).
- Individuals committed for evaluation under 18 U.S.C. § 4241(b) or § 4242(a).
- Individuals found not guilty only by reason of insanity (18 U.S.C. § 4243).
- Convicted individuals suffering from a mental disease or defect, committed to a suitable facility for care or treatment in lieu of being sentenced to imprisonment (18 U.S.C. § 4244).
- Persons serving a sentence of imprisonment suffering from a mental disease or defect (18 U.S.C. § 4245).
- Individuals due for release but suffering from a mental disease or defect (18 U.S.C. § 4246).

Involuntary hospitalization of these inmates requires a court determination that the person may be suffering from a mental disease or defect for the treatment of which he/she needs custody in a suitable facility.

After hospitalization, psychiatric medication may only be involuntarily administered after an administrative hearing has been held complying with the procedural safeguards in Section 7.

Any use of force under this provision must comply with procedures in the Program Statement Use of Force and Application of Restraints.

(b) Hospitalization of inmates not subject to hospitalization pursuant to 18 U.S.C. Chapter 313. Pursuant to 18 U.S.C. § 4042, the Bureau is authorized to provide for the safekeeping, care, and subsistence, of all persons charged with offenses against the United States, or held as witnesses or otherwise. Accordingly, if an examiner determines pursuant to § 549.43 of this subpart that an inmate not subject to hospitalization pursuant to 18 U.S.C. Chapter 313 should be hospitalized for psychiatric care or treatment, and the inmate is unwilling or unable to consent, the Bureau will provide the inmate with an administrative hearing to determine whether hospitalization for psychiatric care or treatment is warranted. The hearing will provide the following procedural safeguards:

A number of inmates in Bureau custody are not serving a sentence of imprisonment or otherwise fall under the auspices of 18 U.S.C. Chapter 313, and therefore cannot be hospitalized pursuant to an 18 U.S.C. § 4245 court order. Examples include alien detainees subject to an order of deportation, exclusion, or removal; material witnesses; contempt of court commitments; or other unsentenced inmates in Bureau custody. When unsure of the legal status of an inmate’s confinement, contact legal staff for assistance before determining whether an inmate is subject to hospitalization pursuant to 18 U.S.C. Chapter 313, requiring a court proceeding and order.
When an inmate not subject to hospitalization per 18 U.S.C. Chapter 313 should be hospitalized for psychiatric care or treatment and he/she is unwilling or unable to consent, staff must provide him/her with an administrative hearing following the procedures below.

Any use of force under this provision must comply with the procedures in the Program Statement Use of Force and Application of Restraints.

(1) The inmate will not be involuntarily administered psychiatric medication before the hearing except in the case of psychiatric emergencies, as defined in § 549.46(b)(1).

(2) The inmate must be provided 24-hours advance written notice of the date, time, place, and purpose, of the hearing, including an explanation of the reasons for the proposal to hospitalize the inmate for psychiatric care or treatment.

Use form BP-A0959, “Notice of Hearing and Advisement of Rights for Involuntary Hospitalization or Medication for Psychiatric Care or Treatment” to provide notice to the inmate. This form is filled out only by the referring psychiatrist currently involved in the diagnosis or treatment of the inmate. Any staff member may deliver a copy of the notice to the inmate.

(3) The inmate must be informed of the right to appear at the hearing, to present evidence, to have a staff representative, to request witnesses, and to request that witnesses be questioned by the staff representative or by the person conducting the hearing. If the inmate does not request a staff representative, or requests a staff representative with insufficient experience or education, or one who is not reasonably available, the institution mental health division administrator must appoint a qualified staff representative.

The BP-A0959 form used to provide notice to the inmate also advises the inmate of his/her rights regarding evidence, witnesses, and staff representatives.

Inmates are entitled to appear at the hearing; however, at the discretion of the hearing psychiatrist, the appearance requirement may be met by videoconference. Teleconference is not permissible, as it does not allow the hearing psychiatrist to visually evaluate the inmate.

The assisting staff member’s responsibility is limited to helping the inmate obtain copies of documents needed, for example, from his/her central file or other reasonably available source(s), or a written statement(s) from reasonably available inmates or staff. The staff representative also helps the inmate prepare and submit an appeal if he/she requests assistance, or wishes to appeal but is unable to prepare and submit the appeal (see subsection b(9)).

(4) The hearing is to be conducted by a psychiatrist other than the attending psychiatrist, and who is not currently involved in the diagnosis or treatment of the inmate.
The hearing may be conducted via videoconference by a psychiatrist who is not physically located at the institution that currently houses the inmate. When the hearing is conducted via videoconference, the hearing is considered to be held at the location of the inmate, not the location of the hearing psychiatrist.

(5) Witnesses should be called if they are reasonably available and have information relevant to the inmate’s mental condition or need for hospitalization. Witnesses who will provide only repetitive information need not be called.

Witnesses are not required to appear at the hearing in person. If reasonably available, witnesses may appear via video- or teleconference, or may submit a written statement.

(6) A treating/evaluating psychiatrist/clinician, who has reviewed the case, must be present at the hearing and must present clinical data and background information relative to the inmate’s need for hospitalization. Members of the treating/evaluating team may also be called as witnesses at the hearing to provide relevant information.

The treating/evaluating psychiatrist/clinician may present clinical data and background information relative to the inmate’s need for hospitalization via video- or teleconference, or in person.

(7) The psychiatrist conducting the hearing must determine whether involuntary hospitalization is necessary because the inmate is presently suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility.

(8) The psychiatrist must prepare a written report regarding the initial decision. The inmate must be promptly provided a copy of the initial decision report, and informed that he/she may appeal it to the institution’s mental health division administrator. The inmate’s appeal, which may be handwritten, must be submitted within 24 hours after receipt of the hearing officer’s report. Upon request of the inmate, the staff representative will assist the inmate in preparing and submitting the appeal.

The psychiatrist conducting the hearing uses form BP-A0960, “Hearing Report: Involuntary Hospitalization for Psychiatric Care or Treatment,” to prepare the written report regarding the initial hospitalization decision.

The hearing psychiatrist must indicate the manner in which the hearing was held (in person or videoconference) on the appropriate section of the hearing report form. At the end of the hearing the hearing psychiatrist advises the inmate of his/her appeal rights and informs the inmate of the specific evidence relied upon in making the determination, the findings, and their justification. The inmate is also advised of the right to appeal the decision to the institution mental health
administrator within 24 hours of receipt of the hearing report. Any staff member may deliver a copy of the hearing report to the inmate.

(9) If the inmate appeals the initial decision, hospitalization must not occur before the administrator issues a decision on the appeal. The inmate’s appeal will ordinarily be reviewed by the administrator or his designee within 24 hours of its submission. The administrator will review the initial decision and ensure that the inmate received all necessary procedural protections, and that the justification for hospitalization is appropriate.

The form used for appeals is BP-A0962, “Appeal of Involuntary Hospitalization or Medication Decisions for Psychiatric Care or Treatment.” The staff representative who participated in the involuntary hospitalization hearing assists the inmate in filing an appeal, if necessary.

(c) Psychiatric medication. Following an inmate’s involuntary hospitalization for psychiatric care or treatment as provided in this section, psychiatric medication may be involuntarily administered only after following the administrative procedures provided in § 549.46 of this subpart.

Following the involuntary hospitalization of inmates for psychiatric care or treatment, whether pursuant to (a) or (b) of this Section, the involuntary administration of psychiatric medication must be preceded by an administrative hearing complying with procedures in Section 7. This hearing is in addition to a court order as explained in subsection (a), or any hearing held pursuant to the involuntary hospitalization of an inmate under subsection (b). Administrative hearings for involuntary hospitalization and medication cannot be combined into a single hearing. If a particular inmate needs both involuntary hospitalization and medication, two separate hearings are conducted.

Any use of force under this provision must comply with the procedures in the Program Statement Use of Force and Application of Restraints.

7. PROCEDURES FOR INVOLUNTARY ADMINISTRATION OF PSYCHIATRIC MEDICATION

§ 549.46 Procedures for involuntary administration of psychiatric medication.

Except as provided in paragraph (b) of this section, the Bureau will follow the administrative procedures of paragraph (a) of this section before involuntarily administering psychiatric medication to any inmate.

Any use of force under this provision must comply with the procedures in the Program Statement Use of Force and Application of Restraints.
(a) **Procedures.** When an inmate is unwilling or unable to provide voluntary written informed consent for recommended psychiatric medication, the inmate will be scheduled for an administrative hearing. The hearing will provide the following procedural safeguards:

(1) **Unless an exception exists as provided in paragraph (b) of this section, the inmate will not be involuntarily administered psychiatric medication before the hearing.**

(2) **The inmate must be provided 24-hours advance written notice of the date, time, place, and purpose of the hearing, including an explanation of the reasons for the psychiatric medication proposal.**

Use form BP-A0959, “Notice of Hearing and Advisement of Rights for Involuntary Hospitalization or Medication for Psychiatric Care or Treatment,” to provide notice to the inmate. This form is filled out only by the referring psychiatrist currently involved in the diagnosis or treatment of the inmate. Any staff member may deliver a copy of the notice to the inmate.

(3) **The inmate must be informed of the right to appear at the hearing, to present evidence, to have a staff representative, to request witnesses, and to request that witnesses be questioned by the staff representative or by the person conducting the hearing. If the inmate does not request a staff representative, or requests a staff representative with insufficient experience or education, or one who is not reasonably available, the institution mental health division administrator must appoint a qualified staff representative.**

The BP-A0959 form used to provide notice to the inmate also advises the inmate of his/her rights regarding evidence, witnesses, and staff representatives.

Inmates are entitled to appear at the hearing; however, at the discretion of the hearing psychiatrist, the appearance requirement may be met by videoconference. Teleconference is not permissible, as it does not allow the hearing psychiatrist to visually evaluate the inmate.

The assisting staff member’s responsibility is limited to helping the inmate obtain copies of documents needed, for example, from his/her central file or other reasonably available source(s), or a written statement(s) from reasonably available inmates or staff. The staff representative also helps the inmate prepare and submit an appeal if he/she requests assistance, or wishes to appeal but is unable to prepare and submit the appeal (see subsection b(9)).

(4) **The hearing is to be conducted by a psychiatrist other than the attending psychiatrist, and who is not currently involved in the diagnosis or treatment of the inmate.**
The hearing may be conducted via videoconference by a psychiatrist who is not physically located at the institution that currently houses the inmate. When the hearing is conducted via videoconference, the hearing is considered to be held at the location of the inmate, not the location of the hearing psychiatrist.

(5) **Witnesses should be called if they are reasonably available and have information relevant to the inmate’s mental condition or need for psychiatric medication.** Witnesses who will provide only repetitive information need not be called.

Witnesses are not required to appear at the hearing in person. If reasonably available, witnesses may appear via video- or teleconference, or may submit a written statement.

(6) **A treating/evaluating psychiatrist/clinician, who has reviewed the case, must be present at the hearing and must present clinical data and background information relative to the inmate’s need for psychiatric medication.** Members of the treating/evaluating team may also be called as witnesses at the hearing to provide relevant information.

The treating/evaluating psychiatrist/clinician may present clinical data and background information relative to the inmate’s need for psychiatric medication via video- or teleconference, or in person.

(7) **The psychiatrist conducting the hearing must determine whether involuntary administration of psychiatric medication is necessary because, as a result of the mental illness or disorder, the inmate is dangerous to self or others, poses a serious threat of damage to property affecting the security or orderly running of the institution, or is gravely disabled (manifested by extreme deterioration in personal functioning).**

(8) **The psychiatrist must prepare a written report regarding the initial decision. The inmate must be promptly provided a copy of the initial decision report, and informed that he/she may appeal it to the institution’s mental health division administrator.** The inmate’s appeal, which may be handwritten, must be submitted within 24 hours after receipt of the hearing officer’s report. Upon request of the inmate, the staff representative will assist the inmate in preparing and submitting the appeal.

The psychiatrist conducting the hearing uses form BP-A0961, “Hearing Report: Involuntary Medication for Psychiatric Care or Treatment,” to prepare the written report regarding the initial medication decision.

The hearing psychiatrist must indicate the manner in which the hearing was held (in person or videoconference) on the appropriate section of the hearing report form. At the end of the hearing
the hearing psychiatrist advises the inmate of his/her appeal rights and informs the inmate of the specific evidence relied upon in making the determination, the findings, and their justification. The inmate is also advised of the right to appeal the decision to the institution mental health division administrator within 24 hours of receipt of the hearing report. Any staff member may deliver a copy of the hearing report to the inmate.

(9) If the inmate appeals the initial decision, psychiatric medication must not be administered before the administrator issues a decision on the appeal, unless an exception exists as provided in paragraph (b) of this section. The inmate’s appeal will ordinarily be reviewed by the administrator or his designee within 24 hours of its submission. The administrator will review the initial decision and ensure that the inmate received all necessary procedural protections, and that the justification for administering psychiatric medication is appropriate.

The form used for appeals is BP-A0962, “Appeal of Involuntary Hospitalization or Medication Decisions for Psychiatric Care or Treatment.” The staff representative who participated in the involuntary medication hearing assists the inmate in filing an appeal, if necessary.

(10) If an inmate was afforded an administrative hearing which resulted in the involuntary administration of psychiatric medication, and the inmate subsequently consented to the administration of such medication, and then later revokes his consent, a follow-up hearing will be held before resuming the involuntary administration of psychiatric medication. All such follow-up hearings will fully comply with the procedures outlined in paragraphs (a)(1) through (10) of this section.

(b) Exceptions. The Bureau may involuntarily administer psychiatric medication to inmates in the following circumstances without following the procedures outlined in paragraph (a) of this section:

Any use of force under this provision must comply with the procedures in the Program Statement Use of Force and Application of Restraints.

(1) Psychiatric emergencies.

(i) During a psychiatric emergency, psychiatric medication may be administered only when the medication constitutes an appropriate treatment for the mental illness or disorder and its symptoms, and alternatives (e.g., seclusion or physical restraint) are not available or indicated, or would not be effective. If psychiatric medication is still recommended after the psychiatric emergency, and the emergency criteria no longer exist, it may only be administered after following the procedures in §§ 549.44 or 549.46 of this subpart.
(ii) For purposes of this subpart, a psychiatric emergency exists when a person suffering from a mental illness or disorder creates an immediate threat of:

(A) Bodily harm to self or others;
(B) Serious destruction of property affecting the security or orderly running of the institution; or
(C) Extreme deterioration in personal functioning secondary to the mental illness or disorder.

(2) Court orders for the purpose of restoring competency to stand trial.

Absent a psychiatric emergency as defined above, § 549.46(a) of this subpart does not apply to the involuntary administration of psychiatric medication for the sole purpose of restoring a person’s competency to stand trial. Only a federal court of competent jurisdiction may order the involuntary administration of psychiatric medication for the sole purpose of restoring a person’s competency to stand trial.

(i) Retention of Court Orders and Documentation. All court orders requiring the involuntary administration of medication for the sole purpose of restoring competency must be retained in the inmate health record. Staff at examining facilities are encouraged to keep a log of time, date, and type of contact for all communication and correspondence related to the order, such as calls to attorneys, and letters to or from the court. This log will help ensure that Bureau staff maintain compliance with court orders originating in the jurisdiction of the court action.

(ii) Compliance with Court Orders. Bureau staff must continue to comply with a court order requiring the involuntary administration of medication. If an inmate’s medical condition changes, the treating physician should promptly consult with the Regional Medical Director, as well as Regional Counsel and staff at the Consolidated Legal Center, for legal assistance and possible consultation with the prosecuting United States Attorney’s Office.

REFERENCES

Program Statements
P5212.07 Control Unit Programs (2/20/01)
P5310.12 Psychology Services Manual (03/07/95)
P5310.13 Mentally Ill Inmates, Institution Management of (03/31/95)
P5566.06 Use of Force and Application of Restraints (11/30/2005)
P6010.02 Health Services Administration (01/15/05)
P6340.04 Psychiatric Services (01/15/05)

Federal Regulations
ACA Standards
- Standards for Adult Correctional Institutions, 4th Edition: 4-4348, 4-4372, 4-4374, 4-4397M, 4-4399, 4-4401M, 4-4404
- Performance Based Standards for Adult Local Detention Facilities, 4th Edition: 4-ALDF-4C-05, 4-ALDF-4C-31, 4-ALDF-4C-34, 4-ALDF-4D15M, 4-ALDF-4C-40, 4-ALDF-4D-17M, 4-ALDF-4D-20

BOP Forms
Various Consent to Use (name of psychiatric medication)
BP-A0801 Consent to Admission for Mental Health Treatment
BP-A0959 Notice of Hearing and Advisement of Rights for Involuntary Hospitalization or Medication for Psychiatric Care or Treatment
BP-A0960 Hearing Report: Involuntary Hospitalization for Psychiatric Care or Treatment
BP-A0961 Hearing Report: Involuntary Medication for Psychiatric Care or Treatment
BP-A0962 Appeal of Involuntary Hospitalization or Medication Decisions for Psychiatric Care or Treatment

Records Retention Requirements
Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) on Sallyport.