

HEALTH SERVICES POLICY & PROCEDURE MANUAL

North Carolina Department Of Correction
Division Of Prisons

SECTION: Care and Treatment of Patient –
Medication Administration

POLICY # TX II-8

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SUBJECT: Involuntary Administration of Psychotropic
Medication (for use in Residential and Inpatient
only)

EFFECTIVE DATE: June 2012
SUPERCEDES DATE: August 2010

References

Related ACA Standard

**4th Edition Standards for Adult Correctional
Institutions 4-4378, 4-4401**

PURPOSE

To delineate the conditions under which psychotropic medication may be administered involuntarily and outline the procedures governing its use.

POLICY

Mental Health treatment is predicated on the presence of a diagnosable condition, the development and implementation of an effective treatment plan, and is most effective when there is cooperative participation by the inmate in the treatment process. All treatments, including the use of psychotropic medications, are intended to be used in accordance with prevailing legal and community standards of practice and with due regard for the rights of the individual inmate.

I. RESPONSIBILITY TO THE INMATE

- A. No psychotropic medication shall be administered to an inmate except upon written order of a physician.
- B. The inmate is entitled to participate in the decision-making process with regard to his/her mental health treatment, including the use of any psychotropic medications.
- C. Health services personnel are expected to encourage inmate participation in the treatment planning process and to encourage inmate compliance with treatment once a plan is developed.
- D. When psychotropic medications are to be used and to the extent the inmate can comprehend, the physician shall advise the inmate of the potential risks and benefits associated with the use of suggested psychotropic medications.
- E. Should an inmate raise an objection to the use of psychotropic medication, he/she shall be informed of the right to refuse psychotropic medication and of the probable consequences, medical and psychiatric, should the inmate refuse to accept the prescribed medication(s).

II. DUTY TO SEEK INMATE COMPLIANCE

Health services personnel should endeavor to obtain inmate compliance with prescribed treatment plans, including the regular and scheduled acceptance of any psychotropic medications prescribed for the inmate. Inmate noncompliance with treatment plans, especially with psychotropic medication, can have immediate implications for institutional order and security as well as the general welfare and safety of other inmates and correctional staff who live and work under conditions of close confinement. While compliance is important in successful treatment, health services personnel must always be mindful that the inmate has the ultimate right to refuse treatment, including the use of psychotropic medication. However, under certain conditions psychotropic medications may be forcibly administered to an inmate who has refused to voluntarily accept prescribed medication.

III. CONDITIONS FOR INVOLUNTARY ADMINISTRATION

Psychotropic medication may be forcibly administered to an inmate housed and being treated in a designated Inpatient or Residential Mental Health Treatment Program if either of the following two conditions apply:

- A. Failure to treat the inmate's condition poses or would pose an imminent substantial risk of injury or death to the inmate or those around him/her, or

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- B. There is evidence of current deterioration or worsening of the inmate's diagnosed condition which, if not treated, is likely to produce acute exacerbation of an inmate's condition such that the safety or life of the inmate or others would be endangered.

IV. MEDICATION REFUSAL

- A. All instances of psychotropic medication refusal must be documented in the inmate's health record and reported as soon as practically possible to the treating psychiatrist.
- B. The medication refusal shall be documented on the Medication Administration Record (MAR), form DC-175. There shall also be a Progress Note entered into the inmate's health record by the medical staff responsible for administering the medications.
- C. Staff responsible for administering the medication should question the inmate about the refusal and attempt to determine from the inmate the reason for the medication refusal and encourage the inmate to accept the medication. These efforts shall also be documented in the record.
- D. If an inmate refuses medication, the attending psychiatrist or on call psychiatrist shall be notified no later than the next working day and evaluate whether the inmate meets the criteria set forth to forcibly administer psychotropic medications over the inmate's objections.
1. If the psychiatrist determines that if refused the inmate's condition poses or would pose an imminent substantial risk of injury or death to the inmate or those around him/her, **and**
 - a. the medication being considered is a generally accepted treatment for the inmate's condition, **and**
 - b. there is a substantial likelihood that the treatment will effectively reduce the signs and symptoms of the inmate's illness, **and**
 - c. the proposed medication is the least intrusive treatment option of the possible treatments, then an initial Emergency Involuntary Medication Order not to exceed twenty-four (24) hours may be issued. The pertinent circumstances and rationale for the psychotropic medication shall be documented in the inmate's medical record. If needed, one (1) subsequent Emergency Involuntary Medication Order not to exceed forty-eight (48) hours may be given. However, this subsequent order may be authorized only after the attending psychiatrist has received the written or verbal (may be by telephone) concurrence from another psychiatrist or physician not currently directly involved in the inmate's treatment. Such concurrence shall be documented in the inmate's medical record. In addition, the Chair of the Involuntary Medication Committee shall be notified in writing (e.g., copy of physician's order, e-mail, etc.) of each instance of an Emergency Involuntary Medication Order, including the inmate's name and OPUS number, the date and time of the order, and the medication(s) and dose(s) administered.
 - d. If a second Emergency Involuntary Medication Order is issued within thirty (30) days of the first Involuntary Emergency Medication Order, then the case shall automatically be referred to the Involuntary Medication Committee for review.
 2. In the case where the inmate's refusal of psychotropic medication does not meet the criteria for an imminent substantial risk, but may meet the criteria for deterioration or worsening of the inmate's diagnosed condition, such that the safety or life of the inmate or others would be endangered, the case shall be referred to the Involuntary Medication Committee for review. The Involuntary Medication Committee shall review and determine if conditions exist an Involuntary Medication order should be issued. In making its decision, the Committee shall apply the same criteria.
 3. If neither of the above situations exists, the inmate's refusal to accept the medication shall be honored.

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V. RESTRICTIONS, EMERGENCY INVOLUTARY PSYCHOTROPIC MEDICATION

In the administration of Emergency Involuntary Psychotropic Medications, **no long-acting agent may be used** (e.g., decanoate formulations) nor will any formulation be used which yields active metabolites with a half-life greater than forty-eight (48) hours.

VI. INVOLUNTARY PSYCHOTROPIC MEDICATION COMMITTEE REFERRAL PROCEDURES

Notice of Referral to Involuntary Psychotropic Medication Committee is required before every formal Involuntary Psychotropic Medication Committee Hearing.

- A. Written notice (DC-546 - Notice of Referral to Involuntary Psychotropic Medication Committee) shall be presented to the inmate before the Hearing takes place. The DC-546 shall inform the inmate of:
 1. The location of the Hearing
 2. The soonest date and time the Hearing could occur
 3. The purpose of the hearing, including the reason for the involuntary medication proposal
 4. The name of the inmate's appointed Advisor
 5. The inmate's rights concerning the Hearing
- B. Notice of Referral is presented to the inmate by his/her appointed advisor who will:
 1. Explain the inmate's rights concerning the Hearing
 2. Attempt to obtain the inmate's signature acknowledging receipt of the Notice of Referral
 3. Inform the inmate of date, time and location of Hearing when scheduled
 4. Meet with the inmate before the Hearing and provide assistance to inmate in preparation for the Hearing
 5. Write "Refused to Sign" in the Inmate Signature space if the inmate refuses to sign the DC-546
 6. Indicate the date and time the Notice of Referral was presented
- C. The Involuntary Psychotropic Medication Committee Chair will schedule the time of the committee meeting.

VII. INMATE REPRESENTATION

Whenever an inmate refuses medication and his/her case is referred to the Involuntary Medication Committee, the Director of Mental Health (or designee) shall appoint a member of the treatment staff to serve as the inmate's Advisor. The inmate may rely upon the assistance of his or her advisor in all aspects of the hearing. The Advisor should appear before the Involuntary Medication Committee whenever it is in the inmate's best interest or at the request of the inmate. A summary of the inmate's reasons for refusal shall be recorded in the inmate's medical record.

The Advisor's role is to assist the inmate:

- A. In his/her attempt to show that no mental illness exists
- B. In acquiring whatever services are required can be provided without the use of involuntarily administered psychotropic medications. In attempting to show one or both of these conditions to be true, the inmate may call witnesses to present evidence at the Hearing on his/her behalf within the following guidelines:
 1. The number of witnesses must be reasonable as determined by the Chairman of the Committee.
 2. Testimony may be received by conference telephone or speaker phone if the Hearing is conducted away from where the witness is assigned or works.

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3. Written statements from witnesses may be taken in lieu of direct testimony.
 4. Specific inmate witnesses may be excluded from direct testimony if a justifiable threat to the safe and efficient operation of the facility would occur if the proposed witness were brought to the Hearing location.

C. The Advisor is expected to:

1. Advise competently and independently on the inmate's behalf.
2. Act **solely** on the inmate's behalf.
3. **Not** be subject to any harassment, pressure, or disciplinary action in connection with the proper execution of his/her duties in connection with advising the inmate.
4. Provide assistance to the inmate in implementing strategies that the inmate has decided upon.
5. **Not** serve as legal counsel in designing a defense, but provide assistance to the inmate as he/she:
 - a. Formulates areas in which to question witnesses that are expected to be presented by the Division of Prisons.
 - b. Determines which witnesses to summons on his/her behalf and advising the inmate with regard to the pertinent and relevant information these witness might provide.

The Advisor will consult directly with the Chair of the Committee with regard to procedures as well as issues of witness testimony. The Advisor will have access to the medical records **and** to the Case Presentation Summary in order to help the inmate prepare for the Hearing. **Inmates will not have direct access to their mental health treatment records.** The Advisor will use only those portions of the medical record germane to the question before the Committee and will maintain the confidentiality of the remaining information. The information obtained from the mental health treatment record shall not be shared with other individuals outside the Hearing process.

When hearing any case involving the involuntary administration of medication, the Involuntary Medication Committee will consider any oral and written comments from the inmate's advisor. No inmate advisor shall be subject to any disciplinary action for acting on behalf of an inmate in accordance with this policy.

VIII. INVOLUNTARY PSYCHOTROPIC MEDICATION COMMITTEE HEARING PROCEDURES

The Involuntary Medication Committee shall be appointed by the Mental Health Director and shall consist of a Psychologist, a Psychiatrist, and a Mental Health Nurse (RN). One of these members shall be appointed to act as Committee Chair by the Mental Health Director. If the Psychiatrist who issued the involuntary medication order is the individual who normally sits on the committee, another Psychiatrist not directly involved with the inmate's treatment shall serve on the committee. To ensure objectivity the Psychologist and Mental Health nurse on the committee shall not be on the treatment team assigned to the inmate. However, other members of the staff will be encouraged to attend the committee meeting to provide pertinent information that would be useful to the committee in making its determination. In conducting the hearing, the Committee Chair, shall confirm that:

- The inmate received written and verbal notice of the referral, date, time and place of the Hearing, and
- The inmate had a minimum of forty-eight (48) hours to prepare for the hearing from the time he/her was notified of the referral, and
- The inmate was informed about his/her right to hear the evidence presented providing the basis for the involuntary medication, and
- The inmate was advised of his/her right to call witnesses to testify on his/her behalf.

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- A. The inmate attends the hearing unless the inmate's clinical condition is such that attendance is not feasible. The committee must state and document its reasons for determining that the presence of the inmate is not feasible. In this circumstance, the inmate's appointed representative will act on the inmate's behalf at the hearing, and will be allowed the opportunity to present facts relevant to whether an involuntary medication order should be issued.
 - B. The inmate shall be allowed a reasonable number of witnesses to be determined by the committee chairman. Written statements by witnesses may be considered in lieu of direct testimony. Specific inmate witnesses may be excluded from direct testimony if their presence would jeopardize the safe and efficient operation of the facility or if requested witnesses could not reasonably attend the Hearing.
 - C. If the inmate is present at the Hearing, she/he shall be given an opportunity to question staff who presents evidence that supports the need to involuntarily medicate with psychotropic medications.
 - D. In presenting evidence to the Committee, the referring psychiatrist shall provide a written (type-written) Case Presentation Summary which shall include relevant facts for consideration by the Committee members. This Case Presentation Summary shall include at least:
 1. Identifying information (inmate name, OPUS number, etc.)
 2. Rationale for referral to the Committee and proposed medication intervention(s)
 3. Criminal history, sentence structure, infraction history
 4. History of mental illness & treatment
 5. History of involuntary psychotropic medication use
 6. Medical history
 7. Current Mental Status Examination
 8. Current Diagnosis (Axis I, II, & III)
 9. Prognosis (both with medication and without medication)
 - E. After the committee has received and reviewed all relevant information, the members will consider the facts and arrive at a decision by vote.
 1. A majority decision is required to approve authorization to administer involuntary psychotropic medications, with such majority including the Physician voting member of the Involuntary Psychotropic Medication Committee.
 2. Authorization to administer involuntary medications shall not exceed thirty (30) days.
 3. The Involuntary Psychotropic Medication Committee Report (DC-953) will be prepared and filed in the inmate's health record at the conclusion of the Hearing.
 4. If at any time the committee has questions regarding the legal propriety of forcibly administering medication in a given case, the committee shall consult the attorney from the Attorney General's Office assigned to represent the Department.
 - F. The inmate shall be advised of the committee's decision and that he or she may submit an appeal to the Director of Mental Health Services or designee regarding the decision within twenty-four (24) hours of the decision and that the Director of Mental Health Services or designee shall review the decision within twenty-four (24) hour of the inmate's appeal. The Director of Mental Health Services or designee shall ensure that the inmate received all necessary procedural protections and that the justification for the involuntary medication is appropriate. Upon the request of the inmate, the client advisor shall assist the inmate in preparing and submitting the appeal.

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- G. If the inmate appeals, absent a psychiatric emergency, medication will not be administered before the Director of Mental Health Services's decision. The inmate's appeal, which may be handwritten, must be filed within twenty-four (24) hours of the inmate's receipt of the decision.
- H. For those inmates that fail to attend the hearing it shall be the responsibility of the attending psychiatrist or designee from the treatment team to inform the inmate of the committee's decision and the appeal process. This notification shall be documented in the medical record and be completed in a timely manner to assure compliance with the time frame for requesting an appeal.
- I. If involuntary psychotropic medication is still deemed necessary after the initial thirty (30) day period, the attending psychiatrist will:
1. Present a current, type-written Case Presentation Summary (as described above) to the Involuntary Medication Committee Chair.
 2. Summary shall include any medication refusals, use of force incidents, adverse reactions, and any other relevant clinical information to be considered by the Committee.
 3. The Committee may then authorize the administration of involuntary psychotropic medication for an additional ninety (90) days.
 - a. If clinically indicated, a second ninety (90) day renewal may be issued by the Committee if requested by the treating psychiatrist utilizing the same procedure (i.e., a current type-written Case Presentation Summary presented to the Committee Chair).
 - b. Under no circumstances shall more than two (2) consecutive ninety (90) day renewals be approved by the Committee without a formal Referral and Hearing.

IX. RESTRICTIONS, INVOLUNTARY PSYCHOTIC MEDICATION

If the Committee approves the use of involuntary psychotropic medications, such approval requires that **no long-acting agents be used** (e.g., decanoate formulations) with fewer than ten (10) days remaining on an active involuntary psychotropic medication order. This applies to both initial thirty (30) day orders **and** to subsequent ninety (90) day renewal orders

Involuntary medication order shall remain in effect as long as the inmate is housed within the Department of Correction Inpatient/Residential Program.

- A. In situations where an inmate is transferred outside the Department of Correction for fifteen (15) days or less, forced medication order shall resume upon return to the Department of Correction.
- B. After fifteen (15) days of absence from the Department of Correction the inmates' involuntary medication order will expire and the inmate will have to be re-presented to the committee in the event the clinician desires to resume forced medications.

X. DOCUMENTATION

At the time of the Involuntary Psychotropic Medication Committee Hearing, the Involuntary Psychotropic Medication Committee Report (DC-953) shall be completed by the Chair of the Committee.

- A. Each Committee member will record his/her decision regarding the use of involuntary psychotropic medications, along with his/her rationale for that decision.
- B. The Committee's decision regarding the use of involuntary psychotropic medications shall be filed in the

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inmate's inpatient or residential mental health treatment record. When the order expires, the documents shall be placed in the miscellaneous section of the chart.

In accordance with current Division of Prisons policy:

- A. Complete documentation of all actions relating to the forceful administration of psychotropic medication will be included in the inmate's mental health record.
- B. Reported to the facility head (Superintendent or Warden) on the "Use of Force Report" (DC-422) whenever physical force is actually used to administer psychotropic medication.



6/27/12

John S. Carbone, M.D., Director of Mental Health Services

Date

SOR: Director of Mental Health Services