

§ 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.

§ 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.

§ 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.

(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:

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

§ 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.

(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.

(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.

(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.

(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.

(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.

(7) The psychiatrist conducting the hearing must determine whether involuntary administration of psychiatric