

F1967 and Response to Comments to Petition HP 00-4," March 2, 2001.

16. Memorandum from M. Kumagai, Directorate for Engineering Sciences, "Evaluation of Bath Seat Design," March 2, 2001.

17. Letter dated May 7, 2001 from Dr. Kimberly Thompson to Chairman Ann Brown re: Comments on Briefing Package Petition No. HP 00-4, Request to Ban Baby Bath Seats.

18. Memorandum dated May 21, 2001 to the Commission from Debra Sweet, Statistician, Division of Hazard Analysis, re: Comments from Kimberly M. Thompson, Sc.D., on Briefing Package for Petition HP 00-4, Request to Ban Baby Bath Seats.

[FR Doc. 03-31135 Filed 12-24-03; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Bureau of Prisons

#### 28 CFR Part 549

[BOP-1088-P]

RIN 1120-AB20

#### Administrative Safeguards for Psychiatric Treatment and Medication

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

**SUMMARY:** In this document, the Bureau of Prisons (Bureau) amends its regulations on Psychiatric Treatment and Medication. We make several minor word changes to conform more closely with the language of 18 U.S.C. 4241-4247 on psychiatric hospitalization. We remove from the rule two elements of the standard for determining whether treatment or psychotropic medication is necessary because this element is inconsistent with community standards and case law. We also change the rules to conform with statutory authority regarding military prisoners and District of Columbia (DC) Code violators in Bureau custody. Previously, our procedures for involuntary psychiatric treatment and medication did not apply to military prisoners or DC Code violators. Under new statutory authority, military prisoners who are incompetent to stand trial, or who have been found not guilty by reason of lack of mental responsibility may now be committed to the Bureau's custody. Sentenced DC Code offenders may now be involuntarily committed to a Bureau psychiatric hospital. Such military prisoners and DC Code violators are subject to our regulations. We revise the applicability statement accordingly.

**DATES:** Please submit comments by February 27, 2004.

**ADDRESSES:** Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

**SUPPLEMENTARY INFORMATION:** The Bureau amends its regulations on providing psychiatric treatment and medication to inmates. We published a final rule on this subject in the **Federal Register** on September 25, 1995 (60 FR 49444).

The following is a section-by-section analysis of the changes we are making: *Section 549.40 Use of Psychotropic Medications.* In this rule, we merely clarify that psychotropic medication is to be used only for a diagnosable psychiatric disorder or *symptoms* for which such medication is accepted treatment. Previously, the rule allowed medication for "symptomatic behavior." The word "symptoms" is more accurate medical terminology.

*Section 549.41 Voluntary Admission And Psychotropic Medication.* In this section, we revise subparagraph (a) to more closely conform with the language of 18 U.S.C. 4241-4247. We change the words "psychiatric treatment and medication" to "psychiatric hospitalization and treatment." We also clarify that inmates may be voluntarily admitted for psychiatric hospitalization and treatment when determined necessary by a clinician with hospital-admitting privileges, which is more accurate than the former term "qualified health personnel."

*Section 549.42 Involuntary Admission.* In this section, as in the previous section, we alter the first sentence by changing the words "psychiatric treatment" to "psychiatric hospitalization" to more closely conform with the language of 18 U.S.C. 4245.

*Section 549.43 Involuntary Psychiatric Treatment and Medication.* In this section, we revise the second sentence of the introductory paragraph by deleting", and no further judicial authorization is needed for the admission decision." and inserting "for the involuntary admission." The current rule explains that "[c]ourt commitment for the hospitalization provides the judicial due process hearing." The remaining phrase, which states that no further judicial authorization is needed, is redundant and unnecessary. We therefore make this change to streamline and clarify the language of this rule.

In subparagraph (a)(5), we clarify that the psychiatrist conducting a hearing to

determine whether treatment or psychotropic medication is necessary will no longer consider whether the inmate is unable to function in the open population of a mental health referral center or a regular prison as a separate basis to justify involuntary administration of medication. We make this change because we found this element to be inconsistent with community standards and applicable case law. *See Cochran v. Dysart*, 965 F.2d 649 (8th Cir. 1992).

Also in subparagraph (a)(5), we delete language that allowed the psychiatrist conducting an administration hearing to determine whether psychotropic medication is necessary to make an inmate competent to stand trial. This revision stems from the Supreme Court decision in *Sell v. U.S.*, 2003 WL 21372478, decided on June 16, 2003. Under the *Sell* decision, where involuntary treatment is considered solely for the purpose of rendering the defendant competent to stand trial, only the trial court may order involuntary medication after applying the standards set forth by the Court.

Finally, we change subparagraph (c) for the following reasons: Title 18 U.S.C. 4241-4247 and various Federal court decisions required certain due process procedures before involuntary hospitalization or involuntary psychiatric treatment. Under former 18 U.S.C. 4247(j), these due process procedures did not apply to military prisoners or DC Code violators.

However, new 10 U.S.C. 876b provides that military prisoners who are incompetent to stand trial or who have been found not guilty by reason of lack of mental responsibility may be committed to the custody of the Attorney General and that the procedures authorized under 18 U.S.C. 4241(d), 4246, and 4243 apply. Likewise, under new 18 U.S.C. 4247(j), DC Code violators are subject to commitment procedures specified at 18 U.S.C. 4245 and 4246.

Accordingly, we revise the list of exceptions in 28 CFR 549.43(c) to remove the reference to military prisoners and DC Code violators. We also clarified the last sentence of paragraph (c).

#### Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Director has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been

reviewed by the Office of Management and Budget.

#### Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Regulatory Flexibility Act

The Director, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director, and its economic impact is limited to the Bureau's appropriated funds.

#### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### List of Subjects in 28 CFR Part 549

Prisoners.

#### Harley G. Lappin,

Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the

Director, Bureau of Prisons, we propose to amend 28 CFR part 549 as follows.

#### SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

#### PART 549—MEDICAL SERVICES

1. Revise the authority citation for 28 CFR part 549 to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. 876b; 18 U.S.C. 3621, 3622, 3524, 4001, 4005, 4042, 4045, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4241–4247, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. Revise § 549.40 to read as follows:

#### § 549.40. Use of psychotropic medications.

Psychotropic medication is to be used only for a diagnosable psychiatric disorder or symptoms for which such medication is accepted treatment.

3. Revise § 549.41(a) to read as follows:

#### § 549.41 Voluntary admission and psychotropic medication.

(a) A sentenced inmate may be voluntarily admitted for psychiatric hospitalization and treatment when, in the professional judgment of a clinician with hospital-admitting privileges such inmate would benefit from such treatment and demonstrates the ability to give informed consent to such admission. The assessment of the inmate's ability to give informed consent will be documented in the inmate's medical record by qualified health personnel.

\* \* \* \* \*

#### § 549.42 [Amended]

4. Amend § 549.42 by removing the words "for psychiatric treatment" from the first sentence and adding in their place the word "psychiatric" before the word "hospitalization" in the first sentence.

5. Amend § 549.43 as follows:

a. In the second sentence of the introductory paragraph remove "and no further judicial authorization is needed for the admission decision." and add in its place "for the involuntary admission."

b. Revise paragraph (a)(5).

c. In the second sentence of paragraph (b), add the words "or disorder," after "mental illness."

d. Revise paragraph (c) to read as follows:

#### § 549.43 Involuntary psychiatric treatment and medication.

(a) \* \* \*

(5) The psychiatrist conducting the hearing shall determine whether

treatment or psychotropic medication is necessary because the inmate is dangerous to self or others, or is gravely disabled. The psychiatrist shall prepare a written report regarding the decision.

\* \* \* \* \*

(c) Exceptions. Title 18 U.S.C. 4241–4247 do not apply to unsentenced Department of Homeland Security (DHS) detainees, unsentenced prisoners in Bureau custody as a result of a court order (e.g., a civil contemnor), and state or territorial prisoners. For those persons not covered by sections 4241–4247, the decision to involuntarily admit the person to the hospital must be made at an administrative hearing, meeting the requirements of *Vitek v. Jones*, 445 U.S. 480 (1980). The decision to provide involuntary treatment, including medication, accordingly is to be made at an administrative hearing in compliance with § 549.43(a).

[FR Doc. 03–31704 Filed 12–24–03; 8:45 am]

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#### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Parts 1 and 2

RIN 2900–AK10

#### Standards for Collection, Compromise, Suspension, or Termination of Collection Effort, and Referral of Civil Claims for Money or Property; Regional Office Committees on Waivers and Compromises; Salary Offset Provisions; Delegations of Authority

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to revise its current regulations concerning the collection, compromise, suspension, termination, and referral of debts owed to VA. The proposed revision clarifies and simplifies debt collection standards and reflects changes to Federal debt collection procedures under the Debt Collection Improvement Act of 1996. VA also proposes to revise regulations pertaining to the administration of regional office Committees on Waivers and Compromises, as well as a regulation pertaining to delegations of authority to the Assistant Secretary for Management.

**DATES:** Comments must be received on or before February 27, 2004.

**ADDRESSES:** Mail or hand deliver written comments to: Director, Regulations Management (00REG1), 810 Vermont Avenue NW., Room 1068, Washington,