

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Behavioral Health (“the Department”), pursuant to the authority set forth in Sections 5113, 5115, 5117 and 5118 of the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code §§ 7-1141.02, 7-1141-04, 7-1141.06 and 7-1141.07 (2014 Supp.)), hereby gives notice of his intent to amend Chapter 5 (Use of Restraints and Seclusion) of Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The purpose of these amendments is to reflect changes in the use of restraints in Title 22-A DCMR, Subsections 503, 505 and 513. The proposed amendments to Subsection 503 address the change to the District’s public adult psychiatric facility, Saint Elizabeth’s Hospital, which has transitioned from multiple maximum security and non-maximum security facilities on several acres to a single facility, which includes maximum, moderate and minimum security units. The regulations are amended to reflect the use of restraints to transport maximum security individuals to areas of the hospital that are less secure. In addition, the proposed amendment to this section amends the definition of “drugs used as a restraint” to be consistent with federal regulations.

The proposed amendments to Subsection 505 allow the use of ambulatory restraints for the sole purpose of transporting a restrained individual to a safe location within a facility.

The proposed amendments to Subsection 513 clarify that leather anklets and wristlets can be used, in addition to metal restraints, and allow for the use of the legally mandated restraints within a single facility consistent with the proposed amendments to Subsection 503.

The Director gives notice of his intent to take final rulemaking action to adopt the proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 5, USE OF RESTRAINTS AND SECLUSION, of 22-A DCMR, MENTAL HEALTH, is amended as follows:

Subsection 503.6 is amended to read as follows:

503.6 Legally mandated restraints are the mechanical restraint of an adult maximum security consumer during transport to or from a facility, or within a facility, including a hospital, to District of Columbia Superior or Federal Court, applied in accordance with the order of a U.S. Marshal, a judge, or other law enforcement official or forensic services policy.

Subsection 503.8 is amended to read as follows:

503.8 A drug used as a restraint is a medication that is used as a restriction to manage the patient's behavior or restrict the patient's freedom of movement and is not a standard treatment or dosage for the patient's condition.

Subsection 505.1(b) is amended to read as follows:

- 505.1 In employing restraints and seclusion, the following measures are strictly prohibited:
- (b) Ambulatory restraints (restraints which allow the consumer to walk around while restrained, such as wristlets or anklets) except as part of a legally mandated restraint, or for the limited purpose of transporting a restrained consumer to a safe location;

Subsection 513.1 and 513.2 are amended to read as follows:

- 513.1 This chapter does not govern the use of legally mandated restraints. Legally mandated restraints are restraints ordered by a court of law or restraints that are applied, monitored, and removed at the discretion of a law enforcement officer, such as a Deputy United States Marshal, an agent of the Secret Service, or an officer of the Metropolitan Police Department, with custody of a consumer, or restraints applied by facility or hospital staff to a maximum security consumer when being transported within or outside of a facility or hospital, in accordance with forensic services policy approved by the Medical Director of the hospital.
- 513.2 Metal or leather wristlets and anklets can be used in the case of a restrained consumer requiring transport to a safe location consistent with Section 505. Metal or leather handcuffs, wristlets and anklets can be used with maximum security consumers who are secured by forensic services personnel in accordance with forensic services policy approved by the Medical Director of the facility, or the order of a judge, U.S. Marshall, or other law enforcement agency with appropriate jurisdiction for transport:
- (a) To the District of Columbia Superior Court or Court of Appeals;
 - (b) To any Federal Court; and
 - (c) Within a facility or a hospital, including areas on or outside the facility or hospital grounds.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Deon Merene, Deputy General Counsel, Office of General Counsel for the Department of Behavioral Health at 1100 Alabama Ave, SE, 2nd Floor, Washington, D.C. 20032, telephone (202) 299-5580, or Deon.Merene@dc.gov. Copies of the proposed rules may be obtained from www.dbh.dc.gov or from the Department of Behavioral Health at the address above.