Idaho Department of Correction	**Standard Operating Procedure** **Operations Division** **Operational Services**	**Control Number:** 401.06.03.067	**Version:** 2.1	**Page Number:** 1 of 17 **Adopted:** 3-1-2001 **Reviewed:** 8-2-2012
		Title: Involuntary Medication and Treatment		

This document was approved by Shane Evans, director of the Education, Treatment, and Reentry Bureau, on 8/2/12 (signature on file).

Open to the general public: ☒ Yes

BOARD OF CORRECTION IDAPA RULE NUMBER 401

Medical Care

POLICY CONTROL NUMBER 401

Clinical Services and Treatment

DEFINITIONS

Standardized Terms and Definitions List

Chief Psychologist: The Idaho Department of Correction (IDOC) employee who is primarily responsible for overseeing or managing the IDOC's mental health services.

Diagnostic and Statistical Manual of Mental Disorders (DSM): The standard manual of psychiatric diagnoses, as published and amended by the American Psychiatric Association from time to time.

Emergency Involuntary Medication: The administration of medication to an offender without the offender's informed consent but only in situations that warrant emergency intervention and only for a limited duration.

Gravely Disabled: A condition in which a person, as a result of a physical or mental disorder, (a) is in danger of serious physical harm resulting from a failure to provide his essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning as evidenced by repeated and escalating loss of cognitive or volition control over his actions and is not receiving such care as is essential for his health or safety.

Health Authority: The Idaho Department of Correction (IDOC) employee who is primarily responsible for overseeing or managing the IDOC's medical services. (The health authority is commonly referred to as the health services director.)

Idaho Security Medical Program (ISMP): A statutorily-constituted program maintained by the Idaho Board of Correction for persons displaying evidence of mental illness or psychological disorders, requiring diagnosis and treatment in a maximum security setting, and for other criminal commitments.

Involuntary Medication: The administration of medication to an offender without the offender's informed consent. (Under non-emergency involuntary medication situations, the administration of medication will occur only after holding an involuntary medication hearing.)

Involuntary Medication Hearing: A hearing to determine whether an offender in a non-emergency involuntary medication situation should be subject to involuntary medication.

Involuntary Medication Hearing Committee (IMHC): A committee comprised of a deputy warden, non-treating psychologist, and non-treating psychiatrist for the purpose of determining whether an offender should be subjected to involuntary medication. (The non-treating psychiatrist shall serve as chair of the IMHC.)

Involuntary Medication Report: A report, submitted by the treating psychiatrist, requesting the involuntary medication of an offender who will not or cannot give informed consent to treatment.

Likelihood of Serious Harm: A substantial risk that:

- Physical harm will be inflicted by an individual upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or
- Physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or
- Harm will be inflicted by an individual upon his or other's property as evidenced by behavior which has caused substantial loss or damage to his or other's property.

Medical Director: A physician either employed by the Idaho Department of Correction (IDOC) or contracted through privatized services (i.e., the physician in charge if medical services are privatized).

Mental Disorder: Any organic, mental, or emotional impairment which has a substantial adverse effect on an individual's cognitive functioning or volitional control.

Preponderance of the Evidence: The general standard of proof in most civil cases, which is the degree of proof that will lead a person (e.g., a party, an investigator) to conclude that the existence of the fact is more probable than not.

Regional Health Manager: The individual (a) assigned as the primary manager, and (b) administratively responsible for the delivery of medical services, if health services are privatized.

PURPOSE

The purpose of this standard operating procedure (SOP) is to establish guidelines for the involuntary administration of medications to those offenders suffering from mental disorders, who as a result of those disorders, are considered gravely disabled and/or presents the likelihood of serious harm to self, others, or their property.

SCOPE

This SOP applies to all Idaho Department of Correction (IDOC) employees, offenders, contract medical providers and subcontractors.

More specifically in regards to offenders, this SOP applies to those offenders (a) committed to the custody of the IDOC pursuant to a judgment of conviction, and (b) committed to the Idaho Security Medical Program pursuant to Idaho Code, section 66-1306 et seq.

RESPONSIBILITY

The director of the Education, Treatment, and Reentry Bureau **and** deputy chief of the Prisons Bureau shall be jointly responsible for the implementation of this SOP **and** for designating appropriate personnel to develop and implement procedures in conjunction with this SOP.

Table of Contents

GENERAL REQUIREMENTS

1. Right to Refuse Treatment

Pursuant to SOP 401.06.03.071, *Right to Refuse Treatment*, an offender has the right to refuse treatment, including medications. The involuntary medication of an offender may only take place under the circumstances and procedures described herein this SOP.

2. Informed Consent

Prior to any involuntary administration of medication to an offender, an attempt must be made to obtain the offender's informed consent (see SOP 401.06.03.070, *Informed Consent*). If the offender provides informed consent, treatment will be provided and staff shall no longer be required to follow the guidance provided herein this SOP.

3. Recording the Administration of Involuntary Medication

The administration of involuntary medication shall be recorded with a video recorder. A copy of the recording will be retained in the offender's healthcare record.

4. Use of Force

If the administration of involuntary medication is ordered **and** the use of force is required, only the amount of force necessary to administer the medication shall be used.

Note: The use of force must be preceded by an attempt to use a less restrictive means to administer the medication. When the use of force is required, it shall be in accordance with SOP 307.02.01.001, *Use of Force: Prisons and Reentry Centers (CRCs)*.

5. Offender's Right to Seek Relief

Nothing in this SOP shall be construed as limiting or expanding an offender's rights to seek relief.

Note: Offenders shall not use the grievance process described in SOP 316.02.01.001, *Grievance and Informal Resolution Procedure for Offenders*, to seek relief. Instead, offenders may seek relief through the courts.

EMERGENCY INVOLUNTARY MEDICATION FOR OFFENDERS

6. Basis and Procedure for Emergency Involuntary Medication

Generally, an involuntary medication hearing must be held prior to any involuntary administration of medication to an offender. However, a physician or psychiatrist may order the emergency involuntary administration of medication without holding an involuntary medication hearing if, in his professional judgment, the offender:

- Is refusing or is unable to consent to treatment;
- Is suffering from a 'mental disorder';
- As a result of that mental disorder, presents an imminent likelihood of serious harm to self or others, including the failure to care for self if the harm is imminent; and
- Is unlikely to respond to less restrictive medically acceptable alternatives, or such alternatives are not available or have not been successful.

Note: For the purpose of this SOP only, 'mental disorder' includes mental illness or psychological disorders which may provide a basis for commitment to the Idaho Security Medical Program pursuant to Idaho Code, section 66-1306 et seq.

Note: The emergency involuntary administration of medication to the offender shall only occur where there is an existing emergency **and** shall not be ordered in anticipation of a potential or future emergency.

Note: No more than two (2) emergencies for a single offender may be declared within any 30-day period.

Physician and Psychiatrist Responsibilities

Where the emergency involuntary administration of medication is ordered by a physician who is not a psychiatrist, the physician must consult with a psychiatrist within 24 hours of administering the medication to the offender.

- If the psychiatrist concurs with the physician, treatment may be continued for an additional 48 hour period.
- If the psychiatrist does not concur, treatment shall cease immediately.
- Documentation of the psychiatrist's consultation shall be entered in the offender's healthcare record.

After the emergency involuntary administration of medication to the offender, the physician or psychiatrist will:

- Ensure monitoring occurs for adverse reactions and side effects;
- Document in the offender's healthcare record the specific justification for the medication, when and how the medication is to be administered, what alternative treatments were attempted (or if no alternative treatments were attempted, document why alternative treatments were not attempted, were unavailable, or were unlikely to succeed); and

- Notify the facility head (or designee) **and** the chief psychologist within 24 hours of initiating treatment and document the notification in the offender's healthcare record.

Duration of Treatment

The emergency involuntary administration of medication to the offender shall have a maximum duration of 72 hours for a single emergency **and** may not continue beyond that time without holding an involuntary medication hearing.

If during the 72-hour period the offender consents to treatment, the 72-hour period will no longer apply. The offender's consent to treatment shall be documented in the offender's healthcare record.

Offender Consent to and then Refuses Treatment

If, after consenting to treatment, the offender again refuses **and** the conditions set forth in this section are applicable, the offender may again be involuntarily administered medication pursuant to the emergency involuntary administration of medication procedures provided in this section. If this occurs, new 24-hour and 72-hour periods begin.

NON-EMERGENCY INVOLUNTARY MEDICATION FOR OFFENDERS

7. Basis for Non-emergency Involuntary Medication

An offender may be subject to non-emergency involuntary medication but only if the Involuntary Medication Hearing Committee (IMHC) holds an involuntary medication hearing, **and** only if the IMHC finds that the offender:

- Suffers from a 'mental disorder' and is gravely disabled; and/or
- Suffers from a mental disorder **and** poses a likelihood of causing serious harm to himself, others, or their property.

Note: Also see section 9, subsection titled 'Involuntary Medication Hearing Officer Responsibilities (Post-IMHC Deliberations)'.

Note: For the purpose of this SOP only, 'mental disorder' includes mental illness or psychological disorders which may provide a basis for commitment to the Idaho Security Medical Program pursuant to Idaho Code, section 66-1306 et seq.

Note: Non-emergency involuntary medication shall be administered only at facilities with identified mental health **or** behavioral health units.

Other safeguards that the IMHC will consider when determining whether or not an offender may be subject to non-emergency involuntary medication are when:

- A psychiatrist determined that the offender should be medicated;
- The offender did not consent to the medication after being given the opportunity to do so;
- All available less restrictive options were exhausted, were shown to be ineffective, or were likely to not be effective;

- The psychiatrist determined that the potential benefits for the proposed medication outweighed the risks associated with it; and
- A less restrictive means of non-emergency treatment was attempted and exhausted, was not successful, was unlikely to succeed, and if true, specifically what means were attempted or exhausted, and what was the basis for concluding that the treatment did not succeed or was unlikely to succeed.

8. Pre-involuntary Medication Hearing Procedure

The involuntary medication hearing process shall be initiated when the treating psychiatrist submits an Involuntary Medication Report to the facility head, chief psychologist, medical director, or their designees. The Involuntary Medication Report shall include, but not be limited to:

- The factual basis of the request for non-emergency involuntary medication;
- Observed behaviors and mental status of the offender;
- The factual basis for the offender's tentative diagnosis from the current Diagnostic and Statistical Manual of Mental Disorders (DSM);
- Documentation indicating the offender meets the criteria for non-emergency involuntary medication;
- Methods used to encourage the offender to accept medication voluntarily and the offender's response to those efforts;
- The offender's history of voluntary and involuntary non-emergency treatment;
- Whether less restrictive medically acceptable means of treatment are available, have been attempted, have been effective, and the likelihood of their effectiveness;
- The medication suggested to treat the offender, the offender's expected prognosis with and without the medication, and the risks and benefits associated with it; and
- The likely duration of the medication.

Treating Psychiatrist Responsibilities

Upon submission of the Involuntary Medication Report, the treating psychiatrist shall arrange for:

- Scheduling the involuntary medication hearing;
- Forwarding of a copy of the Involuntary Medication Report (via email or fax) to the IMHC **and** making the offender's healthcare record available to the IMHC no later than 24 hours prior to the hearing; and
- Notifying the facility head (or designee) **and** chief psychologist of the hearing and documenting this notification in the offender's healthcare record.

24 Hours Prior to Involuntary Medication Hearing: Offender's Right to Refuse Treatment

For a period of 24 hours prior to the involuntary medication hearing, the offender shall not be subject to any medication for the 'mental disorder' (see section 7) for which non-emergency involuntary medication is proposed.

Note: An offender receiving emergency involuntary medication shall have the right to refuse medication during the same 24-hour period.

Involuntary Medication Hearing Officer Appointment

An involuntary medication hearing shall be facilitated and presided over by an involuntary medication hearing officer.

In consultation with the Deputy Attorneys General (DAGs) who represent the IDOC, the chief of the Operations Division (or designee) shall appoint an involuntary medication hearing officer.

The involuntary medication hearing officer shall not have been involved in the treatment of the offender for whom the involuntary medication hearing is being held for.

Involuntary Medication Hearing Officer Responsibilities (Pre-involuntary Medication Hearing)

The involuntary medication hearing officer's duties shall include, but not be limited to, the following:

- Prior to serving the Notice of Involuntary Medication Hearing on the offender, assigning a staff hearing assistant to assist the offender in the hearing and/or appeal process;
- Arranging for an interpreter or translation service if the offender does not speak English;
- Ensuring that an involuntary medication hearing record is kept (see section 9); and
- Ensuring the involuntary medication hearing record (see section 9) **and** a Notice of the Right to Appeal (see section 10) are delivered together to the offender.

Staff Hearing Assistant Appointment and Responsibilities

In consultation with the DAGs who represent the IDOC, the involuntary medication hearing officer shall appoint a staff hearing assistant.

The staff hearing assistant must be an IDOC physician's assistant, nurse practitioner, or registered nurse who has not been directly involved in the offender's treatment or diagnosis.

The staff hearing assistant shall be responsible for assisting the offender with understanding the medical and psychiatric issues involved in the involuntary medication hearing process, and obtaining witness statements, other documents, or evidence.

If the offender is excluded from the involuntary medication hearing process, chooses not to participate, or is unable to participate due to the severity of his 'mental disorder' (see

section 7), the staff hearing assistant shall attend the hearing for the offender (having the same rights as the offender) and represent the offender's wishes as best as possible.

Prior to the involuntary medication hearing, the staff hearing assistant shall meet with the offender and explain to him the following:

- The contents of the Notice of Involuntary Medication Hearing;
- The stated reason for the hearing;
- The medication being recommended, its expected result, and the likely outcome without benefit of the medication;
- The reason the offender is being offered staff assistance;
- The hearing process and the offender's right to attend the hearing;
- The offender's right to challenge the recommended medications;
- The offender's rights to speak at the hearing, to present witnesses and documentary evidence, and to cross-examine witnesses;
- The offender's right to an interpreter or translation service, if one is required; and
- The offender's right to appeal the IMHC's decision to the facility head.

Prior to the involuntary medication hearing, the staff hearing assistant shall determine whether the offender requires an interpreter or translation service. If so, the staff hearing assistant shall immediately inform the involuntary medication hearing officer. If translation services are required but unavailable, the hearing should be delayed until such services are available.

Notice of Involuntary Medication Hearing

No later than 24 hours prior to the scheduled involuntary medication hearing, the offender shall be served with a Notice of Involuntary Medication Hearing. As designated by the involuntary medication hearing officer, service may be performed by the staff hearing assistant, a facility security staff member, or a clinician. The person performing service shall execute a Return of Service and deliver it to the involuntary medication hearing officer prior to the hearing.

The Notice of Involuntary Medication Hearing shall include:

- The date and time of the hearing;
- The reason for the hearing;
- The factual basis for the offender's tentative diagnosis (from the current DSM) and the data that supports it; and
- The evidence (see section 9) to be presented at the hearing that will be used to establish whether the offender meets the criteria for non-emergency involuntary medication. (The IDOC's evidence will include why staff believes non-emergency involuntary medication is necessary. The reasons why shall also be stated in the Notice of Involuntary Medication Hearing.)

Involuntary Medication Hearing Committee (IMHC) Responsibilities

The IMHC shall determine whether non-emergency involuntary medication is appropriate based on the evidence presented at the involuntary medication hearing.

Note: No IMHC member shall at the time of the hearing be directly involved in the offender's treatment or diagnosis for the disorder for which non-emergency involuntary medication is proposed.

Prior to the involuntary medication hearing, the IMHC shall review the Involuntary Medication Report **and** the offender's healthcare record.

Offender's Non-participation or Exclusion From the Involuntary Medication Hearing Process

The offender may elect to not participate **or** may be unable to participate in the involuntary medication hearing process due to the severity of his 'mental disorder' (see section 7). In such cases, the chair of the IMHC may request to the involuntary medication hearing officer that (a) the staff hearing assistant act for the offender during the hearing, and (b) the reasons why the offender is unable to participate be noted in the involuntary medication hearing record (see section 9).

An offender may be excluded or removed from the involuntary medication hearing for (a) safety or security reasons, or (b) if his behavior is so disruptive it is not possible to otherwise proceed with the hearing. The involuntary medication hearing officer will state for the involuntary medication hearing record (see section 9) the reasons why the offender has been excluded or removed. If the offender is excluded or removed from the involuntary medication hearing, (a) the hearing may proceed with the staff hearing assistant representing the offender's wishes, **or** (b) the involuntary medication hearing officer may continue the hearing for no more than three (3) days.

9. Involuntary Medication Hearing Procedure

Involuntary Medication Hearing Officer Responsibilities (Pre-IMHC Deliberations)

The involuntary medication hearing officer shall:

- Convene and preside over the involuntary medication hearing;
- Determine whether translation services are necessary and available;
- Verify that the offender, staff hearing assistant, interpreter (if necessary), all IMHC members, a DAG who represents the IDOC, and a person to create the involuntary medication hearing record are present;
- Identify all personnel who are authorized to remain present for procedural, security, clinical, legal, or training purposes;
- Inform those present of the rules and procedures that must be adhered to during the hearing, and exclude all non-essential personnel;
- Verify that the offender received a Notice of Involuntary Medication Hearing at least 24 hours prior to the hearing;
- Verify that the staff hearing assistant had the opportunity to consult with the offender prior to the hearing, and the offender understands his rights and (a) can

adequately understand the proceedings, or (b) the staff hearing assistant can adequately represent the offender's wishes at the hearing;

- Verify that the IMHC members have reviewed the Involuntary Medication Report, the tentative diagnosis, and the offender's healthcare record and/or mental health record.

Presentation of Evidence

During the presentation of evidence, IMHC members may question any witness **or** the offender.

The IDOC

The IDOC may present evidence through testimony, witnesses, or by records or documents. Evidence of the need for non-emergency involuntary treatment, the treatment proposed, the likelihood of the proposed treatment's success, its benefits and risks, and why less restrictive alternatives did not **or** will not work shall be presented by the treating psychiatrist. The offender may examine the evidence and cross-examine the IDOC's witnesses.

The Offender

The offender may present evidence, through testimony, witnesses, or by records or documents. The offender shall have the opportunity to state his preference as to non-emergency involuntary treatment options. The IDOC may examine the evidence and cross examine the offender's witnesses.

In the event the offender is not present, has been removed or excluded, or is unable to understand the hearing proceedings due to the severity of his 'mental disorder' (see section 7), the staff hearing assistant may present and examine evidence, testify, and cross-examine IDOC witnesses for the offender.

Inclusion or Exclusion of Evidence

Testimony from remote locations, including telephonic or videoconference testimony, may be allowed at the discretion of the involuntary medication hearing officer. Written witness statements provided by the offender may be considered upon a showing of good cause why the witness could not personally appear.

The involuntary medication hearing officer may allow, limit, or exclude evidence and the cross-examination of witnesses. Reasons for limiting or excluding evidence include, but are not limited to: relevance and/or security considerations.

When the involuntary medication hearing officer limits or excludes evidence or the cross-examination of witnesses, the reasons for doing so shall be reflected in the involuntary medication hearing record.

The involuntary medication hearing officer shall ensure that the involuntary medication hearing record reflects all witnesses giving testimony **and** all exhibits are entered into the record.

IMHC Deliberation

When the presentation of evidence is complete, the involuntary medication hearing officer will allow the IMHC to deliberate on whether the offender meets the criteria for being administered non-emergency involuntary medication.

Note: During deliberation, all personnel present (except for the IMHC members **and** the DAG who represents the IDOC) must leave the room, no additional evidence may be presented, and the facility head-designated staff member shall not take written minutes **or** a transcription (if the hearing is being electronically recorded). However, the IMHC will be allowed to consult with the DAG who represents the IDOC.

IMHC Responsibilities

The IMHC shall be responsible for rendering a decision based on the following:

- The Involuntary Medication Report;
- All evidence presented at the involuntary medication hearing;
- The offender's healthcare record and/or and mental health record; and
- The offender's stated preference for non-emergency involuntary treatment.

Note: The chair of the IMHC shall preside over their deliberations and summarize the IMHC's findings **and** evidence relied upon to reach a decision.

Involuntary Medication Hearing Officer Responsibilities (Post-IMHC Deliberations)

When the IMHC has concluded its deliberations and recorded its decision, it shall inform the involuntary medication hearing officer **and** the offender shall be allowed to return to the hearing proceedings.

The involuntary medication hearing officer shall inquire of the chair of the IMHC as to the evidence relied upon to reach their decision.

Following inquiry as to the evidence considered, the involuntary medication hearing officer shall inquire of the chair of the IMHC as to whether their decision was unanimous.

If their decision was unanimous, the chair of the IMHC shall speak to the decision made and that decision and the reason for the decision reflected in the involuntary medication hearing record.

If the decision was not unanimous, the involuntary medication hearing officer shall poll each IMHC member as to their individual findings so that their findings can be reflected in the involuntary medication hearing record.

Based on whether the decision was unanimous or not, the involuntary medication hearing officer shall inquire to the chair of the IMHC **or** each IMHC member as to whether they believe the evidence established that:

- The offender suffers from a 'mental disorder' (see section 7) and is gravely disabled; and/or
- The offender suffers from a mental disorder **and** poses a likelihood of causing serious harm to himself, others, or their property.

Note: The involuntary medication hearing officer shall also inquire to the chair of the IMHC whether or not the safeguards noted in section 7 were considered.

The chair of the IMHC must be in the majority of members who were polled to be in favor of allowing the IDOC to administer non-emergency involuntary medication to the offender.

The involuntary medication hearing officer shall ensure that the IMHC's findings are reflected in the involuntary medication hearing record.

If the IMHC's findings support non-emergency involuntary treatment, the involuntary medication hearing officer shall inform the offender of his right to an appeal (see section 10).

The involuntary medication hearing officer shall ensure that the involuntary medication hearing record be finalized and as soon as possible be transmitted (via email or fax) to the facility head, chief psychologist, medical director, and also provide the offender a hard copy of the record.

The involuntary medication hearing officer may consult with a DAG who represents the IDOC at any time during the non-emergency involuntary medication hearing.

Involuntary Medication Hearing Record

The facility head (or designee) shall designate a facility staff member to (a) be present at the non-emergency involuntary medication hearing **and** (b) take written minutes **or** a transcription (if the hearing was electronically recorded).

Note: During deliberation, the facility head-designated staff member shall not take written minutes **or** a transcription (if the hearing is being electronically recorded).

At the conclusion of the non-emergency involuntary medication hearing, the facility head-designated staff member shall finalize the written minutes **or** transcription.

The involuntary medication hearing record shall include, but not be limited to, the following:

- Instructions by the involuntary medication hearing officer to those present;
- The involuntary medication hearing officer's verification that the offender received a Notice of Involuntary Medication Hearing, was advised of involuntary medication hearing procedure **and** of his rights, had access to a staff hearing assistant, and whether or not an interpreter was required;
- Whether or not the offender refused to participate, was unable to participate in the non-emergency involuntary medication hearing due to the severity of his 'mental disorder' (see section 7), or was excluded or removed from the hearing, and if the latter, the grounds for excluding or removing the offender from the hearing;
- Whether or not all evidence and witnesses, cross-examination, and evidentiary rulings were allowed;
- The IMHC's findings;
- Whether or not the IMHC found in favor of allowing the IDOC to administer non-emergency involuntary medication to the offender; and

- Whether or not the offender was informed of his the right to appeal the IMHC's decision to the facility head.

The involuntary medication hearing record shall not reflect any consultation the involuntary medication hearing officer **and/or** an IMHC member had with a DAG who represents the IDOC.

Facility Head-Designated Staff Member's Responsibilities

The facility head-designated staff member who is responsible for finalizing the involuntary medication hearing record shall forward the record (via email or fax) to the involuntary medication hearing officer within 24 hours of the conclusion of the non-emergency involuntary medication hearing. Upon the involuntary medication hearing officer's approval, the staff member shall, as soon as possible, transmit the record (via email or fax) to the facility head, chief psychologist, medical director, and also provide the offender a hard copy of the record.

10. Appeal and Automatic Review of IMHC's Decision

An offender shall have the option to appeal the IMHC's decision to the facility head within 24 hours of receiving a hard copy of the involuntary medication hearing record.

In addition to the offender's option to appeal the IMHC's decision, and regardless of whether the offender exercises that option, the facility head shall automatically review the decision.

In conducting the automatic review, the facility head must consider the involuntary medication hearing record **and** if the offender appealed, all reasons set forth by the offender as the basis for the appeal.

Except on the grounds that the IMHC's decision was based on inaccurate or erroneous factual evidence, the facility head shall not override the IMHC's decision. The facility head does not and shall not have the authority to override an IMHC decision based on medical grounds.

If the facility head overrides the IMHC's decision based on inaccurate or erroneous factual evidence, the facility head's decision shall be in writing and specific reasons documented for overriding the IMHC's decision.

- In cases where the offender exercises his option to file an appeal, the facility head shall render a decision within one business day of receiving the appeal.
- In cases where the offender did not exercise his option to file an appeal, the facility head shall render a decision within one business day of receiving a copy of the involuntary medication hearing report.
- In all cases, the facility head should consult with a DAG who represents the IDOC when determining an offender's appeal **or** an automatic review.
- In all cases, the facility head shall forward (via email or fax, as soon as possible) his decision to all IMHC members, the DAG, the chief psychologist, the medical director, and also provide the offender a hard copy of the decision.

Note: The offender must be informed of the facility head's decision prior to the IDOC being allowed to administer non-emergency involuntary medication to the offender.

In cases where the facility head overrides the IMHC's decision, the facility head's decision shall constitute a remand, and the case shall be returned to the IMHC. In the case of a remand, the IMHC shall reconvene, and may:

- Accept the facility head's decision and issue a new decision to not allow the IDOC to administer non-emergency involuntary medication to the offender; or
- Set the matter for another involuntary medication hearing as soon as possible, with instructions to the IDOC to address the specific items set forth in the facility head's decision.

Note: If the IMHC conducts another involuntary medication hearing, the IMHC's decision shall again be subject to the appeal and automatic review process described in this section.

11. Periodic Review of the Administration of Non-emergency Involuntary Medication

After an involuntary medication hearing decision, the administration of non-emergency involuntary medication may continue for up to 180 days, and only upon periodic review, as set forth in this section.

After the first seven days of administering non-emergency involuntary medication, the treating psychiatrist shall prepare an Involuntary Medication Report regarding the offender's progress to the IMHC. The IMHC shall review the offender's case, consult, and either re-approve non-emergency involuntary medication or discontinue it. The IMHC's consultation of members may be in person or via electronic media (e.g., telephone, email, and teleconferencing). The IMHC's decision shall be transmitted (via email or fax) by the chair of the IMHC to the treating psychiatrist.

If the IMHC re-approves non-emergency involuntary medication, the treating psychiatrist shall, for every 14 days thereafter while the non-emergency involuntary medication continues, prepare an Involuntary Medication Report regarding the offender's progress to the health authority.

At the end of each 180 day period, another IMHC shall be convened and new findings must be made to continue the non-emergency involuntary medication. If non-emergency involuntary medication is again approved, the offender may appeal and the automatic review (see section 10) and periodic review (see this section) processes shall again take place.

NON-EMERGENCY INVOLUNTARY MEDICATION FOR OFFENDERS DEEMED UNFIT FOR CRIMINAL TRIAL

12. Idaho Security Medical Program (ISMP)

Pursuant to Idaho Code, section 18-212 **and** 66-1304(a), an offender may be committed to the Idaho Security Medical Program (ISMP) upon a finding that the offender is unfit to proceed in his criminal case. In such cases, non-emergency involuntary medication shall not be administered solely for purposes of rendering an offender competent to stand trial, except where the court which has jurisdiction over the criminal case and which has ordered the offender's commitment to the ISMP has made findings that:

- Important governmental interests are at stake in bringing the offender to trial;
- Non-emergency involuntary medication will significantly further those interests;

- Non-emergency involuntary medication is necessary to further those interests;
- Non-emergency involuntary medication is medically appropriate; and
- The IDOC is therefore authorized to administer non-emergency involuntary medication for purposes of rendering the offender competent to stand trial.

The administration of non-emergency involuntary medication under this section may take place only upon the chief psychologist's expressed authorization, based on a review of the applicable court order **and** consultation with the facility head, a DAG who represents the IDOC, and the director of the IDOC.

Pursuant to Idaho Code, section 66-1306, the director of the IDOC retains discretion to discharge an offender from the ISMP at any time.

REFERENCES

Balla v. Idaho State Board of Correction, 869 F.2d 461 (9th Cir. 1989)

Idaho Code, Title 18, Chapter 2, *Section 18-212, Determination of Fitness of Defendant to Proceed – Suspension of Proceeding and Commitment of Defendant – Postcommitment Hearing*

Idaho Code, Title 66, Chapter 13, *Idaho Security Medical Program*

Idaho Code, Title 66, Chapter 13, Section 66-1304, *Sources of Residents*

Idaho Code, Title 66, Chapter 13, Section 66-1306, *Final Decision*

Idaho Code, Title 66, Chapter 13, Section 66-1307, *Return of Patient*

Idaho Code, Title 66, Chapter 13, Section 66-1308, *Transport of Patients*

Idaho Code, Title 66, Chapter 13, Section 66-1309, *Costs and Charges*

Idaho Code, Title 66, Chapter 13, Section 66-1310, *Civil Rights of Residents*

Idaho Code, Title 66, Chapter 13, Section 66-1311, *Right to Humane Care and Treatment*

Idaho Code, Title 66, Chapter 13, Section 66-1312, *Standards for Treatment*

Idaho Code, Title 66, Chapter 13, Section 66-1313, *Mechanical Restraints*

Idaho Code, Title 66, Chapter 13, Section 66-1314, *Interstate Contracts*

Idaho Code, Title 66, Chapter 13, Section 66-1315, *Short Title*

Idaho Code, Title 66, Chapter 13, Section 66-1316, *Patients from Other Institutions*

Idaho Code, Title 66, Chapter 13, Section 66-1317, *Review of Involuntary Treatment*

Idaho Code, Title 66, Chapter 13, Section 66-1318, *Transfer of Noncorrectional Facilities*

National Commission on Correctional Health Care (NCCHC), *Standards for Health Services in Prisons,* Standard P-I-02, Emergency Psychotropic Medication

National Commission on Correctional Health Care (NCCHC), *Standards for Health Services in Prisons,* Standard P-I-05, Informed Consent and Right to Refuse

Riggins v. Nevada, 504 U.S. 127 (1992)

Sell v. United States, 539 U.S. 166 (2003)

Standard Operating Procedure 307.02.01.001, *Use of Force: Prisons and Community Reentry Centers (CRCs)*

Standard Operating Procedure 316.02.01.001, *Grievance and Informal Resolution Procedure for Offenders*

Standard Operating Procedure 401.06.03.070, *Informed Consent*

Standard Operating Procedure 401.06.03.071, *Right to Refuse Treatment*

Standards for Adult Correctional Institutions, Third Edition, Standard 3-4342

Vitek v. Jones, 445 U.S. 480 (1980)

Washington v. Harper, 494 U.S. 210 (1990)

– End of Document –