



NEW MEXICO CORRECTIONS DEPARTMENT

Secretary
Alisha Tafoya Lucero

CD-172500 Psychiatric Referral and Vitek Procedures
for the New Mexico Behavioral Health Institute

Issued: 07/25/07
Effective: 07/25/07

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Revised: 02/16/15

Alisha Tafoya Lucero, Cabinet Secretary

Original Signed and Kept on File

AUTHORITY:

NMSA Section 43-1-11(A), 1978 as amended.

REFERENCE:

American Psychiatric Association Practice Guidelines, 1996.
Vitek vs. Jones, 100 S. Ct. 1254 (1980), NMSA Section 43-1-11.

PURPOSE:

To establish the process for referral and admission to the New Mexico Behavioral Health Institute for psychiatric hospitalization for inmates who cannot be treated within NMCD facilities. The Vitek procedure is required for involuntary psychiatric admissions to the New Mexico Behavioral Health Institute.

APPLICABILITY:

All NMCD facilities and facilities contracted to hold NMCD inmates.

FORMS:

- A. **Notice of Proposed Involuntary Psychiatric Facility Transfer** form (*CD-172501.1*)
- B. **Determination of Vitek Mental Health Panel** form (*CD-172501.2*)

ATTACHMENTS:

None

DEFINITIONS:

- A. *Grave passive neglect*: Failure to provide for basic personal or medical needs or for one's own safety to such an extent that serious bodily harm will result in the near future.
- B. *Likelihood of serious harm to oneself*: The likelihood that in the near future the person will attempt to commit suicide or will cause serious bodily harm to themselves by violent or other self-destructive means, including but not limited to grave passive neglect.

- C. Likelihood of serious harm to others: The likelihood that in the near future the person will inflict serious, unjustified bodily harm on another person or commit a criminal sexual offense, as evidenced by behavior causing, attempting or threatening such harm, instilling a reasonable fear of such harm from the person.
- D. Vitek involuntary commitment hearing: a hearing that must be provided if possible to a prison inmate before he or she can be housed at an outside psychiatric hospital. A decision must be made to determine if there are grounds for outside psychiatric hospitalization.
- E. Vitek Mental Health Panel: A panel comprised of three members (the treating psychiatrist or psychologist, a non-treating psychiatrist or psychologist, and a non-mental health clinician such as the facility Warden) charged with making a determination of whether or not the inmate's condition can be treated within NMCD facilities or if the inmate should be transferred to an outside psychiatric facility on an involuntary basis.
- F. Vitek Mental Health Procedure: The process by which an inmate's condition is reviewed by a Vitek Mental Health Panel to decide if the inmate's condition can be treated within NMCD facilities or if the inmate should be transferred to an outside psychiatric facility on an involuntary basis.

POLICY:

A. Access to the New Mexico Behavioral Health Institute

Standards set by the American Psychiatric Association require that inmates have access to a full range of psychiatric services, including hospitalization in a psychiatric hospital accredited by the Joint Commission on the Accreditation of Health Care Organizations. A Joint Powers Agreement exists between the New Mexico Corrections Department and Department of Health. This agreement allows for the admission of inmates to the New Mexico Behavioral Health Institute if psychiatric treatment is needed and is not available within NMCD facilities.

B. NMCD approval for transfer to the New Mexico Behavioral Health Institute

Prior approval by the NMCD Director of Psychiatry or designee, the contract Chief Psychiatrist is required before making a referral to the New Mexico Behavioral Health Institute. The treating psychiatrist and mental health staff will submit a clinical summary stating the reasons for the New Mexico Behavioral Health Institute referral, address one or more of the commitment criteria and describe why the inmate cannot be treated effectively within NMCD facilities.



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AUTHORITY:

Policy CD-172500

PROCEDURES:

A. Criteria for transfer to the New Mexico Behavioral Health Institute

NMCD Contract Psychiatrists shall seek the transfer and admission to the New Mexico Behavioral Health Institute of those inmates who meet the following criteria:

1. NMCD inmates who are acutely mentally ill;
2. NMCD inmates who are civilly committable under the law of the State of New Mexico found in NMSA Section 43-1-11; and
3. NMCD inmates whose mental health/psychiatric needs cannot be met within NMCD facilities.

B. Clinical criteria for civil commitment, found in NMSA Section 43-1-11, are:

1. As a result of a mental disorder, the client presents a likelihood of serious harm to himself or others or grave passive neglect (also see Definitions);
 - a. "Grave passive neglect" means failure to provide for one's own basic personal or medical needs or for one's own safety to such an extent that it is likely that serious bodily harm will result in the near future.
2. The client needs and is likely to benefit from the proposed treatment; and
3. The proposed commitment is consistent with the treatment needs of the client and with the least drastic means principal.

C. Voluntary consent for transfer to the New Mexico Behavioral Health Institute

Inmates who voluntarily give informed consent to transfer are eligible as long as they otherwise meet the commitment criteria. No Vitek involuntary commitment hearing is

required prior to transfer to the New Mexico Behavioral Health Institute of an inmate who gives informed consent to transfer.

D. Involuntary transfer to the New Mexico Behavioral Health Institute

Inmates who do not voluntarily give informed consent to transfer to the New Mexico Behavioral Health Institute will receive a Vitek involuntary commitment hearing prior to transfer to the New Mexico Behavioral Health Institute. Transfer of inmates to an outside psychiatric facility on an involuntary basis shall be accomplished only upon the determination of a Mental Health Panel pursuant to the following Vitek procedure:

1. A written notice using the Psychiatric Facility Transfer form will be given to the inmate stating that a transfer to an outside psychiatric facility is being considered, informing the inmate of the date, time and place of the hearing before a Vitek Mental Health Panel and providing the inmate with a copy of this policy describing the Vitek procedure pertaining to involuntary transfer to an outside psychiatric facility.
2. A hearing before a Vitek Mental Health Panel will take place no earlier than 24 hours after the written notice using the Psychiatric Facility Transfer Form is given to the inmate.
3. The inmate has the right to be represented at the hearing by an advocate of his/her choice, to question the witnesses presented, and to present relevant evidence and witnesses of his/her own.
4. At the conclusion of the hearing, the Vitek Mental Health Panel will make a determination whether or not the inmate's condition can be treated within NMCD facilities or if the inmate should be transferred to an outside psychiatric facility on an involuntary basis.
5. The determination of the Vitek Mental Health Panel will be given to the inmate in writing using the Determination of Mental Health Panel form. The Determination of Mental Health Panel form will list the members of the Vitek Mental Health Panel, description of the mental disorder, needed psychiatric treatment at the outside psychiatric facility and evidence that adequate treatment cannot be provided at NMCD facilities. The inmate will sign the Determination of Mental Health Panel form indicating he or she has received a copy. If the inmate refuses to sign or is incapable of signing the Determination of Mental Health Panel form, the panel chairperson will make a notation indicating this on the inmate signature block.

**New Mexico Corrections Department Vitek Procedure
Notice of Proposed Involuntary Psychiatric Facility Transfer**

Date/Time: _____

This notice is to advise you that _____ has recommended that you be
(Name of Mental Health provider)
transferred to an outside psychiatric facility _____, which is designed for the
(Name of outside psychiatric facility)
care of persons with mental health disorders.

Before you can be transferred to that facility without your consent, you have the right to a fair hearing and the right to know the procedures to be used in determining if the proposed transfer is appropriate.

A hearing before the Mental Health Panel is scheduled at _____ a.m. /p.m. (circle one),
on (date) _____ to decide whether you will be transferred.

It will be held at _____.

If the Mental Health Panel decides that:

- 1. you have a mental disorder;
- 2. you need and would benefit from the treatment available at the proposed facility; and
- 3. adequate treatment cannot be provided where you are now living;

then you may be transferred to the proposed outside psychiatric facility without your consent.

You have the right to be represented at the hearing by an advocate of your choice, to question the witnesses presented, and to present relevant evidence and witnesses of your own.

If you have any questions concerning your rights under the procedure, which is attached, your caseworker or a member of the mental health staff can assist you. If you do not choose an advocate, one will be selected for you. Attached please find a copy of the Policy and Procedure regarding involuntary transfers to outside psychiatric facilities.

____ Policy/Procedure attached

Signature of Delivering Party _____

Date and Time Delivered _____

Inmate Name: _____ NMCD#: _____ Facility: _____ Housing Unit: _____

