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PART 7401 PREAMBLE AND LEGAL AUTHORITY

Section 7401.1. Preamble

The law requires that juvenile offenders held criminally responsible be committed to the custody of the commissioner of the Office and Children and Family Services and be confined in a secure facility maintained in accordance with Executive Law, section 508. Secure facilities are considered correctional facilities for purposes of the Commission's oversight only. It is acknowledged that secure facilities differ from adult correctional facilities in several significant respects. These regulations provide a framework for the oversight of the secure facilities and set forth a minimum standard of care to ensure the health, safety and well-being of the youth in confinement in compliance with constitutional requirements. It is further acknowledged that the Office of Children and Family Services may, in the exercise of its statutory authority pursuant to Executive Law, section 508, mandate adherence to good child care practices based on evidence based models in the operation of its secure facilities and provide strength based interventions and services to juvenile offenders confined therein. This regulatory framework will guide the Commission's oversight within the context of a secure juvenile justice setting that recognizes the unique needs of young people who are still developing mentally, emotionally, and physically, and as such, have great potential for positively transforming their lives with proper rehabilitative support in a safe and secure environment.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7401.2. Legal authority

(a) Article XVII, section 5 of the New York State Constitution provides that there shall be a State Commission of Correction which shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of a crime.

(b) For the purposes of the State Commission of Correction's authority, Correction Law, section 40(3) includes a secure facility operated by the Office of Children and Family Services within the definition of “correctional facility.”

(c) Correction Law, article 3 delineates the functions, powers and duties of the State Commission of Correction, which include:

> (1) to request and receive from any department, division, board, bureau, commission or other agency of the State or any political subdivision thereof or any public authority, such assistance, information and data as will enable the commission, the board and the council to properly carry out its functions, powers and duties [Correction Law section 44(4)];

(2) to visit, inspect and appraise the management of correctional facilities with specific attention to matters such as safety, security, health of inmates, sanitary conditions, rehabilitative programs, disturbance and fire prevention and control preparedness and adherence to laws and regulations governing the rights of inmates [Correction Law section 45(3)];

(3) to promulgate rules and regulations establishing minimum standards for the care, custody, rehabilitation, treatment, supervision, discipline and other programs for correctional facilities operated by the Division for Youth. [Correction Law section 45(6-b)];

(4) to close any correctional facility which is unsafe, unsanitary or inadequate to provide for the separation and classification of prisoners required by law or which has failed to adhere to or comply with the rules and regulations promulgated by the commission [Correction Law section 45(8)];

(5) to approve or reject plans or specifications for the construction or improvement of correctional facilities [Correction Law section 45(10)];

(6) to adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of the functions, powers and duties of the commission [Correction Law section 45(15)];

(7) to have access at any and all times to any correctional facility or part thereof and to all books, records and data pertaining to any correctional facility deemed necessary for carrying out the commission's functions, powers and duties [Correction Law section 46(1)];

(8) to require from the officers or employees of a correctional facility any information deemed necessary [Correction Law section 46(1)];

(9) to issue and enforce a subpoena or a subpoena duces tecum, administer oaths and examine persons under oath [Correction Law section 46(2)];

(10) to notify the chief administrative officer of any violation of the rules and regulations promulgated by the commission and recommend remedial action and to issue a directive requiring compliance with such rules and regulations. Upon the failure of the chief administrative officer to comply with such directive, the commission may apply to the Supreme Court for an order requiring compliance with such rule, regulation or law [Correction Law section 46(4)];

(11) to investigate and review the cause and circumstances surrounding the death of any inmate of a correctional facility [Correction Law section 47(1)(a)]; and

(12) to investigate the condition of systems for the delivery of medical care to inmates of correctional facilities [Correction Law section 47(1)(a)].

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7402 CLASSIFICATION

Section 7402.1. Policy

(a) In order to provide for the effective management of secure residential populations in a safe and secure environment, the Office of Children and Family Services (OCFS) shall establish, implement, and maintain a formal and objective system for the consistent classification of all secure facility residents.

(b) Consistent with the requirements of this Part, OCFS shall develop and implement a classification system that provides a mechanism for resident initial screening upon reception into OCFS, assessment of the resident by the facility, and resident reassessment to identify the special needs and risk, security and supervision requirements of residents in order to determine an appropriate secure facility and living unit assignment.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7402.2. Definitions

As used in this Part, the following definitions shall apply to the terms listed below:

(a) **Classification** shall mean the documented process of assigning residents to an appropriate secure facility and living unit by determining risk, security and supervision requirements, and the special needs of residents based on the initial screening and assessment by the facility.

(b) **Formal and objective system** shall mean a procedure for determining and documenting a resident's appropriate living unit assignment which utilizes standard and objective criteria and methods.

(c) **Initial screening** shall mean a documented preliminary determination of a resident's risk, special needs, and security and supervision requirements upon admission to OCFS.

(d) **Assessment by the facility** shall mean a documented standardized evaluation of a resident upon admission to a secure facility to determine the appropriate living unit assignment based on a resident's risk, security and supervision, and special needs requirements.

(e) **Living unit assignment** shall mean the documented assignment of the resident to a living unit pursuant to the assessment by the facility.

(f) **Resident reassessment** shall mean any documented review of an assessment of a resident's risk, security and supervision, and special needs made subsequent to a resident's initial assessment by the facility.

(g) **Special needs** shall include, but not be limited to: a medical condition or history of substance abuse, sex offenses, mental disorder or developmental disabilities.

(h) **Detention facility** shall mean any place used for the temporary confinement, pursuant to an order of a court, of a person charged with being or adjudicated a juvenile offender or juvenile delinquent as provided for in section 503 of the Executive Law.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7402.3. Policies and procedures

(a) Classification, assessment, and reassessment policies and procedures shall include, but not be limited to:

(1) staff responsibilities for functions relative to classification, assessment and reassessment;

(2) completion of the initial screening, assessment by the facility and reassessment, including, but not limited to, the determination of risk, security and supervision requirements and resident special needs;

(3) use of a formal screening and assessment instrument and other appropriate intake forms in the classification, assessment and reassessment process;

(4) assessments by the facility and reassessments made subsequent to initial screening for the assignment of residents to an appropriate living unit;

(5) notification to the resident of all living unit and program assignments based upon assessment by the facility and reassessment process; and

(6) procedures governing the disclosure of information contained in the resident medical and mental health records by the facility medical director and/or mental health supervisory staff pursuant to section 7402.7 of this Part.

(b) Such policies and procedures shall be reviewed annually and updated as needed.

(c) Such policies and procedures shall be made available to all facility staff.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7402.4. Initial screening and assessment by the facility

(a) Upon admission to OCFS, an initial screening shall be administered to each secure facility resident in order to make a preliminary determination of the resident's risk, security and supervision, and special needs requirements. Such initial screening documents shall be forwarded to the receiving security facility.

(b) Upon admission to a secure facility, each resident shall be administered an assessment which shall consist of a facility interview, visual assessment and review of the commitment documents. Such assessment by the facility shall occur immediately upon a resident's admission.

(c) Assessment instrument(s) shall be utilized by the facility to elicit and record information on each secure resident relating to the following:

(1) visible injury or injuries;

(2) medical conditions requiring immediate treatment;

(3) developmental or physical disabilities;

(4) history of mental health treatment;

(5) potential for self-injury or suicide;

(6) history of detention or confinement, including, but not limited to, hostile relationships with other residents;

(7) medication currently being taken;

(8) present attitude, appearance, and behavior;

(9) history of alcohol or substance abuse;

(10) criminal charge(s) and conviction(s);

(11) tattoos, body piercing, and other identifiers of gang affiliation; and

(12) any other relevant information concerning the safety or welfare of the resident.

(d) An immediate decision concerning further assessment of each resident shall be made on the basis of information gathered during initial screening and assessment by the facility. Such decision may include, but it is not limited to, referrals to outside medical and mental health service providers.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7402.5. Assignment to facility living unit upon facility admission

(a) After the initial screening and assessment by the facility are completed and pending determination of each resident's living unit assignment, the resident shall be placed in an area designated for such purpose. Placement in such unit shall be temporary pending the determination of an appropriate living unit, which shall be completed within three business days of each resident's admission to the secure facility.

(b) In arriving at a determination of each resident's living unit assignment, the facility director, person acting in that capacity, or designee shall base such determination on the following information, if such information is available and accessible:

(1) criminal history;

(2) propensity for victimization;

(3) medical/mental health history;

(4) history of sex offenses;

(5) history of hostile relationships with other residents;

(6) prior attempts at self-injury or suicide;

(7) prior escapes and attempted escapes;

(8) attitude and behavior during present and prior commitments, including any history of assaultive behavior during such commitments; and

(9) any other information which may affect the safety and security of the resident or staff.

(c) Each secure facility shall utilize a formal and objective system for assessment by the facility in order to fulfill the requirements of subdivisions (a) and (b) of this section and section 7402.6 of this Part.

(d) In considering the information contained in subdivision (b) of this section, the facility director, person acting in that capacity, or designee shall examine and verify the following:

(1) records made available from the court or the delivering jurisdiction;

(2) information obtained during a resident's initial screening and assessment by the facility;

(3) records, to the extent relevant, known, accessible and available, to the facility director, person acting in that capacity, or designee which are prepared at or maintained by any detention facility in the state;

(4) information obtained from mental health treatment providers in accordance with the Mental Hygiene Law;

(5) information contained in the resident's medical and psychiatric records if disclosed by the facility medical director and/or mental health supervisory staff pursuant to section 7402.7 of this Part; and

(6) any other relevant information concerning a resident's condition brought to the attention of the facility director, person acting in that capacity, designee, or any other staff by any person.

(e) Within one business day after determination of the living unit assignment, staff shall notify the resident of the determination and explain its implications, if any.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7402.6. Reassessment review

(a) The facility director, person acting in that capacity, or designee shall review or revise as necessary, pursuant to the requirements of section 7402.5 of this Part, a resident's risk, security and supervision and special needs requirements when one or more of the following conditions occur:

(1) the resident is involved in a serious unusual incident or exhibits other adjustment problems which threaten the resident's safety or the safety, security or good order of the facility;

(2) a written request, including justification, is made by staff to alter or review the resident's risk, security and supervision, and special needs requirements based on new information or exhibited positive or negative behavior; or

(3) the facility medical director or mental health supervisory staff discloses relevant information about the resident, pursuant to section 7402.7 of this Part, which has not already been considered in determining the resident's risk, security and supervision, and special needs requirements.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7402.7. Confidentiality and disclosure of resident medical and mental health records

(a) Each secure facility shall adhere to the requirements of section 7410.23 of this Title, article 27-F of the Public Health Law, article 33 of the Mental Hygiene Law, all applicable Department of Health regulations and Part 164 of this Title to ensure the confidentiality of a resident's medical, mental health, and facility records.

(b) The facility director of each secure facility shall make provisions for maintaining all medical and mental health records in confidential files separate from other residents' records at the secure facility.

(c) Except as otherwise prohibited or restricted by law, the facility medical director and/or mental health supervisory staff of each secure facility shall promptly disclose to the facility director, person acting in that capacity or designee information received concerning a resident which is or may be relevant in determining the resident's risk, security and supervision and special needs requirements, or may affect the life, safety, or welfare of the resident or any other person. The facility director, person acting in that capacity or designee shall then promptly disclose information appropriate to the staff responsible for making classification, assessment, and/or reassessment decisions.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7402.8. Resident classification, initial screening, assessment, and reassessment records

(a) Determinations based upon all initial screenings, assessments by the facility, and reassessments of a resident's risk, security and supervision, and special needs requirements shall be made in writing and kept in the resident's file.

(b) The information to be retained in the resident's file shall include, but is not limited to:

(1) the date when the initial screening was completed, including verification that the resident was notified of needs determinations and their implications, if any;

(2) the resident's criminal history;

(3) the resident's security and supervision requirements;

(4) any special needs of the resident;

(5) the name of staff responsible for making recommendations based on assessment by the facility or reassessment, and the signature of the facility director or designee making the final determination;

(6) the date of each facility assignment and living unit assignment based upon assessment by the facility and the reassessment process; and

(7) all instruments, forms, and other information used to make or record initial screening, assessments by the facility, and reassessment determinations.

(c) Either a photocopy or a written summary on a form developed for this purpose of the information noted in paragraphs (b)(2), (3) and (6) of this section and all resident records shall be sent with every resident when they are transferred to another secure facility.

(d) Whenever a written summary is sent pursuant to the requirements of subdivision (c) of this section, the name(s) of the staff who prepared the summarized information shall be clearly identified on the form.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7403 ADMISSIONS

Section 7403.1. Policy

(a) Consistent with the requirements of this Part, the Office of Children and Family Services (OCFS) shall develop written policies and procedures that govern admissions at an OCFS secure facility. The written policies and procedures shall be reviewed annually and updated as needed.

(b) Consistent with the requirements of this Part, OCFS shall develop policies and procedures to require that all residents are admitted to OCFS secure facilities in accordance with law and in a manner which protects the safety of all persons and the security of the facility.

(c) Only residents lawfully committed to, placed in or transferred to an OCFS secure facility shall be admitted to such facility.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7403.2. Authority for admissions

(a) Prior to the admission of any resident, facility staff performing admission functions shall examine the court order or other documents which serve as the authority for such admission. Residents shall be admitted to a facility only when an examination of resident identification and documentation confirms that a resident's identity corresponds with any information accompanying such order or document.

(b) The facility director, or person acting in that capacity, shall designate facility staff members to be responsible for admitting residents in accordance with the requirements of this Part.

(c) Persons delivering a resident to an OCFS secure facility shall present identification as required by OCFS.

(d) The admissions process shall include the recording of:

(1) the name of the resident admitted;

(2) the itemization of all documents and property received with the resident;

(3) the date and time of admission; and

(4) the name, title/rank, badge number (if appropriate) and authority of the delivering agent.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7403.3. Identification/documentation

(a) Consistent with the requirements of this section, identification procedures, including fingerprinting, shall be established for residents of OCFS secure facilities.

(b) All resident fingerprints shall be taken in accordance with the rules and methods prescribed by the New York State Division of Criminal Justice Services.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7403.4. Searches

Upon admission to an OCFS secure facility, a search shall be conducted to verify that no resident is in possession of contraband. A search shall include, but is not limited to, a strip search. When lawful and warranted, a body cavity search may be conducted pursuant to OCFS regulations.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7403.5. Property confiscation

(a) Facility staff shall confiscate all contraband and disallowed items from residents admitted to the facility pursuant to Part 7404 of this Title.

(b) All resident property confiscated by facility staff shall be inventoried and recorded in writing. Such inventory shall include:

(1) the name of the resident;

(2) an itemization of each personal property item confiscated with an accurate description of such item;

(3) the date of the confiscation; and

(4) the printed name and signature of staff completing the inventory.

(c) The resident shall verify, by signing the inventory, that such inventory is a complete and accurate itemization of such resident's confiscated personal property. If, for any reason, a resident is not able to verify, or refuses to verify, that such listing is accurate or complete by signing the inventory, such inventory shall be witnessed and signed by a second facility staff

member. The resident shall be given a copy of the signed inventory and at least one copy shall be retained in the facility.

(d) Except as provided in subdivisions (g) and (h) of this section, all property confiscated pursuant to this section shall be kept in a safe and secure area which is accessible only to authorized personnel.

(e) The facility director or assigned personnel shall establish and maintain accurate books of account with respect to any money confiscated pursuant to this Part. Money confiscated pursuant to this section shall be deposited in the resident's account, and a written receipt shall be provided to the resident.

(f) Personal property not allowed in the facility pursuant to OCFS policy shall be returned to the resident's parent, legal guardian or spouse at the expense of the facility.

(g) If no parent, legal guardian or spouse is available to receive property, or refuses to receive such property, and if such property cannot be stored within the facility because such storage may present a substantial facility health or sanitation threat, such property may, upon the order of the facility director or person acting in that capacity, be destroyed. Any such order shall be recorded in writing and shall state:

(1) the name of the resident;

(2) the specific property being destroyed;

(3) the time and date of destruction; and

(4) the specific facts and reasons why such property constitutes a facility health or sanitation threat.

(h) The facility director or person acting in that capacity shall not release any confiscated resident property, the possession of which may constitute a criminal offense, to any person except appropriate law enforcement officials. Any such release shall be recorded in writing and shall state:

(1) a description of the property released to law enforcement officials;

(2) the time and date of release;

(3) the name of the resident from whom the property is confiscated; and

(4) the name and organization of the official to whom the property is released.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7403.6. Records

(a) Each facility shall record and maintain information concerning each resident admitted to an OCFS secure facility.

(b) A record shall be made of the name, address, telephone number, and relationship to the resident of a parent, legal guardian, or spouse to be notified in case of the death, serious illness, or other serious incident involving the resident.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7403.7. Health screening

A health screening shall be administered by facility staff upon admission or prior to the placement of a resident in a facility housing unit, pursuant to section 7410.9(a)(1) of this Title.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7403.8. Personal hygiene and clothing issue

Upon admission, all residents shall be provided with personal hygiene items and clothing as required by Part 7419 of this Title.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7403.9. Admission telephone call

A resident shall be permitted to complete a telephone call to their legal guardian, parent or spouse at facility expense within 24 hours of admission. Upon admission, a resident shall be informed of their right to complete a telephone call.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7403.10. Orientation to facility rules and information

(a) Upon admission, each facility shall provide to all residents an orientation to services, a written copy of facility rules of conduct and disciplinary procedures. In addition, each facility shall make available other pertinent written information which shall include, but is not limited to, the following:

(1) available health services and procedures for access;

(2) procedures for the use of the telephone;

(3) available exercise, recreation, and leisure activities;

(4) information on any available facility programming, including, but not limited to:

(i) educational programs;

(ii) counseling programs;

(iii) vocational programs; and

(iv) work programs;

(5) commissary operations (if available);

(6) daily program schedule;

(7) information on the behavior management system;

(8) package procedures;

(9) correspondence procedures;

(10) visitation procedures and schedules;

(11) religious services schedules;

(12) grievance procedures;

(13) the availability of an ombudsman;

(14) an explanation of the oversight authority of the State Commission of Correction;

(15) the availability of the minimum standards of the State Commission of Correction chapter that pertains to OCFS secure facilities; and

(16) any additional information the facility director or person acting in that capacity deems necessary.

(b) Reasonable efforts shall be made to assist any resident who appears illiterate, non-English speaking, or for any other reason needs assistance in the understanding and use of necessary

facility rules of conduct, facility services, disciplinary procedures and programs, pursuant to Part 7405 of this Title.

(c) Each OCFS secure facility shall mail orientation information describing the availability of services and programs to the parent or legal guardian of each resident.

(d) Facility rules of conduct and information shall be reviewed annually and amended as needed.

(e) The facility director, or person acting in that capacity, shall require that each resident sign a document verifying that such resident has received, and been oriented to, the facility rules of conduct and the availability of other pertinent information required pursuant to this section.

(f) The facility director, or person acting in that capacity, may require that residents return any written information upon release or discharge from the facility.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7404 SECURITY AND SUPERVISION

Section 7404.1. Policy

The Office of Children and Family Services (OCFS) shall operate each secure facility in a manner that provides for adequate supervision of residents and for a safe and secure environment.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7404.2. Definitions

As used in this Part, the following definitions shall apply to the terms listed below:

(a) **Security post** shall mean a workstation/area established for the purpose of observing, supervising, and managing residents in a secure facility and shall be occupied by youth division aides or youth counselors, as defined in Part 7433 of this Title.

(b) **Supervisory** visit shall mean:

(1) a personal visual observation of each resident by facility staff responsible for the care and custody of such residents to monitor their presence and conduct; and

(2) a personal visual inspection of all areas in each occupied individual occupancy unit by staff responsible for the care and custody of residents to maintain the safety, security, and good order of the facility.

(c) **Active supervision** shall mean the immediate availability to residents of staff responsible for the care and custody of such residents, which shall include:

(1) the continuous occupation of a security post within the living area when residents are actually present on the living area;

(2) the uninterrupted ability to communicate orally with and respond to each resident unaided by any electronic or other artificial amplifying device;

(3) the conducting of supervisory visits at intervals not to exceed 30 minutes; and

(4) the ability of staff to immediately respond to emergency situations.

(d) **General supervision** shall mean:

(1) supervisory visits conducted at intervals not to exceed 30 minutes by staff who are responsible for the care and custody of residents when they are secured in their individual rooms; and

(2) the continuous occupation of a security post within a living area when occupied by residents.

(e) **Constant supervision** shall mean the uninterrupted personal visual observation of residents by facility staff responsible for the care and custody of residents. Facility staff shall provide continuous and direct supervision by occupying an assigned position in close proximity to the residents under supervision which shall provide staff with:

(1) a continuous clear view of all residents under supervision; and

(2) the ability to immediately and directly intervene in response to situations or observed behaviors which threaten the safety, security, or health of residents, another person, or the good order of the facility.

(f) **Contraband** shall mean:

(1) any article or substance, the possession of which would constitute an offense under the New York State Penal Law;

(2) any deadly weapon or dangerous instrument, as defined in article 10 of the Penal Law;

(3) any article or substance, the possession of which is specifically prohibited by written facility rules and regulations.

(4) any article or substance, the possession of which is specifically prohibited by the provisions of this Chapter; and

(5) any article or substance which may present a substantial sanitation or health threat to the facility.

(g) **Mechanical restraint** shall mean any device used to immobilize or limit a resident's movement which such resident cannot remove. This does not include incidental restraint during transportation outside a secure facility and/or routine movement within a secure facility.

(h) **Use of physical force** shall mean physical intervention with a resident by staff to control behavior and enforce order, with or without the use of mechanical restrains.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7404.3. Policies and procedures

(a) Consistent with the requirements of this Part, OCFS shall develop written policies and procedures that govern security and supervision for each secure facility. Such policies and procedures shall include, but not be limited to:

(1) supervision of residents in facility living areas;

(2) supervision of residents outside facility living areas;

(3) records of supervision;

(4) requirements of staff prior to assuming responsibilities in an assigned facility area;

(5) contraband;

(6) use of physical force and mechanical restraints;

(7) resident population counts;

(8) transport of residents;

(9) firearms control;

(10) key control;

(11) locks and other security devices;

(12) tool and equipment control; and

(13) perimeter control.

(b) These policies and procedures shall be reviewed annually and updated as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7404.4. Supervision of residents in facility living areas

(a) Active supervision shall be maintained in any secure facility living area when any resident is confined in such area but not secured in an individual unit.

(b) General supervision shall be maintained whenever a resident is secured in an individual occupancy unit. For the duration of such general supervision, mechanical or electrical time recording devices shall be used to record the performance of supervisory visits conducted pursuant to the requirements of this section.

(c) The records resulting from the use of mechanical or electrical time recording devices shall be retained within the facility and reviewed weekly by the facility director or designee.

(d) The facility director, designated administrator or the facility physician shall determine whether a resident requires additional supervision based on the resident's condition, illness or injury, and the facility director or designated administrator shall order such supervision if warranted. Additional supervision may include more frequent supervisory visits, active supervision when only general supervision is required, or constant supervision. Such determination shall be documented and include, but not be limited to, the following information:

(1) the reasons underlying such determination;

(2) orders made requiring such additional supervision, including the dates and times when the supervision is to be initiated and concluded;

(3) the name(s) of the individual(s) making such determination and/or ordering the supervision; and

(4) periodic facility staff observations of the resident's condition and behavior.

(e) Consistent with the requirements of section 7404.6 of this Part, such determination and orders for additional supervision shall be recorded.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7404.5. Supervision of residents outside facility living areas

Active supervision shall be maintained whenever residents are participating in activities outside their facility living areas.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7404.6. Records of supervision

(a) All written records pertaining to facility living area supervision required in this section shall be recorded legibly in ink, in a bound ledger of consecutively numbered pages, and shall be maintained for each living area. Such records shall include, but not be limited to, the following information:

(1) the name or designation of the living area for which the supervision is being maintained;

(2) the name(s) of staff conducting the supervision;

(3) where a security post is not located within a living area pursuant to section 7404.2(c)(1) of this Part, each supervisory visit conducted in the course of providing active supervision shall be entered in the living area logbook at the times such visits are made;

(4) the date and time when general supervision is initiated and concluded; and

(5) any significant events or activities occurring during supervision, including, but not limited to:

(i) the date and time of such event or activity;

(ii) the names of all residents and staff involved;

(iii) staff response to such event or activity if applicable, including a summary of what occurred; and

(iv) a description of any change in the physical or mental condition of any resident involved in such event or activity.

(b) Each entry recorded in the ledger required pursuant to this section shall include the signature of the staff member making the entry.

(c) Alterations made by staff to any entries contained within such ledger shall be:

(1) accomplished by staff drawing a single line through the entry to be changed which does not prevent the original entry from being read; and

(2) dated and signed by the staff making the alteration with the reason(s) noted for altering the record.

(d) Notwithstanding the provisions of this section requiring a bound ledger, records pertaining to living area supervision may be recorded on a computerized log. Entries made on a computerized log shall identify the staff making such entry.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7404.7. Requirements of staff prior to assuming responsibilities in an assigned facility area

(a) Upon assuming responsibilities in an assigned secure facility area, each staff shall review the log entries maintained pursuant to section 7404.6 of this Part.

(b) Upon assuming responsibilities in an assigned secure facility area, an assigned staff shall perform the following:

(1) conduct an actual count of the residents assigned to the staff's area of responsibility and record such results in a logbook;

(2) obtain and count all necessary keys for the assigned area in accordance with the provisions of section 7404.13 of this Part;

(3) inspect all supplies, equipment, locks, doors, screens, security windows, and other securing devices;

(4) perform any other necessary security functions as determined by the facility director or person acting in that capacity; and

(5) make a log entry documenting activities required by this section and initial such records.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7404.8. Contraband

(a) OCFS shall conduct facility and resident searches solely to inspect for contraband and/or to recover missing or stolen items.

(b) The disposition of contraband shall be in accordance with Part 7403 of this Title.

(c) Nothing in this section shall limit or restrict OCFS from using electronic devices during the search of residents, visitors, facilities, and/or secure grounds.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7404.9. Use of physical force and mechanical restraints

(a) The use of physical force and restraints by staff shall be reasonable under the circumstances and in accordance with applicable law.

(b) Neither physical force nor mechanical restraints shall be used for purposes of discipline, punishment, or for the convenience of staff.

(c) All staff and residents involved in a use of force incident shall thereafter be evaluated by licensed health care professionals and shall receive medical treatment if warranted.

(d) All use of force incidents shall be immediately entered into the appropriate logbook(s) and shall be fully documented within 24 hours of the incident.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7404.10. Formal resident population counts

(a) Formal resident population counts shall:

(1) be conducted at least once during each regularly scheduled shift throughout the course of a 24 hour period; and

(2) include an accounting of all residents housed in or otherwise assigned to the facility area in which such count is conducted.

(b) The results of each formal resident population count conducted pursuant to subdivision (a) of this section shall be recorded in writing. Such written record shall include the:

(1) date and time of the count;

(2) facility area in which the count was conducted;

(3) number of residents accounted for; and

(4) names of staff conducting the count.

(c) Subsequent to each formal resident population count conducted pursuant to subdivision (a) of this section, the written records of the results of each count compiled pursuant to subdivision (b) of this section shall be immediately forwarded to the facility director or designee. Upon receipt of the results of the formal resident population counts, the facility director or designee shall determine the total formal resident population count. Such total formal resident population count shall account for every resident committed to the facility.

(d) Total formal resident population counts shall be made in writing and shall include the:

(1) date and time of such count;

(2) results of such count; and

(3) signature of the facility director or designee.

(e) The facility director or designee shall immediately initiate appropriate emergency procedures in response to any discrepancy in the resident population count.

(f) Nothing in this Part shall preclude the facility from conducting informal counts.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7404.11. Transport of residents

(a) Active supervision of residents shall be provided by OCFS staff during transport.

(b) Prior to beginning such transport, staff responsible for the transport of residents shall obtain:

(1) all necessary documents or other authorizations; and

(2) any other information relative to such transport.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7404.12. Firearms control

(a) Neither firearms nor ammunition shall be permitted within the secure area of any secure facility.

(b) All persons in possession of any firearm or ammunition shall be required to deposit such items in an individual secure depository prior to entering the secure area of any secure facility. Any firearm or ammunition deposited pursuant to this subdivision shall be maintained in a safe and secure manner.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7404.13. Key control

(a) All persons in possession of keys used in a secure facility shall maintain the keys in a secure manner. All keys not in the possession of a person shall be maintained in a secure area of the facility.

(b) The facility director or person acting in that capacity shall require that a duplicate of every key used in a secure facility is maintained. Such duplicate keys shall be maintained in a secure area and shall be readily accessible when needed. Inventory of the duplicate keys shall be completed annually, and the inventory documentation shall be retained at the facility.

(c) A written record shall be maintained with respect to the control and issuance of keys and shall include the:

(1) name of staff issued keys;

(2) date and time of issuance of the keys; and

(3) date and time the keys were returned.

(d) All keys which could provide residents with a means of exit from any secure facility shall not be permitted in any area where residents may gain access to such keys.

(e) Key rings shall be bonded closed.

(f) Restricted and emergency keys must be stored separate and distinct from regular use keys.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7404.14. Locks and other security devices

(a) Notwithstanding the requirements of section 7404.7 of this Part, OCFS shall require that all locks and other securing devices including, but not limited to, bars, security windows, screens, and outside perimeter fencing are inspected at least weekly to confirm that such locks and other securing devices are in proper working order at each secure facility.

(b) Written records of such inspections shall be maintained at the facility, and shall include:

(1) the name of the staff performing the inspection;

(2) the date of inspection;

(3) the condition of the locks and other securing devices; and

(4) the action taken to correct any deficiencies in the locks and other securing devices.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7404.15. Tool and equipment control

(a) OCFS shall require that each secure facility implement and maintain a system to provide for the control, tracking and storage of tools, culinary equipment and medical equipment.

(b) Written records of such system shall be maintained and shall include:

(1) the name of the staff monitoring compliance;

(2) the date of monitoring;

(3) the condition of the tools, culinary equipment and medical equipment; and

(4) action taken to repair or replace any tools, culinary equipment and medical equipment.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7404.16. Perimeter control

(a) OCFS shall require all secure facilities to conduct a formal security visual inspection of each facility's external perimeter security. Such inspection shall be conducted at least once during the regularly scheduled shift and shall include, but not be limited to:

(1) the integrity of all perimeter fencing, including entrances and exits;

(2) locking mechanisms on all entrances and exits to the facility;

(3) perimeter lighting fixtures;

(4) any free standing buildings adjacent to the facility; and

(5) any windows throughout the exterior of the building.

(b) Written records of such inspections shall be maintained and include, but not be limited to:

(1) the name of the staff conducting the inspection;

(2) the date and time of such inspection;

(3) the condition of the perimeter fencing, locking mechanisms, lighting fixtures, and free standing buildings; and

(4) the notification of any security breaches to the facility director or designee.

(c) Such written records shall be retained within the facility and shall be reviewed the facility director or designee.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7405 DISCIPLINE

Section 7405.1. Policy

(a) In order to promote the safety, security, and good order of all secure facilities, the Office of Children and Family Services (OCFS) shall establish and maintain a fair, impartial and consistent system of resident discipline designed to set standards of appropriate behavior and encourage self control.

(b) Consistent with the requirements of this Part, OCFS shall develop written policies and procedures regarding a disciplinary system for secure facilities. These policies and procedures shall be reviewed annually and updated as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7405.2. Rules of resident conduct

(a) OCFS shall develop and list written rules of conduct governing resident behavior.

(b) The rules of resident conduct shall include, but not be limited to:

(1) all chargeable rule violations;

(2) the range of penalties that may be imposed for each violation, consistent with the seriousness of the prohibited conduct; and

(3) a detailed description of the facility's disciplinary procedures.

(c) Upon admission to a secure facility, each resident shall be provided with a copy of the rules of resident conduct. Each resident shall be required to acknowledge, in writing, receipt of the facility rules of resident conduct pursuant to section 7403.10 of this Title.

(d) Reasonable efforts shall be made to assist any resident who is, or appears to be, illiterate, non-English speaking, or for any other reason needs assistance in the understanding of facility rules of resident conduct and disciplinary procedures pursuant to this Part.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7405.3. Rule violation reports

(a) When any secure staff have a reasonable belief that a resident has committed an offense that constitutes a violation of the facility's rules of resident conduct, such staff shall prepare a written rule violation report.

(b) Each rule violation report shall include, but not be limited to:

(1) the name(s) of the resident(s) charged with the misconduct;

(2) the date, time, and place of occurrence;

(3) a description of the incident or behavior involved and the rule(s) allegedly violated;

(4) the date and time the report is written; and

(5) the reporting staff's printed name and signature.

(c) If two or more violations are involved, all the violations may be incorporated in a single report, separately stated. Each violation shall be disposed of separately in accordance with the policies and procedures required by this Part.

(d) If more than one resident is involved in any incident, the facts and circumstances surrounding each resident's involvement shall be separately stated in the rule violation report.

(e) Any resident charged with a rule violation shall be issued a copy of the rule violation report as soon as practicable.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7405.4. Investigative processes

(a) An investigation into the facts and circumstances of the incident shall be initiated if the facility director or designee determines that the circumstances warrant such an investigation.

(b) In those cases where an investigation is deemed necessary, the investigation shall be conducted by a person who was not involved in the incident, and a completed report shall be provided to the hearing officer prior to any hearing based on the incident investigated.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7405.5. Assistance to residents

(a) If a resident is non-English speaking, illiterate, and for any other reason unable to prepare a defense, assistance shall be provided to the resident.

(b) Such assistance shall be provided to the resident by a person selected from a list approved by the facility director or designee, and shall commence at least 24 hours prior to the hearing.

(c) Consistent with the requirements of this Part, such assistance shall include, but not be limited to:

(1) interviewing witnesses; and

(2) obtaining evidence and written statements.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009

Section 7405.6. Hearing proceedings

(a) A resident charged with a rule violation for which a hearing is required shall be served with a notice of hearing no later than eight business days after the rule violation report is issued pursuant to section 7405.3(e) of this Part.

(b) Such written notice of hearing shall be given to the resident at least 24 hours prior to the commencement of the hearing, and such hearing shall be completed within five business days of commencement, unless a delay is authorized by the Deputy Commissioner of Rehabilitative Services or designee. When such a delay is authorized, the record of the hearing should reflect the reasons for delay or adjournment and the resident should be made aware of these reasons unless to do so would jeopardize the safety, security, or good order of the facility or the safety or security of another person. The time frames required by this subdivision may be waived by the resident, but such waiver shall not be effective unless made in writing.

(c) The facility director shall serve, or appoint an impartial person to serve, as a hearing officer to conduct the hearing proceedings.

(d) Residents shall be allowed to be present at the hearing unless the resident has waived the right to be present or the hearing officer determines that the resident's presence will jeopardize the safety, security, or good order of the facility, or the safety, security, or the health of another person. A waiver of the right to be present shall be made in writing and signed by the resident. If the resident refuses to sign such waiver, it shall be noted in the record. The hearing officer's determination that a resident's presence will jeopardize the safety, security, or good order of the facility or the safety, security, or the health of another person shall be documented in the hearing record.

(e) Residents shall be given the opportunity to speak on their behalf at the hearing, and shall be permitted to call witnesses and present evidence in their defense if relevant and not redundant, and when doing so would not jeopardize the safety, security, or good order of the facility or the safety, security, or the health of another person. A hearing officer's determination that the presence of a particular witness or the introduction of particular evidence is irrelevant, redundant, or will jeopardize the safety, security, or good order of the facility or the safety, security, or the health of another person shall be documented in the hearing record.

(f) If the hearing officer calls witnesses, the resident may submit questions directed toward such witnesses to the hearing officer. The hearing officer shall pose such questions to the witness if relevant and not redundant, and when doing so would not jeopardize the safety, security, or good order of the facility. The hearing officer may restate such question if it is unclear or improper in form. A hearing officer's determination that a particular question is irrelevant, redundant, or will jeopardize the safety, security, or good order of the facility or the safety, security, or the health of another person shall be documented in the hearing record.

(g) Residents may be excluded from the hearing during the interview of witnesses in accordance with subdivision (d) of this section. The content of such interview shall be provided to the resident, except for such information that, if provided, would jeopardize the safety, security, or good order of the facility, or the safety, security, or the health of another person.

(h) No charges other than those contained in the rule violation report shall be presented during the course of the hearing. Any additional charges brought against the resident shall be treated as new charges and shall be subject to the requirements of this Part.

(i) A disposition shall be reached within five business days of the conclusion of the hearing. The disposition shall be supported by evidence, shall be in writing, and shall contain the following:

(1) a finding of guilt or innocence on each charge of a rule violation;

(2) the evidence relied upon by the hearing officer in reaching such finding; and

(3) the sanction(s) imposed, if any.

(j) A copy of the disposition shall be provided to the resident.

(k) Nothing in this Part shall preclude the use of plea bargaining.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7405.7. Disciplinary sanctions

(a) If the charges against a resident are affirmed as a result of a hearing, one or more of the following sanctions may be imposed based upon the resident's past record and the severity of the offense:

(1) counseling and/or written reprimand;

(2) loss of one or more specified privileges for a period consistent with the facility rules of resident conduct for the particular offense(s);

(3) restitution for the loss or damage of property made from existing or future funds in the resident's account;

(4) loss of a specified period of good behavior allowance, subject to restoration pursuant to applicable laws and regulations; and

(5) the assigning of a facility service activity for a length of time not to exceed 40 days.

(b) Disciplinary sanctions may be imposed at the completion of the disciplinary hearing and prior to any appeal by the resident.

(c) The hearing officer may hold the commencement of a sanction in abeyance for a period of up to 120 days in order to assess the behavioral adjustment of the resident. At the conclusion of such period, the hearing officer shall determine whether the sanction shall commence in whole, in part or shall be suspended in whole or in part.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7405.8. Appeal procedures

(a) Residents shall have the right to appeal the hearing disposition and any sanction(s). Such appeal shall be submitted in writing within 15 days of the resident's receipt of the disposition, specifying the grounds for appeal.

(b) The facility director or designee shall be required to send the resident's appeal and hearing proceeding paperwork, within 15 days of receipt, to the Deputy Commissioner of Rehabilitative Services or designee for review.

(c) The Deputy Commissioner of Rehabilitative Services or designee review shall be completed within 45 days of receipt of the resident's appeal and hearing paperwork.

(d) The Deputy Commissioner of Rehabilitative Services or designee may confirm, reduce or modify all or part of the sanction(s), but not increase them.

(e) Residents shall be notified in writing of the Deputy Commissioner of Rehabilitative Services' decision regarding their disciplinary appeal.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7405.9. Recordkeeping

Each secure facility shall maintain a disciplinary record which shall include:

(a) the rule violation report;

(b) the investigation report, if prepared;

(c) the formal disposition;

(d) the sanction(s) imposed, if any; and

(e) the appeal documents.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7406 REPORTABLE INCIDENTS

Section 7406.1. Policy

(a) In order to provide a mechanism by which secure facility operations, policies and procedures can be monitored, evaluated and improved, each secure facility shall internally review and assess all incidents of a serious or potentially problematic nature, and report such incidents to the State Commission of Correction (the Commission) pursuant to the requirements of this Part.

(b) Consistent with the requirements of this Part, the Office of Children and Family Services (OCFS) shall develop written policies and procedures that govern the reporting of secure facility incidents to the Commission. These policies and procedures shall be reviewed annually and updated as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7406.2. Reportable incidents

(a) The following incidents shall be reported to the Commission pursuant to the requirements of this Part:

(1) assaults;

(2) sexual abuse;

(3) sexual assaults;

(4) employee misconduct;

(5) communicable reportable disease;

(6) contraband;

(7) deaths;

(8) escapes;

(9) escape attempts;

(10) fires;

(11) personnel group actions;

(12) resident group actions;

(13) hostage situations;

(14) major disturbances;

(15) major maintenance/service disruptions;

(16) natural/civil emergencies;

(17) attempted suicides;

(18) self-inflicted injuries; and

(19) serious accidental injuries.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7406.3. Reporting incidents other than resident deaths

(a) As required in section 7406.2 of this Part, whenever a reportable incident occurs at a secure facility, OCFS shall report such incident to the Commission pursuant to the following requirements:

(1) all major disturbances, escapes, resident group actions, personnel group actions, hostage situations, natural/civil emergencies, major maintenance/service disruptions, or any incident during which control at a secure facility is lost or partially lost shall be reported immediately upon occurrence or discovery in a form and manner as required by the Commission.

(2) all assaults, sexual assaults, sexual abuse, employee misconduct, communicable reportable disease, contraband, escape attempts, fires, attempted suicides, self-inflicted injuries, serious accidental injuries, or occurrence(s) that disrupt the normal operations of a secure facility or that involve injury to residents or staff resulting in hospital treatment shall be reported, in a form and manner as required by the commission, within 24 hours of occurrence or discovery.

(b) OCFS shall provide follow-up reports for specified incidents which may be required by the Commission. Such follow-up reports shall be submitted in writing to the Commission in a form and manner as required by the Commission, as soon as practicable, but no later than 30 days following the initial report.

(c) When additional pertinent facts are discovered about an incident after OCFS has submitted the follow-up report to the Commission, such information shall be forwarded in writing, in a form and manner as required by the Commission, as soon as practicable, but no later than 14 days following discovery.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009; amd. filed Jan. 5, 2016 eff. Jan. 22, 2016.

Section 7406.4. Reporting resident deaths

(a) OCFS shall report the death of any resident listed on its official count of secure facility residents to the commission within six hours of pronouncement of death, in a form and manner prescribed by the commission.

(b) Within three days after the pronouncement of a resident's death, a copy of the deceased's entire medical record, including the preliminary autopsy report, if available, shall be forwarded to the Commission.

(c) Any copies of medical records provided pursuant to subdivision (b) of this section shall be certified as being a true copy of such record by the authority responsible for maintaining the record.

(d) Within 10 days after the pronouncement of a resident's death, the facility medical director shall forward a follow-up report in writing to the Commission which shall include, but not be limited to:

(1) a narrative medical history of the deceased covering the period 90 days prior to death;

(2) the deceased's primary medical and/or psychiatric diagnosis and the therapy provided, if any, as a result of such diagnosis;

(3) a narrative description of the terminal event occurring immediately prior to the pronouncement of death; and

(4) a final copy of the autopsy report, if available.

(e) In addition, such follow-up report shall include information required by the Commission's Medical Review Board and any other information specified by the Commission in a form and manner required by the Board and Commission.

(f) When additional pertinent facts are discovered about a resident's death after the facility has submitted the follow-up report to the Commission, such information shall be forwarded in writing in a form and manner as required by the Commission as soon as practicable, but no later than 14 days following discovery.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009; amd. filed Jan. 5, 2016 eff. Jan. 22, 2016.

Section 7406.5. Maintenance of reportable incident information

A copy of all completed reports and supplementary information prepared by OCFS secure facility staff pertaining to reportable incidents, including copies of all information forwarded to the Commission pursuant to the requirements of this Part, shall be maintained on file as applicable per OCFS policies and procedures.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7406.6. Review and assessment of reportable incidents

(a) OCFS shall develop and implement procedures for the review, investigation, and assessment of reportable incidents.

(b) OCFS shall regularly review all reports prepared by secure facility staff in conjunction with the review and/or investigation of reportable incidents, including pertinent facility log entries.

(c) The facility director or person acting in that capacity shall take appropriate actions, based upon review of prior incidents, to reduce the possibility of recurrence.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7407 PRINTED MATERIAL AND PUBLICATIONS

Section 7407.1. Policy

(a) Residents placed in a secure facility operated by the Office of Children and Family Services (OCFS) are entitled to receive printed material and publications suitable for minors. Residents shall be permitted to receive such material from any approved vendor, including but not limited to bookstores or publishers.

(b) Consistent with the requirements of this Part, OCFS shall develop written policies and procedures that govern access to printed material and publications at each secure facility. The written policy and procedures shall be reviewed annually and updated as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009

Section 7407.2. Definitions

As used in this Part, the term censor shall mean the exclusion of any printed material or publications, or any portion thereof.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7407.3. Facility review of incoming printed material and publications

(a) Incoming printed material and publications may be read and reviewed. Incoming printed material and publications may be censored only when it is determined that an item of printed material or a publication constitutes a threat to the safety or security of a secure facility, or the resident's treatment or rehabilitation program.

(b) When the introduction of any printed material or publication into a secure facility is thought to constitute a threat to the safety or security of a secure facility, or the resident's treatment or rehabilitation, such printed material or publication shall be forwarded to the facility director, or person acting in that capacity, for appropriate disposition. The facility director or designee shall read and review such printed material and shall make a determination as to whether it shall be censored.

(c) Any determination made pursuant to subdivision (b) of this section shall be made in writing and shall state the specific facts and reasons underlying such determination. A copy of such determination shall be given to the intended resident recipient.

(d) The reading, review and determination made pursuant to subdivision (b) of this section shall be completed within 10 days after receipt of the printed material or publication at the facility.

(e) When any incoming printed material or publication may involve a criminal offense, it shall be forwarded by the facility director or person acting in that capacity for appropriate disposition.

(f) Except as provided in subdivision (b) of this section, the deletion of any portion of any printed material or publication that has been censored pursuant to subdivision (c) of this section shall be permitted only when the intended resident recipient consents in writing to such deletion, in which case the censored portion of the printed material or publication shall be deleted and the remainder forwarded to the intended resident recipient.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7407.4. Limitation of incoming printed material and publications

OCFS may adopt policies and procedures which limit the amount of printed material and other paper materials retained within a resident's living area, in furtherance of the safety, security and good order of the facility, especially safety from the risk of fire.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7410 HEALTH SERVICES

Section 7410.1. Policy

(a) Adequate health care and health care services shall be provided to all residents in order to promote the well being of residents through the prevention, detection, treatment and management of disease and disability.

(b) Consistent with the requirements of this Part, the Office of Children and Family Services (OCFS) shall develop written policies and procedures that govern health services. The written policies and procedures shall be reviewed annually and updated as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.2. Applicability

The provisions of this Part shall apply to each secure facility and OCFS in its operation of such secure facilities.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.3. Definitions

As used in this Part, the following definitions shall apply to the terms listed below:

(a) **Administrative health services authority** shall mean a person or organized group of persons responsible for the management of the health care delivery system of a secure facility or group of facilities, excluding direct patient care.

(b) **Ambulatory services clinic** shall mean a designated area within a secure facility, including a room or group of rooms, with facilities, services, equipment and personnel providing nonresidential medical management of outpatients, which is planned, organized, operated and maintained to function as an integrated unit within secure facilities.

(c) **Certified or registered ambulance service** shall mean an ambulance service having a valid certificate or statement of registration issued pursuant to article 30 of the Public Health Law.

(d) **Clinical health services authority** shall mean an organized group of licensed health care professionals responsible for the overall medical management of secure residents and for all aspects of direct patient care of residents within secure facilities.

(e) **Drug room or pharmaceutical storage** shall mean any place within a secure facility in which drugs, prescriptions or poisons are stored for delivery after having been compounded, preserved or dispensed by a licensed pharmacist.

(f) **Full-time** shall mean the personal availability of employees for the discharge of their assigned duties and responsibilities for a period of not less than 40 hours during each facility work week, excluding holidays and authorized leave periods, 32 hours of which shall consist of their personal presence at their assigned work stations/areas.

(g) **Health screening** shall mean an interview and visual assessment of a resident conducted by a facility health trained staff member which is recorded and designed to elicit a past history or current evidence of a medical or mental health condition requiring immediate medical or psychiatric evaluation and treatment.

(h) **Health trained staff member** shall mean an individual trained in limited aspects of health care as determined by the facility medical director. Such training shall be recorded.

(i) **Infectious, reportable disease** shall mean an infectious disease transmissible to uninfected persons by air and listed as reportable in Part 2 of Title 10 NYCRR.

(j) **Infirmary** shall mean a designated area within a secure facility, including a multiple occupancy or group of rooms, with facilities, services, equipment and personnel providing residential nursing care and medical management of inpatients admitted for 24 hours or more and which is planned, organized, operated and maintained to function as an integrated unit within a secure facility.

(k) **Licensed health care professional** shall mean a physician, nurse practitioner, registered professional nurse, physician's assistant, licensed practical nurse or dentist licensed to practice in the State of New York.

(l) **Medical director** shall be a physician licensed to practice medicine in the State of New York.

(m) **Medical hold** shall mean the retention of a named resident at a secure facility for so long as it is believed that the transfer to another secure facility would be detrimental to the resident's health or would hinder the effectiveness and efficiency with which necessary health services are provided to such resident.

(n) **Medical isolation** shall mean a private room which is negative air-flow ventilated and which is otherwise designed and equipped to assist health care staff in practicing appropriate isolation techniques according to diagnosis.

(o) **New construction or renovation** shall mean any of the following:

(1) a facility constructed after the effective date of this Part;

(2) acquisition of a physical plant not previously operated as a health care delivery setting;

(3) construction of a new physical plant; or

(4) renovations, additions, and/or alterations to the health care delivery setting within an existing secure facility which involves major physical and/or structural changes or major fixed equipment changers, other than replacements.

(p) **Partial care patient** shall mean a resident who meets either of the following conditions:

(1) requires moderate assistance with personal care and activities of daily living; or

(2) requires some nursing supervision; and

(3) is alert and aware of surroundings.

(q) **Pharmacy** shall have the same meaning as set forth in section 6802.1 of the Education Law.

(r) **Physical therapy service** shall mean an organized unit which is designed, staffed and equipped to provide evaluation, treatment or prevention of disability, injury, disease or other condition of health using physical, chemical and mechanical means including, but not limited to: heat, air, water, sound, electricity, massage and mobilization, and therapeutic exercise with or without assistive devices, performed in accordance with a physician's order, diagnosis or referral.

(s) **Physician** shall mean a physician licensed to practice medicine in New York State who is an independent contractor with or an employee of OCFS.

(t) **Self care patient** shall mean a resident who meets all of the following conditions:

(1) is capable of self-care with minimal nursing supervision;

(2) is alert and aware of surroundings; and

(3) can walk unassisted by mechanical or human means.

(u) Skilled nursing service shall mean an organized nursing care unit in which there are employed and on duty throughout each 24-hour period, a:

(1) director, assistant director; and

(2) registered professional nurses, licensed practical nurses, and nurses' aides in sufficient number to provide a combined average of direct nursing care of not less than one hour for each self care patient, two hours for each partial care patient and four hours for each total care patient.

(v) **Skilled professional health care services** shall mean:

(1) a skilled nursing service; and

(2) a physical therapy service.

(w) **Total care patient** shall mean a resident who meets any one or more of the following conditions:

(1) is dependant for most or all nursing and personal care;

(2) needs continuous nursing supervision because of physical or mental status;

(3) is prevented or severely limited in independent activity because of a severe emotional state, conditions resulting from the use of medications, physiological changes, or is restrained physically; or

(4) is bedfast, chair-fast, room-bound, who can sit in, but not propel, a wheelchair, or who can use a walker if assisted by two persons.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.4. Residents' rights as patients

(a) Consistent with the requirements of this Part, OCFS shall afford resident patients the right to:

(1) considerate and respectful care;

(2) obtain, upon request, the name of the physician responsible for coordinating their care;

(3) the name and function of any person providing health care services to the resident;

(4) obtain from the agency medical director or designee current information concerning a resident's diagnosis, treatment and prognosis in terms the resident can reasonably be expected to understand. When it is not medically advisable to give such information to the resident, the information shall be made available to an appropriate person on behalf of the resident;

(5) receive from the physician or qualified health professional information necessary for the resident, parent or legal guardian to give informed consent prior to the start of any procedure or treatment involving a non-emergency treatment procedure or surgery, diagnostic procedure, or medical test which involves invasion or disruption of the physical integrity of the body. Such information shall include, at a minimum: the specific

procedure, treatment, or medical test, the reasonably foreseeable risks involved, and alternatives to care and treatment, if any;

(6) refuse treatment, diagnostic procedures, and medical tests to the extent permitted by law and to be informed of the medical consequences of this action;

(7) privacy, to the extent consistent with providing adequate medical care to the resident and consistent with the safety and good order of the facility; and

(8) privacy and confidentiality of all records pertaining to the resident's treatment, except as otherwise provided by law and consistent with the safety and good order of the facility.

(b) No punitive action shall be taken against any resident based exclusively upon their request for health care services, or exclusively upon assertion of the rights set forth in subdivision (a) of this section.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.5. Administrative health services authority

(a) OCFS shall establish an administrative health services authority and shall require that the health care delivery in secure facilities is governed by an administrative health services authority.

(b) Every administrative health services authority shall fall under the management of a health services administrator.

(c) OCFS shall develop a written job description for the position of health services administrator.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.6. Clinical health services authority

(a) OCFS shall establish clinical health services authorities, and shall require that direct health care delivery in secure facilities is governed by a clinical health services authority.

(b) At a minimum, each clinical health services authority shall consist of a medical director, registered professional nurse and licensed health care professionals.

(c) OCFS shall develop written job descriptions outlining the duties and responsibilities of the medical director and all other licensed health care professionals.

(d) Each clinical health services authority responsible for more than one secure facility shall be staffed by a full time medical director.

(e) Each medical director shall be responsible for the quality, continuity and availability of all health care provided to residents within each secure facility.

(f) OCFS shall provide each clinical health services authority with licensed health care professionals sufficient to meet the health care needs of the resident population. In determining the adequacy of each health care staff, OCFS shall take into account factors including, but not limited to:

(1) the annual average size of the resident population under the care of the clinical health services authority;

(2) the level(s) of care to be delivered by the clinical health services authority, as defined by OCFS and consistent with the requirements of this Part; and

(3) impediments to or limitations upon resident access to health services associated with security imperatives and/or physical plant location or configuration.

(g) At a minimum, the following health care staffing requirements shall be met:

(1) each clinical heath services authority shall be staffed with one registered professional nurse on a 16-hour basis each day and shall provide for the continuous access, without undue delay, to such nurse by all residents for whom the clinical health services authority is responsible. Reasonably proximate clinical health services authorities may share nursing staff for purposes of compliance with this subdivision;

(2) if a secure facility operates an infirmary unit, and it is occupied by a resident, it shall be staffed on a 24-hour basis each day with a registered professional nurse, a licensed practical nurse and/or a nurses' aid in sufficient number to furnish each infirmary patient direct nursing care and related services including assessments, treatments, medications, diets, and other health services in accordance with each resident's treatment plan prepared pursuant to a physician's order; and

(3) the services of a physician shall be available on call to each secure facility every day during the hours in which no physician is present within the facility.

(h) All health care staff shall wear, at all times, identification that clearly states their name and professional title.

(i) OCFS shall maintain records of current New York State licensure or registration of all physicians, nurses and heath care staff.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.7. Medical treatment areas

(a) Each secure facility shall provide medical treatment areas for diagnosis and treatment adequate to meet the needs of the resident population.

(b) In newly constructed or renovated facilities that operate infirmary units, each medical treatment area shall contain a nurses' station which shall be an enclosed area and be proximate to the infirmary and observation rooms.

(c) Consistent with the requirements of Subparts 70-1 and 70-2 of Title 10 NYCRR, solid waste originating in medical treatment areas, including but not limited to: garbage, rubbish and other refuse, medical waste and infectious materials shall be disposed of in such a manner that will prevent the transmission of disease and not create a nuisance, fire hazard or breeding place for insects or rodents.

(d) OCFS shall develop, implement and enforce a comprehensive medical housekeeping and infection control policy and procedure specifically tailored to each medical treatment area.

(e) OCFS shall provide that all details, finishes and furnishings in medical treatment areas are able to be easily cleaned and in a condition which facilitates infection control.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.8. Independent health care services

OCFS shall require that all independent providers of health care treatment and services to residents comply with the pertinent requirements of this Part.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.9. Health appraisal

(a) OCFS shall develop and implement an admission health appraisal process for each resident which includes, but is not limited to:

(1) a health screening which consists of a visual assessment and interview which shall be performed as soon as possible after each resident's admission into a secure facility, but in no event later than 24 hours after admission;

(2) a complete written medical history which shall be obtained from each resident within seven days following initial admission to a secure facility and shall include assessments of chemical dependency and risk behaviors for HIV infection and blood-borne viruses such as hepatitis B and C. If a resident has a documented complete written medical history within the previous 12 months, an update of the medical history is required, except as determined by a licensed health care professional; and

(3) a complete physical examination which shall be provided to each resident within seven days of initial admission to a secure facility and at yearly intervals thereafter. If a resident has documented evidence of a physical examination within the previous 12 months, a new physical examination is not required, except as determined by a licensed health care professional.

(b) Each resident's physical examination shall be conducted by a physician, registered physician's assistant, nurse practitioner or dentist, as appropriate, and shall include, but is not limited to:

(1) an examination of major body systems;

(2) Mantoux tuberculin skin test;

(3) sexually-transmitted infections screening;

(4) a dental examination provided by a licensed dentist within 14 days of initial admission;

(5) where clinically indicated, screening tests including, but not limited to:

(i) a urinalysis;

(ii) blood chemistry analysis to include lipid screen;

(iii) a chest radiograph;

(iv) a complete blood count with white blood cell differential count;

(v) a pregnancy test for female residents; and

(6) a cervical cytology (PAP test) for female residents when, in the medical judgment of the examining physician, registered physician's assistant or nurse practitioner, such a screening is medically necessary and appropriate.

(c) The medical history document and/or medical problem list of each resident transferred between secure facilities shall be reviewed within 24 hours of the resident's arrival at the receiving secure facility.

(d) All findings made by a health professional pursuant to subdivision (a) of this section shall be recorded and included in each resident's permanent medical record. Such findings shall be legibly signed and dated by a physician, physician's assistant or nurse practitioner, together with identification of professional title.

(e) OCFS shall require that all residents are orientated to the health care services available at each facility and to the correct procedures for using such services.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.10. Ambulatory health care services

(a) OCFS shall require each secure facility to provide access to ambulatory health care services (sick call).

(b) Each secure facility shall provide ambulatory services adequate to meet the needs of the resident population. No resident shall be denied access to sick call services.

(c) Treatment plans shall be formulated and implemented for all residents in need of continuing medical treatment on an ambulatory service basis. Such treatment plans shall provide for regular, periodic medical re-evaluation of such resident.

(d) OCFS shall require that each secure facility's ambulatory services clinic provide sufficient space which shall include, but is not limited to:

(1) a storage area for medical records and medical supplies;

(2) adequate space and equipment to handle routine emergency situations;

(3) a private examination and treatment room; and

(4) an adequate waiting space if necessary.

(e) Ambulatory services clinics shall be located so that residents do not enter occupied infirmary areas.

(f) In newly constructed or renovated facilities, each ambulatory services clinic shall have at least two fully equipped lavatories available, one for staff use, and one for resident use.

(g) Every resident will have unimpeded access to health care service though sick call.

(h) The following elements are required for conducting general resident sick call:

(1) scheduled sick call access for all secure facility residents shall be at least three days per week;

(2) direct access to a health care provided;

(3) resident's health record must be available during sick call process;

(4) shall be performed in an ambulatory service clinic; and

(5) residents shall be triaged and seen by a health care provider within 48 hours of the sick call request.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.11. Possession of medication by residents

(a) OCFS may develop and implement policies and procedures that govern the possession of medication by residents for whom medication is prescribed.

(b) All approvals for individual residents to keep a supply of medication in their possession shall be recorded by the facility medical director and recorded in the resident's medical record.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.12. Storage of medications

(a) All medications shall be stored in a safe and secure manner consistent with the requirements of this section to insure control only by authorized personnel designated by the facility medical director.

(b) Each facility shall store all pharmaceuticals in sanitary, locked compartments under proper temperature controls.

(c) Each facility shall store controlled drugs, needles and syringes in separately locked, permanently affixed compartments in accordance with Part 80 of Title 10 NYCRR. Adequate records of administration of such drugs and stocks on hand, including perpetual inventory and shift count records, shall be maintained.

(d) Medications whose shelf life has expired or which are otherwise no longer in use shall be disposed of or destroyed in accordance with State and Federal laws and regulations.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.13. Disposal of unused medications

Unused resident controlled substance medication shall be disposed of in compliance with section 80.51 of Title 10 NYCRR.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.14. Medical emergency services

(a) Each secure facility shall provide access to emergency services which permit the medical evaluation, treatment and disposition of medical emergency cases on a 24-hour basis each day.

(b) Each secure facility shall designate a primary and, if practicable, secondary certified or registered ambulance service. Such designations shall be documented and approved by OCFS.

(c) Each secure facility shall designate a primary and, if practicable, secondary nearby hospital emergency room to provide emergency medical services on a 24-hour basis each day. Such designations shall be recorded and approved by OCFS.

(d) Each secure facility shall develop security procedures providing for the timely medical transport of residents to a designated hospital emergency room.

(e) Residents requiring hospital emergency room service shall get personally presented at such emergency room for treatment. Every refusal of hospital emergency room service to residents so presented which, in the opinion of the agency medical director constitutes a violation of section 405.19(e) of Title 10, shall be reported in complaint form to the New York State Department of Health (DOH), Bureau of Hospital Services by such medical director.

(f) Every refusal by DOH certified or registered ambulance service to respond to a medical emergency at a secure facility shall be reported in complaint form by the agency medical director to DOH, Bureau of Emergency Medical Services.

(g) Each secure facility shall provide first aid kits adequate in number, distribution and content to meet the needs of security and health care staff as determined by the agency medical director.

(h) Direct care staff shall receive training and maintain certification in approved first aid and emergency life support techniques.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.15. Hospital services

(a) Consistent with the requirements of this Part, OCFS shall provide access for all residents to the services of a hospital.

(b) Each secure facility shall designate, in writing, hospitals for acute care and outpatient hospital services adequate to meet the needs of the resident population.

(c) OCFS shall determine acute care hospital services needs, including future needs. In making such determination, OCFS shall take into account the utilization review activities as they relate to hospital services.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.16. Quality assurance program

OCFS shall establish and maintain a formal, coordinated quality assurance program which periodically evaluates the health care delivery activities for each secure facility within the context of the overall health care delivery system for the purpose of enhancing the quality of resident-patient care and identifying and preventing medical and dental malpractice.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.17. Skilled professional health care services

OCFS shall provide every total care patient access to skilled professional health care services.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.18. Special diagnostic and therapeutic services

(a) OCFS shall provide access to special diagnostic and therapeutic services provided by a qualified medical specialist to all residents as ordered by the facility medical director.

(b) OCFS shall require that:

(1) residents requiring emergency surgery are presented to an appropriate medical facility for such surgery immediately;

(2) residents requiring diagnostic surgery are presented to a appropriate medical facility for such surgery in a timely manner; and

(3) residents requiring elective surgery approved by the medical director to correct conditions determined by the medical director to be progressively deteriorating are presented to an appropriate medical facility for such surgery within a time span recommended by the medical director in each case, but in no event more than 120 days after completion of such pre-surgical approval in each case.

(c) At the discretion of the facility medical director, in consultation with the agency medical director, each resident who has completed a pre-surgical evaluation, or who is scheduled for surgery, shall be placed on a medical hold status.

(d) OCFS shall provide access to hemodialysis treatment for all residents the facility medical director determines require such treatment. Except during emergencies, residents shall be provided hemodialysis treatment only in hemodialysis centers which meet DOH operating standards.

(e) OCFS shall provide all residents access to optometrist services, including the provision of properly fabricated and fitted prescription eyeglasses for each resident the facility medical director determines is in need of such eyeglasses.

(f) OCFS shall provide access to medical prosthetic services, devices, and equipment to all residents who the facility medical director determines need such services, devices, and equipment.

(g) Scheduled trips by residents outside the confines of a secure facility for the purpose of health care treatment shall not be cancelled except as directed or approved by the facility director, or person acting that capacity, and only after consultation with a health care professional. A written explanation of the circumstances surrounding all such cancellations shall be recorded in the resident's medical record.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.19. Radiology services

(a) Each secure facility shall have access to radiology services adequate to make satisfactory X-rays as ordered by the facility medical director and sufficient to meet the needs of its population.

(b) All X-rays other than dental X-rays shall be interpreted by a board-eligible radiologist. Interpretations shall be recorded, signed and dated by the radiologist.

(c) Only licensed X-ray technicians shall operate facility radiology equipment except that dentists and dental hygienists under the supervision of a dentist may operate facility dental radiology equipment.

(d) All secure facility radiology equipment shall be licensed and registered by State or local authorities.

(e) A radiation physicist, other than OCFS staff, shall inspect each secure facility's radiology equipment on an annual basis to provide that it is free of hazards for residents and staff members. Such inspections shall be recorded and forwarded to OCFS.

(f) OCFS shall establish a radiation protection program for each secure facility which operates radiology services.

(g) Facility radiology services shall be used solely for medical diagnostic purposes and only when ordered by a physician.

(h) OCFS shall establish a process for storing, identifying and promptly retrieving resident X-rays.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.20. Laboratory services

(a) Each secure facility shall have access to licensed clinical laboratory services which meet clinical laboratory operating standards set forth by DOH sufficient to meet the needs of its population as ordered by the facility medical director.

(b) Clinical laboratory services shall be provided only by registered clinical laboratory technologists or physicians or as otherwise permitted by applicable Federal and NYS laws, rules and regulations.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.21. Medical diets

OCFS shall require every secure facility to establish a program of prescription and provision of therapeutic nutrition as ordered by the facility medical director or dentist, for all residents in need of such program.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.22. Experimentation and research

(a) OCFS shall prohibit resident participation in medical, pharmaceutical or cosmetic experiments.

(b) Nothing in this section shall prohibit the provision of investigational therapies to residents in need of such medical therapies or their consensual participation in therapeutic research programs consistent with the requirements of this Part and article 24-A of the Public Health Law.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.23. Medical records

(a) A permanent individual medical record shall be established and maintained for every resident.

(b) All health care services provided to residents by facility health care staff or by independent health care providers shall be recorded in the medical record.

(c) Medical records shall contain sufficient information to justify the diagnosis and warrant the treatment and results.

(d) Each active resident medical record shall contain a current medical history and a written, regularly updated list of diagnosed medical problems located at the beginning of the record.

(e) OCFS shall maintain a professional review system which ensures that a representative sample of resident medical records in every facility is periodically reviewed for completeness and for quality of medical care based upon evidence in the medical record.

(f) OCFS shall provide each clinical health services authority with trained staff responsible for resident medical records.

(g) Each clinical health services authority shall maintain a system of storage and identification to ensure the prompt location and retrieval of every resident medical record.

(h) The medical record of every resident transferred between secure facilities shall be forwarded in a confidential manner, consistent with section 2782 of the Public Heath [FN1] Law, with the resident at the time of transfer to the receiving secure facility. If, due to an emergency situation, it is not possible to forward the medical record at the time of a resident's transfer, such record shall be forwarded to the receiving facility within 24 hours of the time of transfer.

(i) All resident medical records shall be safely and securely retained as required by law.

(j) All resident records shall be confidential and access to them restricted as required by law.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.24. Isolation for contagious diseases

(a) Consistent with the requirements of this Part, each secure facility which operates an infirmary shall develop and implement procedures for medical isolation.

(b) There shall be at least one medical isolation room in each secure facility which operates a facility infirmary.

(c) Any resident admitted to a facility infirmary who the facility medical director determines may have an infectious reportable disease shall be placed in isolation.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.25. Resident mortality

(a) Each secure facility shall report the death of any resident on its official count of residents to the Commission of Correction by telephonic facsimile, in a form and manner prescribed by the Commission, within six hours of pronouncement of death.

(b) Each secure facility shall mail a certified copy of any deceased resident's entire health care record to the Commission within three days of pronouncement of death.

(c) Each secure facility shall immediately report the death of any resident on its official count of residents to the coroner or medical examiner having jurisdiction in the place where such resident is pronounced dead.

(d) OCFS shall not, absent approval of identifiable next of kin, dispose of resident remains by cremation.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.26. HIV/AIDS

OCFS shall develop and implement written policy, procedure and practice that specify approved actions to be taken by staff concerning juveniles who have been diagnosed as HIV positive. This policy shall be consistent with article 27-F of the Public Health Law, and all other applicable laws, rules and regulations.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.27. Emergency and disaster preparedness

Each secure facility shall have in effect a written health services emergency and disaster preparedness plan. Written policy and procedure shall require that the health aspects of the facility's disaster plan be approved by the clinical health services authority and the facility director. The emergency and disaster preparedness plan shall be reviewed and drilled annually. All review and drills shall be recorded.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.28. Health systems records and data

Nothing in this Part shall prevent access, including but not limited to telephonic consultation, by the Commission, or any employee designated by the chairman of the Commission, pertaining to any resident's medical treatment, to any and all records maintained by OCFS or any secure facility, or to any information from any OCFS employee.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7410.29. Education and training

(a) Each secure facility shall provide a formal orientation and training program for new health care staff which shall include an orientation to the secure facility and OCFS' written policies and procedures for health services.

(b) A continuing training program appropriate to the position shall be provided for all health care staff member employed at each secure facility. Such continuing training program shall include, but is not limited to:

(1) training in physical assessment for registered professional nurses who conduct ambulatory clinic screening of residents;

(2) training in counseling, prevention education and clinical management protocols of HIV disease, including associated psychosocial aspects, provision of current effective therapies, associated techniques and infection control; and

(3) training in all aspects of the emergency and disaster preparedness plan required pursuant to section 7410.27 of this Part.

(c) OCFS shall require that all newly appointed secure facility staff obtain and maintain certification in cardio-pulmonary resuscitation provided or approved by a recognized health care training authority.

(d) OCFS shall develop and deliver in all secure facilities a formal continuing education and training program for residents and secure facility staff on the nature, transmission and detection of HIV illness.

(e) Each secure facility shall maintain written records of the education and training as required by this Part.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7414 MENTAL HEALTH SERVICES

Section 7414.1. Policy

(a) All Office of Children and Family Services (OCFS) secure facility residents shall be provided uniform access to comprehensive mental health services.

(b) Consistent with the requirements of this Part, OCFS shall develop written policies and procedures that govern uniform access and delivery of comprehensive mental health services. Such policies and procedures shall be reviewed annually and updated as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7414.2. Definitions

As used in this Part, the following definitions shall apply to the terms listed below:

(a) **Mental health professional** shall mean a person licensed or certified by New York State to deliver mental health services.

(b) **Mental health services authority or authorities** shall mean a mental health professional, or group of professionals, responsible for the management of mental health service delivery at one or more secure facilities.\

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7414.3. Mental health services authority

OCFS shall establish a mental health services authority or authorities which shall govern all mental health care delivery in secure facilities.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7414.4. Mental health screening

Residents shall receive mental health screening and risk assessment upon admission to a secure facility in order to determine the necessity of an immediate referral to a mental health professional. Mental health assessments and observations shall be incorporated into the

classification system, consistent with the requirements of Part 7402 of this Title. Signs, symptoms and behaviors identified by the screening and risk assessment shall be evaluated by an assigned facility counselor to determine if mental health services are required.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7414.5. Mental health services

(a) Mental health services shall include, but not be limited to: a system of screening, risk assessment, observation, evaluation, diagnosis, treatment and case management.

(b) Each secure facility resident shall receive a psychological evaluation within 30 days of admission to OCFS.

(c) Each secure facility shall operate a suicide prevention program consistent with training approved by the State Commission of Correction (the Commission).

(d) Each secure facility shall provide adequate space for residents to be interviewed, evaluated and treated in private.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7414.6. Mental health records

(a) Mental health records shall be kept confidential in compliance with all applicable laws, rules and statutes.

(b) When residents are transferred to another secure facility or to a Department of Corrections and Community Supervision facility, the resident's entire mental health record shall be forwarded by the facility director or designee to the receiving facility. The mental health record shall contain:

(1) the name and relationship of a parent, legal guardian or spouse of the resident to be notified in case of the death, serious illness or other serious incident involving the resident;

(2) a record of current medications used for mental health treatment;

(3) all physician's orders; and

(4) any parental/legal guardian consent(s).

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009; amd. filed May 21, 2013 eff. June 5, 2013.

Section 7414.7. Emergency and inpatient mental health services

(a) OCFS shall have a designated plan with a local mental health provider for resident access to emergency mental health services.

(b) OCFS shall have a written agreement with the Office of Mental Health to provide resident access to inpatient mental health services at certified hospitals.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7414.8. Mental health training for staff

(a) All secure facility staff responsible for resident supervision shall be trained to recognize the signs, symptoms and behaviors that may indicate mental illness, developmental disability or chemical dependency.

(b) All secure facility staff responsible for resident supervision shall be trained in a suicide prevention training program approved by the Commission.

(c) All secure facility staff responsible for resident supervision shall be trained in procedures to make referrals for mental health services.

(d) All secure facility staff responsible for resident supervision shall receive annual suicide prevention refresher training, and records of such training shall be kept pursuant to section 7433.6 of this Title.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7415 CASE MANAGEMENT AND COUNSELING

Section 7415.1. Policy

(a) All residents of Office of Children and Family Services (OCFS) secure facilities shall be provided case management and counseling services.

(b) Consistent with the requirements of this Part, OCFS shall develop written policies and procedures that govern case management and counseling. The written policies and procedures shall be reviewed annually and updated as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7415.2. Definitions

As used in this Part, the following definitions shall apply to the terms listed below:

(a) **Case management** shall mean a process which includes gathering information about and from residents, making assessments, setting goals, evaluating progress, documenting information, screening residents, making referrals and preparing appropriate forms and reports.

(b) **Counseling** shall mean a structured intervention in an individual or group setting to assist residents to understand themselves and their interactions with their environment, to address their identified needs, to set personal goals, and to develop skills to achieve these goals.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7415.3. Scope of case management

OCFS staff that provides case management services will coordinate the gathering of information, assessments, referrals, and case coordination.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7415.4. Frequency and documentation of case management

OCFS staff with case management responsibilities shall ensure that the necessary documentation is recorded at least monthly in the resident's file.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7415.5. Content of counseling sessions

Counseling sessions shall address issues relevant to the needs of the resident or group, and allow for the development of positive social norms for each resident.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7415.6. Frequency of counseling

Counseling in either individual or group settings shall be provided for each resident at a minimum of two hours per week. The duration of the individual or group sessions shall be subject to each resident's needs. Each secure facility shall establish provisions to allow each resident to request counseling sessions on an as-needed basis or in the case of an emergency.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7415.7. Location of counseling sessions

Counseling sessions shall be held in locations which are reasonably free from distraction caused by outside interference. Such locations shall be of an adequate size.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7415.8. Documentation of counseling sessions

OCFS staff members who provide or are present for counseling shall record the content of each counseling session in accordance with OCFS policy.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7415.9. Special needs counseling

Each secure facility shall provide residents access to mental health counseling, psychiatric and crisis intervention services, or other special needs counseling on an as-needed basis. Staff providing special needs counseling shall share relevant information and coordinate their efforts with appropriate facility staff.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7415.10. Staff training and qualifications

OCFS staff that provides case management or counseling at secure facilities shall be assigned to the position based on education, training, and experience. OCFS staff that provides counseling or case management at secure facilities shall be periodically trained or retrained in the field of case management and counseling.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7416 EDUCATIONAL SERVICES FOR RESIDENTS

Section 7416.1. Educational services

The Office of Children and Family Services (OCFS) shall provide to secure facility residents all educational programs and services required by section 112 of the Education Law, Part 116 of Title 8 NYCRR, and all other applicable laws, statutes, and regulations.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7417 FOOD SERVICES

Section 7417.1. Policy

(a) The Office of Children and Family Services (OCFS) shall maintain a facility food service program sufficient to satisfy the daily nutritional needs of each resident.

(b) Consistent with the requirements of this Part, OCFS shall develop written policies and procedures that govern food services at each secure facility. These policies and procedures shall be reviewed annually and updated as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7417.2. Food service sanitation

All food service areas, including, but not limited to kitchens, dining areas and food storage areas shall be maintained in a sanitary condition in accordance with the provisions of section 7439.5 of this Title and the State Sanitary Code as contained in Part 14 of Title 10 NYCRR.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7417.3. Nutritional adequacy

The food service program in each secure facility shall require that all residents are provided with an appropriate level of nutrients and calories. Such appropriate level of nutrients and calories shall be based upon current recommended dietary allowances of the Food and Nutrition Board of the National Academy of Sciences, National Research Council.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7417.4. Medical diets

The facility director or designee shall require that any medical diet prescribed for a resident by a physician, dentist, or other authorized facility health services staff member is provided to such resident.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7417.5. Religious diets

Pursuant to the requirements of section 7425.6 of this Title, residents are entitled to observe reasonable dietary laws established by their religion. Each secure facility shall provide residents with food items reasonably sufficient to meet such religious dietary laws.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7417.6. Food service personnel

(a) The facility director, or person acting in that capacity, shall designate an individual who shall be responsible for the supervision of the facility food service program. Such person shall be responsible for:

(1) the implementation of menus consistent with the requirements of section 7417.8 of this Part; and

(2) the supervision, preparation and service of all meals.

(b) Only persons who are in good health and free from communicable diseases shall be assigned to, or permitted to work in, the facility food service program.

(c) Consistent with the requirements of section 7439.5 of this Title, all persons employed in the food service program of a secure facility shall maintain a high level of cleanliness and conform to hygienic practices while performing such facility functions.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7417.7. Meals

(a) Each secure facility shall provide residents with at least three meals at regular meal times during each 24-hour period, with no more than 14 hours between the evening meal and breakfast. Variations may be allowed on weekends and holidays, provided basic nutritional goals are met.

(b) At least one of the three regularly scheduled meals in a 24-hour period shall be served hot.

(c) Secure facility staff shall provide active supervision of residents during meals, as defined in section 7404.2(c) of this Title.

(d) Each secure facility shall prohibit the withholding of food as a disciplinary measure.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7417.8. Menus

(a) OCFS shall require that written and dated menus, which fulfill the nutritional requirements of this Part, shall be prepared in advance for each secure facility.

(b) Each secure facility's menus shall be reviewed annually by a registered dietician or nutritionist to ensure compliance with nationally recommended food allowances.

(c) Exclusive of medical, religious or vegetarian diets, menus prepared in accordance with the provisions of this Part shall:

(1) be designed to require that variety is provided in the preparation of meals;

(2) be designed to require that those food items prepared and served in combination for an evening meal are not repeated in such exact combination for another evening meal for at least a five-day period;

(3) be retained in the facility for a minimum of one year; and

(4) be posted for residents to read.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7417.9. Food storage

All food stored in a secure facility shall be maintained in such a manner so as to protect against spoilage or contamination. Such foods shall be stored in compliance with the requirements of the State Sanitary Code, as set forth in Part 14 of Title 10 NYCRR.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7418 EXERCISE, RECREATION AND LEISURE ACTIVITIES

Section 7418.1. Policy

(a) Within an Office of Children and Family Services' (OCFS) secure facility, exercise, recreation and leisure activities are essential to resident health and contribute to reducing resident tension. Pursuant to the requirement of this Part, OCFS shall require that each secure facility provide exercise, recreation and leisure activities for all residents.

(b) Consistent with the requirements of this Part, OCFS shall develop written policies and procedures regarding resident access to exercise, recreation and leisure activities. The written policies and procedures shall be reviewed annually and updated as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7418.2. Exercise, recreation and leisure activities

(a) Each secure facility shall provide residents with at least two hours per day of exercise, recreation and leisure activities.

(b) Each secure facility shall provide an opportunity for residents to have forty-five (45) minutes of exercise, recreation and leisure activities outdoors per day, except during inclement weather when exercise, recreation and leisure activities must be held indoors.

(c) The determination to cancel outdoor exercise, recreation and leisure activities due to inclement weather shall be based upon factors related to the safety, security and good order of the facility, or the health of the residents including, but not limited to, weather conditions that impair visibility, precipitation, and accumulation of snow or ice. Such determination shall be made by the facility director or designee, which will be recorded, and shall state the specific facts and reasons underlying the determination.

(d) Each secure facility shall employ one full time qualified staff member who plans and coordinates all exercise, recreation and leisure activity programs.

(e) Each secure facility shall maintain a schedule for exercise, recreation and leisure activities. The exercise, recreation and leisure activities shall be organized and supervised by designated staff.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7418.3. Exercise, recreation and leisure areas and equipment

(a) Each secure facility shall establish and maintain one or more outdoor areas of sufficient size and design to enable residents to engage in outdoor exercise, recreation and leisure activities.

(b) Each secure facility shall provide residents with appropriate outer garments when they participate in outdoor exercise, recreation and leisure activities periods.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7418.4. Exercise, recreation and leisure areas inspections

Visual inspections of exercise, recreation and leisure activities areas and equipment shall be conducted before and subsequent to each exercise period. Such visual inspections shall be recorded.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7418.5. Limitation of exercise, recreation and leisure activities

(a) The exercise, recreation and leisure activities period of a resident may be denied, revoked or limited when it is determined that such exercise, recreation and leisure activities would cause a threat to the safety, security, or good order of the facility, or the safety, security or health of the resident or other residents.

(b) Any determination to deny, revoke or limit a resident's exercise, recreation and leisure activities pursuant to this section shall be made by the facility director or designee. Such decision shall state the specific facts and reasons underlying such determination, and shall be recorded. The resident shall be informed of such determination.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7419 RESIDENT PERSONAL HYGIENE

Section 7419.1. Policy

(a) The Office of Children and Family Services (OCFS) shall provide for and maintain standards of personal hygiene for residents.

(b) Consistent with the requirements of this Part, OCFS shall develop written policies and procedures that govern resident personal hygiene. These policies and procedures shall be reviewed annually and updated as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7419.2. Showers

Every OCFS secure facility shall provide a shower schedule that allows for the daily shower of each resident.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7419.3. Shaving

(a) Each OCFS secure facility shall make necessary shaving items available. Shaving items shall be provided at facility expense and shall be maintained in a safe and sanitary manner.

(b) Hot water sufficient to enable residents to shave with care and comfort shall be provided.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7419.4. Haircuts

(a) Each OCFS secure facility shall make hair care services available to all residents.

(b) Barber and beautician instruments shall be maintained in a safe and sanitary manner.ction 7419.4. Haircuts

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7419.5. Hairstyles

(a) Consistent with the requirements of Part 7425 of this Title, OCFS may establish rules for the permissible style and length of a resident's hair.

(b) Residents assigned to work in areas where food is stored, prepared, served or otherwise handled shall be required to wear a hairnet or other head covering.

(c) The facility director, or person acting in that capacity, may determine that certain work assignments constitute a safety hazard to those residents with long hair or beards. Residents unwilling or unable to conform to the safety requirements of work assignments shall be removed from such work assignment.

(d) When, in the opinion of the facility director, or person acting in that capacity, the growth or removal of a resident's hair, including facial hair, creates an identification problem, a new photograph may be taken of the resident.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7419.6. Personal health care items

(a) Upon admission to an OCFS secure facility, OCFS shall require that articles necessary for maintaining proper personal hygiene are made available at facility expense to all residents, including but not limited to:

(1) soap;

(2) a toothbrush;

(3) toothpaste;

(4) a comb;

(5) deodorant; and

(6) toilet paper.

(b) In addition to the items listed in subdivision (a) of this section, tampons and/or sanitary napkins shall be made available to all female residents at facility expense.

(c) All feminine hygiene items shall be stored and disposed of in a sanitary manner.

(d) All personal health care items issued pursuant to subdivisions (a) and (b) of this section shall be replenished or replaced as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7419.7. Clothing

(a) All residents shall wear facility issued clothing. Facility issued clothing shall be provided at facility expense and shall include, but not be limited to:

(1) For males:

(i) two shirts;

(ii) two pair of trousers; and

(iii) three sets of undergarments.

(2) For females:

(i) two shirts or blouses;

(ii) two skirts, dresses, or slacks;

(iii) two brassieres; and

(iv) three underpants.

(3) For males and females:

(i) three pairs of socks;

(ii) one pair of suitable footwear;

(iii) one sweater or sweatshirt; and

(iv) seasonable clothing, which shall be issued as needed.

(b) Residents engaged in work assignments requiring special clothing shall be provided such clothing at facility expense.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7419.8. Laundry and repair of clothing

(a) Laundry services shall be provided at facility expense twice a week and more frequently when necessary.

(b) Reasonable repairs of any clothing issued pursuant to section 7419.7 of this Part shall be made at facility expense.

(c) When a resident is without necessary clothing listed in section 7419.7(a) of this Part, with such clothing having been collected for laundering or repair, the resident shall be provided with replacement clothing in a timely manner.

(d) All clothing items issued pursuant to this Part shall be cleaned, checked for damage and repaired when necessary before reissue.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7419.9. Bedding and linen

(a) Upon admission to a facility, all residents shall be provided, at facility expense, with an issue of clean bedding in good condition. The bedding shall consist of two sheets, a pillow, a pillowcase, one mattress, and sufficient blankets to provide comfort under existing temperature conditions.

(b) Pillowcases and sheets shall be exchanged weekly, or more frequently when necessary. All other bedding items issued pursuant to subdivision (a) of this section shall be exchanged when necessary.

(c) All bedding items issued or exchanged pursuant to this section shall be cleaned, checked for damage and repaired when necessary and before reissue.

(d) Mattresses shall be constructed of a fire-retardant material. When issued, mattress covers shall be constructed of materials both water-resistant and easily sanitized.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7419.10. Storage of clothing and bedding

All items of clothing and bedding stored within the facility shall be maintained in a safe and sanitary manner.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7420 GRIEVANCE PROGRAM

Section 7420.1. Policy

(a) In order to provide an effective and impartial procedure for the timely resolution of resident complaints, the Office of Children and Family Services (OCFS) shall establish, implement and maintain a formal resident grievance program at each secure facility. Residents shall be afforded the opportunity to resolve their complaints in an informal manner.

(b) Consistent with the requirements of this Part, OCFS shall develop written policies and procedures that govern the grievance program at each secure facility. These policies and procedures shall be reviewed annually and updated as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7420.2. Definitions

(a) **Grievance** shall mean a resident's written complaint concerning either written or unwritten facility policies, procedures, rules, practices, programs, or the action or inaction of any person within the facility which personally affects the resident.

(b) **Grievant** shall mean a resident who has filed a grievance pursuant to this Part.

(c) **Grievance coordinator** shall mean staff designated to facilitate and monitor the resident grievance program.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7420.3. Facility grievance policies and procedures

OCFS shall develop written policies and procedures pursuant to this Part which shall include, but not be limited to:

(a) a detailed description of the grievance program operations including steps, timelines, investigative processes, and available appeal procedures;

(b) staff responsibilities and functions relative to the grievance program;

(c) procedures to provide grievance program accessibility to residents;

(d) a statement regarding safeguards for residents against reprisals for having filed a grievance;

(e) procedures for orientation to the grievance program for all facility staff and residents; and

(f) procedures for corrective action to be taken when a grievance is found to have merit.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7420.4. Facility grievance program requirements

(a) All residents of a secure facility shall have access to the facility's grievance program.

(b) Instructions for filing a grievance shall be included in the orientation information as required by section 7403.10 of this Title.

(c) Upon admission, all residents of secure facilities shall be advised in writing as to the availability of grievance forms.

(d) The grievant must file a grievance within 14 days of the date of the act or occurrence giving rise to the grievance.

(e) At each secure facility, the facility director, or person acting in that capacity, shall designate staff to act as grievance coordinator(s).

(f) The facility director, or person acting in that capacity, shall require that each grievance is investigated to the extent necessary by an impartial person who was not personally involved in the circumstances giving rise to the grievance; provided, however, that a grievance which is too vague to understand or fails to set forth supporting evidence or information may be returned to the resident. Failure to supply sufficient information or evidence within two days thereafter shall be cause to deny the grievance.

(g) The results of any investigation conducted pursuant to subdivision (f) of this section shall be immediately provided to the grievance coordinator and the unit administrator, or other appropriate staff member chosen to determine the grievance pursuant to subdivision (i) of this section. At a minimum, each investigation of a resident's grievance shall include gathering, assessing, and summarizing the following information:

(1) the facts and issues underlying the circumstances of the grievance;

(2) any interviews held with the grievant and with all parties involved in the grievance; and

(3) any other relevant information.

(h) The following complaints are not grievable and shall be returned to the grievant by the grievance coordinator with a written explanation:

(1) finding(s) and sanction(s) from facility disciplinary proceedings;

(2) grievances that do not personally affect the resident; or

(3) dispositions or individual decisions of any current or subsequent program, and/or procedures having a written appeal mechanism which extends review to outside the facility also shall not be grievable. These dispositions or individual decisions shall include, but not be limited to:

(i) parole revocation decisions;

(ii) Fenner hearing decisions; and

(iii) time allowance hearing decisions.

(i) A determination of every grievance shall be reached within seven days of filing. Such determination shall be in writing and shall be issued by the unit administrator or, if the unit administrator is the subject of the grievance, an appropriate staff member designated by the grievance coordinator. The written determination shall specify the facts and reasons underlying the determination and a copy of such determination shall be provided to the grievant and the grievance coordinator.

(j) Within seven days after receipt of the determination described in subdivision (i) of this section, the grievant may appeal the decision to the facility director, or person acting in that capacity.

(k) Within 14 days from the time the appeal is received by the facility, the facility director, or person acting in that capacity, shall issue a written determination on the grievance appeal and provide a copy of such determination to the grievant and the grievance coordinator.

(l) Within seven days of receipt of the facility director's determination, the grievant may appeal the decision to the Deputy Commission for Rehabilitative Services, or designee.

(m) Within 30 days from the time the appeal is received by the Deputy Commissioner for Rehabilitative Services, or designee, a written determination shall be issued on the grievance appeal and the following people shall be provided a copy of such determination: the grievant, the facility director or person acting in that capacity, and the grievance coordinator. The determination by the Deputy Commissioner of Rehabilitative Services shall be final.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7420.5. Grievance program forms

Each secure facility shall utilize a grievance form that contains all of the required elements of this Part, including, but not limited to, an indication as to whether or not a resident has attempted to informally resolve their complaint, and if so, a description of the attempt.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7420.6. Continuation and termination of grievances

(a) If the grievant is transferred from a secure facility to another OCFS facility prior to the resolution of a grievance, the grievance coordinator shall forward the grievance decision upon completion to the receiving facility director, or person acting in that capacity, and the grievant.

(b) If the grievant is released from a secure facility and the grievance is applicable only to the grievant, the grievance shall be forwarded to the facility director for a determination as to whether the subject of the grievance requires corrective action.

(c) If the grievance is applicable to any other resident, the facility director, or person acting in that capacity, shall be required to complete the grievance process and to render a decision. If the facility director or person acting in that capacity denies such grievance, the facility director, or person acting in that capacity, shall forward the grievance to the Deputy Commissioner of Rehabilitative Services, or designee, for a final decision.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7420.7. Assistance to residents

If a grievant is non-English speaking, illiterate, or if the complexity of an issue makes it unlikely that the resident will be able to adequately present the substance of the grievance, the grievance coordinator or a designated impartial person shall assist the grievant in the preparation of the written grievance. Where the grievance coordinator has investigated a grievance, they shall not assist the resident in the preparation of that grievance and shall designate an impartial person to assist the resident in the preparation of the grievance.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7420.8. Recordkeeping

(a) Each facility director, or person acting in that capacity, shall be responsible for the development of a centralized facility based record system for all resident grievances.

(b) The facility director, or person acting in that capacity, shall be responsible for requiring the confidentiality and maintenance of the centralized facility based record system in each secure facility.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7420.9. Staff orientation

All facility staff shall receive an orientation to the policies and procedures as required by section 7433.5 of this Title.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7421 ACCESS TO LEGAL SERVICES

Section 7421.1. Policy

(a) Residents placed in a secure facility operated by the Office of Children and Family Services (OCFS) shall be allowed access to legal services for the purpose of:

(1) legal preparation with respect to any civil action or proceeding relating to the resident's conditions of confinement or criminal action or proceeding; and

(2) at the discretion of the facility director, or person acting in that capacity, legal preparation with respect to any matter.

(b) Consistent with the requirements of this Part, OCFS shall develop written policies and procedures that govern residents' access to legal services. These policies and procedures shall be reviewed annually and updated as needed.

(c) As used in this subtitle, legal services shall include access to:

(1) legal counsel; and

(2) the Ombudsman.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7421.2. Definitions

(a) As used in this Part, the term legal counsel shall mean:

(1) any attorney authorized to practice law in New York State or in any jurisdiction where a resident has a legal action, proceeding or other legal matter pending; and

(2) a law student, law clerk, or paralegal acting under the supervision of and with the written authorization of an attorney who meets the requirements of paragraph (1) of this subdivision.

(b) Nothing in this Part shall be construed as requiring OCFS to provide a resident with legal counsel at facility expense.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7421.3. Access to legal counsel

(a) Consistent with the requirements of this Part, all residents shall have access to legal counsel. Such access shall include telephone communications and visits between residents and their legal counsel at times not unduly disruptive of facility routine.

(b) Visits or telephone communications between residents and their legal counsel shall not be monitored except visually.

(c) Access to legal counsel shall be made available at the request of legal counsel, the resident, the resident's parent(s), legal guardian or spouse.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7421.4. Notary public

Each secure facility shall make available the services of a notary public to the residents within 72 hours after a resident's request for notarization or attestation of their signature.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7421.5. Limitation on legal services

A resident's access to legal services, as defined in this Part, shall not be denied, revoked or limited.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7422 VISITATION

Section 7422.1. Policy

(a) All Office of Children and Family Services (OCFS) secure facility residents shall be entitled to receive visits.

(b) Consistent with the requirements of this Part, OCFS shall develop written policies and procedures that govern visitation at each secure facility. These written policies and procedures shall be reviewed annually and updated as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7422.2. Visiting area

(a) Each secure facility shall provide sufficient space for a visiting room or an area designed to allow for physical contact between residents and their visitors.

(b) Each secure facility shall provide for the proper storage of visitors' coats, handbags and other personal items not allowed into the visiting area.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7422.3. Availability of visits

(a) Each secure facility shall grant residents the right to receive visits, subject only to the limitations pursuant to section 7422.7 of this Part.

(b) The facility director, or person acting in that capacity, shall establish and publish a schedule of visitation that permits each resident to have the opportunity for at least two hours of visitation per week.

(c) Residents shall be permitted to visit more than one visitor at the same time, with the maximum number of visitors to be determined by the facility director, or person acting in that capacity.

(d) Each secure facility shall provide information to visitors about transportation to the facility and facilitate transportation between the facility and nearby public transit terminals.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7422.4. Visitor identification and registration

(a) Consistent with the requirements of this Part, a resident shall be entitled to receive visitors only from their immediate family, foster parent(s), legal counsel and representatives of the Ombudsman's office. For the purpose of this Part, immediate family shall include parents or legal guardians, grandparents, siblings, aunts, uncles, children, and spouse. A prospective visitor who is under 18 years of age may be restricted from visiting a resident if they are not accompanied by an approved adult visitor.

(b) Each secure facility shall verify the identity of each prospective visitor.

(c) At each secure facility staff shall record the following information for each prospective visitor:

(1) the visitor's name;

(2) the date;

(3) the time of entry and the time of exit;

(4) the name of the resident to be visited; and

(5) the visitor's relation to the resident.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7422.5. Contact visits

(a) Consistent with subdivision (b) of this section, physical contact shall be permitted between a resident and their visitors.

(b) Residents and their visitors shall be required to conduct themselves in an appropriate manner and consistent with reasonable standards of public decency.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7422.6. Visitation security and supervision

(a) Prior and subsequent to each visit, all residents shall be searched solely to verify that they are not in possession of contraband.

(b) All prospective visitors and any personal effects brought into the visiting area shall be searched solely for contraband.

(c) A search of the visiting area shall be conducted prior and subsequent to each visiting period and such search shall be recorded.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7422.7. Limitation of visitation

(a) Consistent with the requirements of this Part, the visitation of a resident with a particular visitor may be denied, revoked or limited only when it is determined that such visitation would cause a threat to the safety, security or good order of the facility or the safety, security or health of the resident or be detrimental to the resident's treatment and rehabilitation program.

(b) Any determination to deny, revoke or limit a resident's visitation pursuant to this section shall be made by the facility director, or person acting in that capacity, in writing, and shall state the specific facts and reasons underlying such determination. A copy of this determination shall be given to any person affected by the determination.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7422.8. Special visits

Each secure facility shall implement procedures that govern special visits and the conditions of such visits. Such visits shall include, but not be limited to, visits from persons who have traveled long distances, visits to hospitalized residents, visits to residents on modified services program status, non-contact visits, and visits between residents and their attorneys.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7423 CORRESPONDENCE AND TELEPHONE

Section 7423.1. Policy

(a) Consistent with the requirements of this Part, the Office of Children and Family Services (OCFS) shall develop written policies and procedures that govern correspondence and telephone usage at each secure facility. The written policies and procedures shall be reviewed annually and updated as needed.

(b) Subject to the limitations of this Part, residents are entitled to correspond with any person.

(c) There shall be no restriction upon incoming or outgoing resident correspondence based upon:

(1) the amount of correspondence sent or received; or

(2) the language, (e.g., Spanish, Chinese), in which such correspondence is written.

(d) In accordance with this Part, where incoming or outgoing, privileged or nonprivileged mail would otherwise be opened in the presence of the recipient resident, OCFS shall not be required to do so where it would interfere with an ongoing investigation. All notices required to be given to the recipient residents under this Part shall be waived when the notice of such would interfere with the investigation.

(e) If a resident is unable to read, write, or has any other disability that may interfere with the resident's ability to read or write, OCFS shall provide assistance to the resident with their correspondence.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7423.2. Outgoing resident correspondence

(a) Each secure facility shall make available to residents, at facility expense, writing materials and first class postage for at least two one ounce pieces of correspondence each week.

(b) Each secure facility shall make available for purchase by residents both writing materials and first class postage.

(c) Outgoing resident correspondence shall bear at least the sender's first name, in addition to the first initial of their last name, the name of the institution, and the institutional post office box or street address in the upper left-hand corner of the envelope.

(d) Outgoing resident correspondence shall be sealed by the resident in the presence of staff.

(e) Outgoing resident nonprivileged correspondence shall not be opened or read except when the facility director, or person acting in that capacity, determines there is reasonable suspicion to believe that the contents of such correspondence endanger or threaten the safety, security, or good order of the facility, or the safety, security, or the health of another person.

(f) A resident shall be notified in writing when their outgoing nonprivileged correspondence is opened pursuant to this section.

(g) The facility director, or person acting in that capacity, may delay notifying the resident regarding the specific facts and reasons when such notification would endanger or threaten the safety, security or good order of the facility, or the safety security, or the health of another person. As soon as the danger no longer exists, the facility director or person acting in that capacity shall immediately notify the resident.

(h) All outgoing resident correspondence shall be collected and forwarded to the United States Postal Service at least once each business day.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7423.3. Incoming resident correspondence

(a) Incoming resident correspondence, other than privileged correspondence, may be opened and inspected outside the presence of the intended resident recipient solely to ensure the absence of contraband.

(b) Incoming resident correspondence shall not be read except pursuant to written order of the facility director, or person acting in that capacity. Such written order shall state the specific facts and reasons why such action is necessary to maintain the safety, security, or good order of a facility, or the safety, security, or health of a person.

(1) A copy of any order made pursuant to this subdivision shall be forwarded by the facility director, or person acting in that capacity, to the intended resident recipient unless doing so would interfere with an ongoing investigation.

(2) A written record of correspondence read pursuant to this subdivision shall be maintained. Such record shall include:

(i) the name of the sender;

(ii) the name of the intended resident recipient;

(iii) the date the correspondence was read; and

(iv) the name of the reader.

(c) Should the facility director, or person acting in that capacity, upon reading any incoming resident correspondence pursuant to subdivision (b) of this section, determine that such correspondence or any portion thereof constitutes a threat to the safety, security, or good order of the facility, or the safety, security, or the health of a person, except as provided in subdivision (d) of this section, the director, or person acting in that capacity, shall return the correspondence to the sender. A written statement setting forth the specific facts and reasons underlying the determination will be retained in the resident's record. A copy of such written statement shall be forwarded to the intended resident recipient. Any reading or determination made pursuant to this subdivision shall be completed by the facility director, or person acting in that capacity, within five business days after receipt of the correspondence at the facility.

(d) When any incoming resident correspondence read pursuant to subdivision (c) of this section may involve a criminal offense, it shall be forwarded to the facility director, or person acting in that capacity, for appropriate disposition in accordance with facility procedures.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7423.4. Privileged incoming and outgoing correspondence

(a) As used in this Part, privileged correspondence shall mean correspondence to or from attorneys and individuals under the direct supervision of attorneys, legal assistance agencies, and individuals under the direct supervision of legal assistance agencies, courts, the State Commission of Correction, other correction officials, local, State, and Federal law enforcement agencies, and the ombudsman.

(b) Incoming privileged correspondence shall not be opened and inspected for contraband except in the presence of the recipient resident, unless doing so would interfere with an ongoing investigation.

(c) Outgoing privileged correspondence shall not be opened and inspected for contraband except where the facility director or person acting in that capacity determines there is reasonable suspicion to believe that the contents of such privileged correspondence threaten the safety, security, or good order of the facility, or the safety, security, or the health of a person. A resident shall be present when their outgoing privileged correspondence is opened pursuant to this subdivision.

(d) Incoming and outgoing privileged correspondence shall not be read except where the facility director, or person acting in that capacity, determines there is reasonable suspicion to believe that the contents of such privileged correspondence endanger or threaten the safety, security, or good order of the facility, or the safety, security, or the health of a person. When the facility director, or person acting in that capacity, makes such a determination, he or she shall issue a

written order which states the specific facts and reasons why such action is necessary to maintain the safety and security of the facility, or the safety and security of a person. The resident shall be present when their incoming and outgoing privileged correspondence is read pursuant to this subdivision.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7423.5. Restrictions on correspondence

Nothing contained in this Part shall be deemed to prevent the facility director, or person acting in that capacity, from establishing a list of correspondents with whom residents shall be prohibited from corresponding in order to protect the safety, security, or good order of the facility, or the safety, security, or the health of a person.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7423.6. Contraband found in incoming resident correspondence

(a) As used in this Part, the term contraband shall include any item which constitutes a threat to the safety, security, or good order of a facility, or the safety, security, or the health of a person.

(b) Incoming resident correspondence that is found to contain contraband shall be processed as follows:

(1) when contraband found in incoming resident correspondence may involve a criminal offense, the contraband shall be forwarded to the facility director, or designee, for disposition in accordance with facility procedures; and

(2) contraband found in incoming resident correspondence that does not involve a criminal offense but has personal or financial value, as determined by the facility director or designee, shall be returned to the sender at the resident's expense or retained by the facility for the resident. The disposition of such articles shall be inventoried and recorded in writing.

(i) The facility director, or designee, shall give written notice to the intended resident recipient of any determination made pursuant to this paragraph. The written notice shall include:

(a) the name and address of the sender;

(b) the nature of the contraband; and

(c) a statement of the specific facts and reasons underlying the determination.

(ii) Subsequent to any determination made pursuant to this paragraph, the facility director, of person acting in that capacity, shall, upon removal of the contraband accompanying the correspondence, forward such correspondence to the intended resident recipient.

(c) Cash, checks or money orders received through the mail shall be deposited in the personal cash account of the intended resident or forwarded to the facility director or designee for disposition in accordance with facility procedures. The resident shall be notified in writing of all amounts received and the disposition of such.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7423.7. Telephone policy

Consistent with the requirements of this Part, OCFS shall develop policies and procedures that provide access to a telephone by residents. These policies and procedures shall include, but not be limited to:

(a) specific hours of telephone availability;

(b) maximum number and length of calls; and

(c) any other limitations on telephone usage.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7424 NONDISRIMINATORYTREATMENT

Section 7424.1. Policy

The Office of Children and Family Services (OCFS) shall develop written policies and procedures designed to prevent the unlawful discriminatory treatment of residents in any secure facility based upon race, religion, nationality, sex, sexual orientation, age or political beliefs. The areas addressed by such policies shall include, but shall not be limited to, educational, religious, and vocational programs, work assignments, classification, disciplinary and grievance decisions, and consideration for program participation. These policies and procedures shall be reviewed annually and updated as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7424.2. Non-English speaking residents

Each secure facility shall employ procedures designed to reasonably assure that non-English speaking residents understand all written and oral communications from facility staff members, including, but not limited to, orientation procedures, health services procedures, facility rules, disciplinary procedures, and the provisions of this Chapter.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7425 RELIGION

Section 7425.1. Policy

(a) Consistent with the requirements of this Part, the Office of Children and Family Services (OCFS) shall develop written policies and procedures that allow for religious observance at each secure facility. The written policy and procedures shall be reviewed annually and updated as needed.

(b) Residents have a right to hold any religious belief, and to be affiliated with any religious faith.

(c) Residents are entitled to exercise their religious beliefs in a manner that does not constitute a threat to the safety, security or good order of the facility, or the safety, security or health of any person.

(d) No person shall be permitted to proselytize to any resident of an OCFS secure facility.

(e) Consistent with the requirements of subdivision (c) of this section, no resident shall be compelled to or dissuaded from exercising any religious belief.

(f) Equal status and protection shall be afforded all residents in the exercise of their religious beliefs except when such exercise results in facility expenditures which are unreasonable or disproportionate to those extended to other residents for similar purposes.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7425.2. Supervision of residents exercising their religious beliefs

Consistent with the requirements of Part 7404 of this Title, each OCFS secure facility shall maintain adequate supervision during the exercise of religious beliefs by residents.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7425.3. Congregate religious activities

Consistent with the requirements of section 7425.1(c) of this Part, residents shall be permitted to congregate in an appropriate area for the purpose of religious worship and other religious activities.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7425.4. Religious advisors

(a) As used in this Part, the term religious advisor shall mean a person whose ecclesiastical credentials have been approved by the Bureau of Ministerial Services.

(b) Religious advisors shall be permitted to conduct congregate religious activities at least once per week at a time approved by the facility director, or person acting in that capacity.

(c) Consistent with the requirements of section 7425.1(c) of this Part, residents shall be permitted confidential religious counseling on a voluntary basis.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7425.5. Celebration of religious holidays or festivals

Consistent with the requirements of section 7425.1(c) of this Part, residents shall be permitted to celebrate religious holidays or festivals of the religious faith with which they are affiliated.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7425.6. Religious dietary laws

Residents are entitled to observe reasonable dietary laws established by their religion. Each facility shall provide residents with food items reasonably sufficient to meet such religious dietary laws.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7425.7. Change of religion

Residents who are under the age of 18 years shall be permitted to change their religious affiliation only with the consent of the resident's parent or legal guardian, and upon application to the Bureau of Ministerial Services. Residents over the age of 18 years shall be permitted to change their religious affiliation upon application to the Bureau of Ministerial Services.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7425.8. Religious articles

Consistent with the requirements of section 7425.1(c) of this Part, residents shall be entitled to wear and possess approved religious articles during religious services and in their rooms.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7425.9. Recognition of a religious group or organization

(a) Residents' requests to exercise the beliefs of religious groups or organizations not generally recognized shall be made to the facility director, or person acting in that capacity, for referral to the Bureau of Ministerial Services.

(b) In determining requests made pursuant to subdivision (a) of this section, the Bureau of Ministerial Services shall consider the following factors, among others, as indicating a religious foundation for the belief:

(1) whether there is substantial literature supporting the belief as stated to religious principle;

(2) whether there is formal, organized worship by a recognizable and cohesive group sharing the belief;

(3) whether there is an informal association of persons who share common ethical, moral, or intellectual views supporting the belief; and

(4) whether the belief is deeply and sincerely held by the resident.

(c) In determining requests made pursuant to subdivision (a) of this section, residents shall be permitted to present evidence to the Bureau of Ministerial Services indicating a religious foundation for the belief.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7425.10. Limitations on the exercise of religious beliefs

Any determination made by the facility director, or person acting in that capacity, to limit the exercise of the religious beliefs of any resident shall be made in writing and shall state the specific facts and reasons underlying such determination. A copy of this determination shall be given to any person affected by the determination.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7426 COMMISSARY SERVICES

Section 7426.1. Commissary services

Commissary services provided by the Office of Children and Family Services (OCFS) at secure facilities shall be in accordance with the requirements of section 517 of the Executive Law, and all other applicable laws, statutes and regulations.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7427 ACCESS TO MEDIA

Section 7427.1. Policy

(a) Consistent with the requirements of this Part, the Office of Children and Family Services (OCFS) shall develop written policies and procedures that govern the residents' access to media and the media's access to the residents. The written policies and procedures shall be reviewed annually and updated as needed.

(b) Consistent with the requirements of this Part, residents and the media will have reasonable access to each other subject only to limitations necessary to maintain the safety, security and good order of the facility, to protect a resident's rights and a resident's treatment and rehabilitation program. OCFS shall protect each resident's right to privacy and guarantee the confidentiality of each resident under the care and custody of OCFS.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7427.2. Definitions

As used in this Part, the term **media** shall mean any printed or electronic means of conveying information to any portion of the public, and shall include, but is not limited to, newspapers, magazines, books, or other publications, and licensed radio and television stations.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7427.3. Access to media by residents

OCFS shall provide each resident reasonable access to the media, subject only to the limitations necessary to maintain the safety, security and good order of the facility, and to protect a resident's right to privacy and a resident's treatment and rehabilitation program.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7427.4. Media’s access to the residents

OCFS may grant representatives of the media access to the facility consistent with preserving resident privacy and maintaining the safety, security and good order of the facility and resident

treatment and rehabilitation programs. Any resident under the age of 18 years must have written approval from a parent or legal guardian for contact with the media.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7428 LIBRARY SERVICES

Section 7428.1. Policy

(a) Consistent with the requirements of this Part, the Office of Children and Family Services (OCFS) shall require that each secure facility provide all residents with regular access to library services.

(b) OCFS shall develop written policies and procedures that govern library services at each secure facility. The written policies and procedures shall be reviewed annually and updated as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7428.2. Definitions

As used in this Part, the term **facility library** shall mean an area permanently designated within a secure facility that allows for the adequate storage, organization and display of library materials.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7428.3. Facility library services

(a) All secure facilities shall maintain a facility library in conformance with the requirements of this Part.

(b) Materials and services provided by each facility library shall include, but not be limited to:

(1) materials which are current and responsive to the educational, vocational, informational and recreational interests and needs of the resident population at a variety of ability levels;

(2) a reference collection which consists of a non-circulating collection of books and other related materials including, but not limited to, an almanac, dictionary and encyclopedia;

(3) an orientation to library services which includes, but is not limited to, instructions on library procedures and the use of library resources such as informational tools or aids to locate materials and facts in the library; and

(4) an inter-library loan service, where available.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7428.4. Material selection in facility libraries

(a) Each secure facility shall use a systematic approach to determine and meet the library service interests and needs of the resident population, including those of non-English speaking residents.

(b) Library materials for each secure facility shall be acquired on a continual and planned basis.

(c) Material that is determined to pose a threat to the safety, security or good order of a facility shall not be acquired or held for circulation by a secure facility.

(d) Each secure facility shall review all of the materials selected for acquisition and provided by the facility library to determine if such materials are a threat to the safety, security or good order of the facility. A determination for denial shall be recorded by the facility director or designee.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7428.5. Accessibility to facility library services

Secure facility residents shall be provided the opportunity to access the facility's library materials and services at least once a week.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7428.6. Library staff

(a) The librarian who administers and coordinates library services for the secure facilities shall be responsible for:

(1) the selection of materials and equipment as provided for in this Part;

(2) the management of each secure facility's library services including, but not limited to, the organization of materials and services, the budgetary process, long and short-range planning and evaluation; and

(3) providing assistance in the selection, training, and use of residents as library clerks.

(b) Each secure facility library shall be supervised and coordinated by facility program staff that is knowledgeable in the provision of such services.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7433 PERSONNEL STANDARDS

Section 7433.1. Policy

In order to provide for the safety, security, and good order of all secure facilities, the Office of Children and Family Services (OCFS) shall require that secure facility staff are oriented to safety and security policies and procedures and trained to perform their duties and responsibilities.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7433.2. Definitions

As used in this Part, the **terms youth division aide** and **youth counselor** shall mean secure facility staff whose primary duties and responsibilities shall include, but are not limited to:

(a) resident observation;

(b) resident management; and

(c) resident supervision.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7433.3. Basic training requirement

Commencing no later than one year from the effective date of this Part, OCFS shall require that, prior to assuming employment at a secure facility, all youth division aides and youth counselors satisfactorily complete a basic training program certified by the State Commission of Correction (the Commission) which shall include, but not be limited to:

(a) practical applications;

(b) pre and post tests; and

(c) a passing score on a written exam approved by the Commission.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7433.4. Training certification

(a) All training programs offered to secure facility staff pursuant to section 7433.3 of this Part shall be reviewed and certified every five years by the Commission.

(b) OCFS shall be responsible for maintaining a centralized system of all certified academy courses, staff training records, and instructor training records.

(c) All training instructors shall be certified to instruct Commission approved training programs.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7433.5. Academy training records

Consistent with the requirements of this Part, OCFS shall maintain current and accurate academy training records. These training records shall include, but not be limited to:

(a) names of trainees;

(b) names of each training module;

(c) time and date of each training module;

(d) names and records of certification of each instructor; and

(e) exam results.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7433.6. Training records

(a) Consistent with the requirements of this Part, OCFS shall maintain current and accurate training records for all secure facility staff. Such training records shall include, but not be limited to:

(1) course title and description;

(2) date, time and location of program;

(3) list of program participants; and

(4) exam results.

(b) Consistent with the requirements of this Part, OCFS shall maintain current and accurate records for all Commission approved training courses taught to secure facility staff. Such training records shall include, but not be limited to:

(1) course descriptions and lesson plans;

(2) copies of exams; and

(3) a list of instructors certified to train the course.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7433.7. Orientation of staff new to a secure facility

(a) Each secure facility shall provide a formal standardized orientation program for all staff new to a secure facility.

(b) Secure facility staff orientation shall include, but not be limited to:

(1) applicable secure facility operations;

(2) applicable security policies and procedures;

(3) confidentiality of resident information; and

(4) any other pertinent information.

(c) Such orientation shall be documented and maintained at each secure facility.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7434 POLICY

Section 7434.1. Policy

(a) The State Commission of Correction (the Commission) recognizes the need to provide a mechanism by which the Office of Children and Family Services (OCFS) may apply for a variance to the requirements of this Chapter when situations exist or arise that would prevent or alter OCFS's ability to meet such requirement. The Commission shall grant such variances only under specified conditions and when doing so will not jeopardize the safety, security, or good order of a secure facility.

(b) Consistent with the requirements of this Part, OCFS shall develop written policies and procedures that govern the application process of obtaining variances for each secure facility. These policies and procedures shall be reviewed annually and updated as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7434.2. Conditions for applying for a variance

(a) The Commissioner of OCFS may apply to the Commission for a variance to requirements of this Chapter when:

(1) compliance with a specific rule or regulation cannot be achieved by the effective date of such rule or regulation;

(2) due to a temporary condition or situation, compliance with a specific rule or regulation cannot be achieved; or

(3) compliance is to be achieved in a manner other than that which is specified in such rule or regulation.

(b) The provisions of this Part shall not apply to any requirements of this Chapter where it is specifically stated that variances to such requirements are prohibited.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7434.3. Application for a variance

(a) Any application to the Commission for a variance shall be made in writing by the Commissioner of OCFS.

(b) Such application shall include:

(1) the specific rule, regulation or provision that is the subject of the application;

(2) the specific reasons and facts supporting OCFS's position that compliance with the specific rule and regulation cannot be achieved; and

(3) the specific plans, provisions and timetables for achieving full compliance with the rule or regulation at issue, the time period for which the variance is requested, and any other material that OCFS deems supportive of the application.

(c) When the application is made for reasons stated in section 7434.2(a)(3) of this Part, the application shall also include the specific plans which fully explain and support alternative methods of compliance.

(d) The Commission may require additional information concerning any variance application prior to rendering a decision.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7434.4. Review of variance application

(a) The Commission shall review and issue a written determination to the Commissioner of OCFS on each variance application which complies with the requirements of this Part.

(b) When a variance is granted, the Commission's determination shall specify:

(1) the time period for which the variance is granted; and

(2) any special requirements or conditions imposed as a condition of the variance.

(c) When a variance is granted, such variance and any special requirements or conditions imposed shall become the standard for compliance with the specific rule or regulation at issue for OCFS or the secure facility involved.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7435 DEATHBED AND FUNERAL VISITS

Section 7435.1. Policy

(a) Residents in secure facilities operated by the Office of Children and Family Services (OCFS) shall be permitted to visit family members when the death of a family member is imminent or after death has occurred, subject to the provisions of this Part.

(b) Consistent with the requirements of this Part, OCFS shall develop written policies and procedures that govern deathbed and funeral visits. These policies and procedures shall be reviewed annually and updated as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7435.2. Definitions

As used in this Part, the term funeral visit shall mean resident attendance at one of the following, at the discretion of the Deputy Commissioner of Rehabilitation Services or designee:

(a) a place of worship, a licensed funeral home, or other appropriate memorial service; or

(b) as a rare exception, an interment held at the gravesite, only when the resident is unable to pay final respects as specified in subdivision (a) of this section.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7435.3. Legal requirements and eligibility

(a) At the discretion of the Deputy Commissioner of Rehabilitative Services or designee, when the death of a resident's mother, father, legal guardian, brother, sister, spouse, child, grandparent, ancestral uncle or ancestral aunt is imminent, the resident shall be permitted to visit or make a funeral visit of such individual.

(b) Such visits shall be permitted only within New York State.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7435.4. Assessment and processing of visit requests

(a) OCFS shall implement a procedure for the expeditious review, assessment and approval of requests made by the resident, or other person, that the resident be permitted to visit the deathbed of, or make a funeral visit to, a designated family member.

(b) Deathbed visits may only take place at recognized health care facilities. Deathbed or funeral visits shall not be permitted in private homes.

(c) Prior to approving any such request, the facility director, or person acting in that capacity, shall verify:

(1) that the person to be visited is one of the persons specified in section 7435.3 of this Part;

(2) that the claim of imminent death is legitimate; and

(3) that the resident wishes to have such a visit, if the request was made by someone other than the resident.

(d) The facility director, or person acting in that capacity, shall assess the potential security risks associated with the visit by considering the following factors:

(1) the offense for which the resident was committed to OCFS and circumstances surrounding such offense;

(2) the criminal history, escape history or attempted escape history of the resident;

(3) whether the resident's presence at the visit may constitute a threat to the resident or any other person present because of:

(i) the involvement of a member of the resident's family in the offense committed by the resident; or

(ii) other persons who may be present at the deathbed visit or funeral;

(4) the mental stability of the resident, including the resident's mental health history and the potential effect of the visit on the resident;

(5) the medical condition of the resident;

(6) the method of transport or escort required; and

(7) any other relevant circumstances specific to the resident or situation.

(e) After considering all of the factors specified in this section, the Deputy Commissioner of Rehabilitative Services, or designee, shall approve or deny the visit. Such determination shall be made as soon as possible given the circumstances surrounding the deathbed or funeral visit.

(f) After such determination has been made, the resident and any person requesting the visit shall be informed of the decision.

(g) If the visit is denied, the resident shall be immediately informed of the denial and given the opportunity to discuss the response with the facility director or designee. Any such denial shall, as soon as practical, be documented and the resident shall be informed in writing.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7435.5. Security and supervision requirements

(a) A resident shall be under constant supervision at all times during their absence from a secure facility due to a deathbed or funeral visit. The facility director, or person acting in that capacity, shall determine:

(1) the appropriate number of staff assigned to accompany the resident on the visit, at least one of which shall be the same gender as the resident;

(2) the method of transportation and the vehicle to be used;

(3) the procedures for the use of restraint equipment;

(4) special procedures which are necessary due to the medical condition or mental health of the resident and the specific steps to be followed;

(5) the route to be followed and the itinerary for the trip; and

(6) any other special instructions concerning the visit.

(b) Prior to the deathbed or funeral visit, staff assigned to supervise such visit shall be thoroughly briefed concerning security measures and special instructions, and given all pertinent information regarding the family and circumstances surrounding the visit so that staff may employ good judgment in conducting the visit.

(c) Prior to the deathbed or funeral visit, the resident shall be instructed to surrender any secure facility identification cards and be thoroughly instructed regarding conduct, rules, and restrictions during the visit, and advised on the use of restraints.

(d) Staff shall escort a resident only to destinations approved by the facility director, or person acting in that capacity, during the visit.

(e) Except as specified in section 7435.6 of this Part, during a deathbed or funeral visit, a resident shall not be permitted to accept any food, beverages, gifts, or money from family, friends, or other members of the public.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7435.6. Food, lavatory, and lodging stops

(a) Residents participating in deathbed or funeral visits shall be given the opportunity to eat during regular meal times.

(b) Lavatory stops shall be made only as the need arises and as security permits. Whenever possible, such stops shall be made at facilities approved by OCFS.

(c) If it is not possible to utilize a secure facility, every attempt shall be made to utilize facilities with as little public presence and access as possible.

(d) If a deathbed or funeral visit requires a resident's absence from a secure facility overnight, the resident shall be housed at facilities approved by OCFS.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7435.7. Staff conduct and resident attire

(a) While accompanying a resident on a deathbed or funeral visit, staff shall be dressed in appropriate attire, conduct themselves in a professional, courteous manner toward the public and the resident, and cause as little public display as possible.

(b) Any search of the resident or use of restraints by staff during deathbed or funeral visits shall be conducted in an inconspicuous manner which minimizes public attention, unless security considerations require otherwise.

(c) At no time shall staff accept food, beverages, gifts or money from the resident's family or any other member of the public.

(d) Residents shall be permitted to wear appropriate clothing during deathbed or funeral visits.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7435.8. Duration of visits

(a) Except as otherwise provided in subdivisions (c) and (d) of this section and absent emergency circumstances which could cause security-related problems, residents attending

deathbed visits shall be permitted to visit family members for one hour, excluding the time taken to transport the resident to and from the visit.

(b) The facility director, or designee, has the authority to limit such a visit to less than one hour or to terminate such visit if in his or her opinion the safety, security or welfare of the resident, staff, or any member of the public is at risk.

(c) If a determination is made by the attending physician or other health services staff that a deathbed visit would jeopardize the health of the ill family member or the resident, or if hospital regulations restrict the length of the visit, such visit may be denied or modified as so recommended or required.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7435.9. Reportable incidents

If a reportable incident occurs while a resident is absent from a secure facility due to a deathbed or funeral visit, OCFS shall report such incident to the State Commission of Correction (the Commission) pursuant to the requirements of Part 7406 of this Title.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7435.10. Records

A written record of all requested deathbed and funeral visits shall be maintained by each secure facility.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7438 CONSTRUCTION AND RENOVATION

Section 7438.1. Definitions

As used in this Part, **construction and renovation** shall mean:

(a) all acquisition or designation of a physical plant not originally operated as a secure facility;

(b) all new secure facility construction; or

(c) all renovations, additions, or substantial alterations to an existing secure facility setting which involves physical structure, security, or major fixed equipment changes, other than replacement.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7438.2. Construction and renovation

(a) All plans and specifications for the construction or renovation of Office of Children and Family Services (OCFS) secure facilities shall be submitted to the State Commission of Correction (the Commission) for review and approval.

(b) Such approval by the Commission shall be obtained before a construction or renovation project is advertised for bids. If a bidding procedure will not be followed, Commission approval must be obtained before any construction or renovation begins.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7439 SANITATION

Section 7439.1. Policy

(a) Consistent with the requirements of this Part, the Office of Children and Family Services (OCFS) shall develop written policies and procedures that govern sanitation in each secure facility. The written policies and procedures shall be reviewed annually and updated as needed.

(b) OCFS shall require that each secure facility is maintained in a sanitary manner.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7439.2. Definitions

As used in this Part, the term living area shall mean an area in which the residents sleep, shower and participate in program and leisure activities.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7439.3. General facility sanitation

(a) Each OCFS secure facility shall develop written housekeeping procedures for all areas of the facility's physical plant which shall provide for daily housekeeping and regular maintenance by assigning specific duties and responsibilities requiring that all areas of a facility are maintained in a sanitary manner.

(b) The facility director or designee shall require that residents confined in an OCFS secure facility maintain their living area in a sanitary manner.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7439.4. Facility sanitation equipment

(a) OCFS shall require that each secure facility maintain a sufficient inventory of sanitation equipment.

(b) All facility sanitation equipment shall be maintained in good condition and stored in a safe and secure manner.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7439.5. Food service sanitation

(a) OCFS shall require that the food service areas in each secure facility, including equipment and utensils, are maintained in a safe, secure and sanitary manner.

(b) OCFS shall specify the sanitary procedures which are to be employed in the food service areas of each secure facility.

(c) OCFS shall require that all persons working in the food service area of a secure facility conform to hygienic practices consistent with the State Sanitary Code.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7439.6. Insect and rodent control

OCFS shall require each secure facility to develop and implement procedures designed to eliminate insect and rodent infestation. Consistent with such procedures:

(a) the facility director, or person acting in that capacity may prohibit or establish limitations regarding the accumulation of food items in rooms or living areas; and

(b) any pesticide applied in the facility shall be used consistent with the manufacturer's recommendations and any applicable laws or regulations.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7439.7. Sanitation inspections

(a) OCFS shall require weekly sanitation inspections of all secure facility areas by a designated staff member. The results of each inspection shall be recorded in writing.

(b) Each OCFS secure facility shall be inspected annually by State or local sanitation and health officials to ensure compliance with all applicable laws and regulations. The results of each inspection shall be recorded in writing, together with a summary of any action taken to address any deficiencies, and maintained on file at the facility. There shall be documentation that deficiencies have been corrected. Such inspections conducted pursuant to this subdivision

shall be designed to require compliance with the requirements of this Part and with the applicable provisions of the State's Sanitary Code, set forth in Chapter I of Title 10 NYCRR.

(c) OCFS shall require that the secure facility's potable water source, whether owned or operated by the public water department or by the secure facility, is certified in compliance with applicable laws and regulations.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7439.8. Waste disposal

OCFS shall require that each secure facility provide for waste disposal which protects the health and safety of residents and staff and complies with all applicable laws, codes, rules and regulations.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7440 FIRE PREVENTION AND SAFETY

Section 7440.1. Policy

(a) Consistent with the requirements of this Part, the Office of Children and Family Services (OCFS) shall develop written policies and procedures that govern fire prevention and safety. The written policies and procedures shall be reviewed annually and updated as needed.

(b) In order to safeguard the lives and property of all occupants within each OCFS secure facility, and to minimize the possibility of fire emergencies or other similar hazards, each OCFS secure facility shall practice proper fire prevention and safety measures.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7440.2. Fire prevention code requirements

OCFS shall ensure that each secure facility fully complies with all applicable laws, codes, rules and regulations related to fire safety and prevention.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7440.3. Fire and safety inspections

The facility director, or person acting in that capacity, shall request the appropriate authority having code enforcement jurisdiction to conduct annual fire and safety inspections. A copy of each inspection report, together with a detailed written statement of all completed and planned remedial actions, shall be maintained on file within such facility.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7440.4. Fire prevention and safety practices and training

(a) The facility director, or person acting in that capacity, shall designate one or more staff members to conduct regular fire and safety inspections of all areas of the facility to determine whether a fire hazard exists, and shall take the necessary action to correct such hazard.

(b) Such inspections shall be conducted at least once every week, and the results of such inspections shall be recorded in a facility log maintained for such purpose.

(c) Prior to assuming any duties, such appointed staff member(s) shall have successfully completed appropriate specialized training approved by the Office of Fire Prevention and Control.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7441 ENVIRONMENTAL HEALTH AND SAFETY

Section 7441.1. Policy

(a) Environmental conditions significantly influence the overall effectiveness of secure facility operations. Standards for lighting, air quality, temperature and noise levels are designed to preserve the health and well-being of residents and staff members and to promote the good order and security of each secure facility.

(b) Consistent with the requirements of this Part, the Office of Children and Family Services (OCFS) shall develop written policies and procedures that govern environmental health and safety. These policies and procedures shall be reviewed annually and updated as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7441.2. Lighting

(a) OCFS shall ensure that all areas of each secure facility are illuminated in a manner consistent with all applicable laws, codes, rules and regulations.

(b) OCFS shall provide:

(1) that each resident's room has access to natural light from a window with a view to the outside or from a natural light source within 20 feet of the room;

(2) lighting of at least 20 foot-candles at desk level in the personal grooming area; and

(3) other lighting requirements for the facility determined by the tasks to be performed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7441.3. Water supply

OCFS shall ensure that each secure facility fully complies with all applicable laws, codes, rules and regulations related to water supplies.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7441.4. Plumbing

OCFS shall ensure that each secure facility fully complies with all applicable laws, codes, rules and regulations related to plumbing and plumbing installations.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7441.5. Noise control

OCFS shall require that noise levels are controlled to provide adequate supervision and safety.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7441.6. Heating control

Each secure facility shall maintain an adequate heating system which shall safely heat all appropriate areas of the facility and which fully complies with all applicable laws, codes, rules and regulations related to heating systems.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7441.7. Ventilation

All areas in a secure facility shall be provided with sufficient ventilation to comply with all applicable laws, codes, rules and regulations related to ventilation. When primary ventilation systems fail, there shall be an alternate means of ventilation.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7441.8. Heating, plumbing, electrical, mechanical ventilation systems and equipment

Heating, plumbing, electrical, mechanical ventilation systems and equipment shall be maintained in a good, safe, sanitary, and serviceable condition and in compliance with all applicable laws, codes, rules and regulations related thereto.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7441.9. Environmental health and safety inspections

(a) The facility director, or person acting in that capacity, shall designate one or more staff members to conduct regular environmental health and safety inspections of all areas of the facility to determine whether an environmental hazard exists, and shall take the necessary action to correct any such hazard.

(b) Such inspections shall be conducted at least once every week, and the results of such inspections shall be recorded in a facility log maintained for such purpose.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

PART 7442 MAXIMUM FACILITY CAPACITY

Section 7442.1. Policy

(a) In order to promote a safe, secure and healthy environment, there shall be a limit on the total number of residents confined at any given time within each secure facility operated by the Office of Children and Family Services (OCFS).

(b) Consistent with the requirements of this Part, OCFS shall develop written policies and procedures that govern maximum facility capacity at each secure facility. These policies and procedures shall be reviewed annually and updated as needed.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7442.2. Definitions

As used in this Part, the following definitions shall apply to the terms listed below:

(a) Maximum facility capacity shall mean the greatest number of residents that may be confined at one time within each secure facility as certified by the New York State Commission of Correction (the Commission), pursuant to the requirements of this Part.

(b) Individual occupancy unit shall mean a resident's room with an individually controlled locking device secured from resident access and equipped to accommodate one resident.

(c) Living area shall mean an area in which the residents sleep, shower and participate in program and leisure activities.

(d) Special management unit shall mean any unit which can be designated for the individual housing of a resident separate and apart from the general population for purposes including, but not limited to:

(1) a medical treatment unit;

(2) a modified services program unit;

(3) a classification and orientation unit; or

(4) a mental health unit.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7442.3. Facility population limitation

The total number of residents confined within each secure facility shall not exceed the maximum facility capacity of such facility.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7442.4. Establishment of occupancy units

Consistent with sections 7442.2 and 7442.7 of this Part, OCFS may establish individual occupancy units.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7442.5. Individual occupancy unit

(a) Each individual occupancy unit shall contain at least 60 square feet of floor space if such unit is constructed after the effective date of this Part and has been rated for single occupancy by the Commission. Individual occupancy units with less than 60 square feet shall be permitted if such units were originally constructed for such purpose prior to the effective date of this Part.

(b) Except as otherwise provided in subdivision (e) of this section, each individual occupancy unit shall contain:

(1) one bed and mattress;

(2) one functioning toilet; and

(3) one functioning sink.

(c) At least one functioning shower shall be available for every 15 residents contained within a living area.

(d) Each individual occupancy unit constructed after the effective date of this Part shall provide a minimum of 25 square feet of unencumbered dayroom space per resident adjacent and accessible to such unit.

(e) Individual occupancy units which do not contain individual sinks or toilets are permitted if such units were originally constructed for such purpose prior to the effective date of this Part.

(f) Each individual occupancy unit shall house only one resident.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7442.6. Medical treatment unit

(a) Each medical treatment unit shall have a minimum of 80 square feet of floor space if such unit is constructed after the effective date of this Part and has been rated for single occupancy by the Commission.

(b) Medical treatment units with less than 80 square feet shall be permitted if such units were originally constructed for such purpose prior to the effective date of this Part.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7442.7. Formulating maximum facility capacity

(a) Consistent with the requirements of this Part, OCFS shall formulate a proposed maximum facility capacity in writing for each secure facility in a form and manner prescribed by the Commission.

(b) Such proposed capacity shall be approved in writing by the Commissioner of OCFS or designee.

(c) In formulating the proposed maximum facility capacity of a facility, OCFS shall determine the maximum number of residents that can be housed in all individual occupancy units pursuant to the requirements of this Part. Such determination shall be based on the following:

(1) the number of properly equipped individual occupancy units, including the number of special management units; and

(2) the facility's ability to provide required programs and services and to comply with other provisions of this Part which are related to facility capacity.

(d) Upon receipt of a proposed maximum facility capacity from OCFS, the Commission shall review such proposed capacity and approve, modify, or reject such proposal.

(e) Upon completion of such review, the Commission shall issue the Commissioner of OCFS the certified maximum facility capacity analysis for such facility.

(f) Within 60 days after receipt of the certified maximum facility capacity, OCFS may, if the Commission has modified or rejected the proposal, appeal to the Commission for a revision to the certified maximum facility capacity.

(g) Any such appeal shall be made in writing and include the specific facts, reasons and special circumstances underlying the request.

(h) The Commission shall respond to such appeal within 60 days after receipt and shall sustain or amend the original certified maximum facility capacity.

(i) The Commission's determination shall be made in writing, stating the specific facts and reasons underlying such decision. A copy of such determination shall be forwarded to the Commissioner of OCFS.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.

Section 7442.8. Application for a change in maximum facility capacity

(a) The Commissioner of OCFS shall apply to the Commission for a revision of the certified maximum facility capacity of a secure facility upon a change in any of the factors delineated in section 7442.7(c) of this Part.

(b) Such application shall be made in writing and include the specific facts, reasons and special circumstances underlying the request.

(c) Within 60 days after receipt, the Commission shall review such application and forward its determination in writing to the Commissioner of OCFS.

History

Sec. filed July 23, 2009 eff. Aug. 12, 2009.