

**Statutes Pertaining to the Delivery of Health Care in Correctional Settings**  
Title 28, Chapter 11

**Interdepartmental Transfers for Mental Health Care**

§ 703. Transfer to DMH

- The transfer of a person under supervision of DMH shall occur in accordance with the commitment proceedings under Title 18, part 8
- If a person is transferred to the custody of DMH, the time spent in DMH's custody shall be computed as part of the term for which the person was sentenced and the person shall continue to be eligible for good behavior reductions and eligible for parole during that time

§ 704. Disposition when person recovers

- When the Commissioner of MH determines that a person whose sentence has not expired no longer meets the commitment criteria of a "person in need of treatment" or a "person in need of continued treatment", the person is returned to the custody of the Commissioner of DOC

§ 705. Hospitalization upon expiration of sentence

- If the Commissioner of MH determines that person transferred to the Commissioner's custody needs further care after the expiration of the person's maximum sentence, the Commissioner shall petition the Criminal Division of the Superior Court for recommitment of the person into DMH's custody
- The petition shall be filed prior to the expiration of the maximum sentence

**Provision of Health Care**

§ 801. Medical care of inmates

- (a) DOC is required to provide health care for inmates in accordance with prevailing medical standards. If receiving this standard of care requires that the inmate be taken outside of the correctional facility, DOC must provide safeguards, if necessary, for the custody the of the person while confined in a medical facility.
- (b)(1) Once an inmate is admitted to a correctional facility for a minimum of 14 consecutive days, the inmate must be given a physical assessment, unless there is an extenuating circumstance.
  - (2) An inmate is screened for SUD within 24 hours of admission to a correctional facility, as part of the initial and ongoing screening and assessment process, which includes screening and assessment for OUD.
- (c) If it is believed an inmate needs medical care, the officers and employees shall provide emergency first aid and immediately secure additional medical care in

accordance with subsection (a). Correctional facilities shall have at least one person on staff at all times who is trained in emergency first aid.

- (d) DOC must establish and maintain policies for the delivery of health care in accordance with subsection (a).
- (e)(1) Except as otherwise provided, an inmate admitted to a correctional facility while under the care of a licensed physician, licensed physician assistant, or licensed advanced practice registered nurse and who is taking medication at the time of admission pursuant to a valid Rx (as verified by the inmate's pharmacy of record, primary care provider, licensed care provider, or as verified by the VPMS or other Rx monitoring or information system), including buprenorphine or methadone, or other MAT medication, is entitled to continue that medication and to be provided that medication by DOC pending evaluation by a licensed physician, licensed physician assistant, or licensed advanced practice registered nurse.
  - (2) Notwithstanding (e)(1), DOC may defer the provision of a validly prescribed medication if, in the clinical judgement of a licensed physician, licensed physician assistant, or licensed advanced practice registered nurse, it is not medically necessary to continue the medication at that time.
  - (3) When a licensed practitioner makes the clinical judgment to discontinued medication, the practitioner shall cause the specific reason for discontinuance to be entered into the inmate's medical record. A specific-explanation of the discontinuance decision shall be provided to the inmate, both orally and in writing, with notice of the right to have the inmate's community-based prescriber notified. If the inmate provides signed authorization, DOC shall notify the community-based prescriber.
  - (4) GA does not intend to create a new or additional private right of action in this section.
  - (5) Definitions:
    - (A) "Medically necessary" describes health care services that are appropriate in terms of type, amount, frequency, level, setting, and duration to the individual's diagnosis or condition, are informed by generally accepted medical and scientific evidence, and are consistent with generally accepted practice parameters. Such services shall be informed by the unique needs of each individual and each presenting situation, and shall include a determination that a service is needed to achieve proper growth and development or to prevent the onset or worsening of a health condition."
    - (B) "Medication-assisted treatment"
- (f) Any contract between DOC and a provider of physical or mental health services must establish policies/procedures for continuation of the provision of medication at the time of admission and afterwards, as determined by an evaluation that protects the health of inmates.

#### § 801a. Pregnant inmates

- VT's policy: respect the unique health issues associated with a pregnant inmate

- DOC shall not restrain a pregnant inmate beyond the first trimester in the same manner as other inmates because doing so may pose undue health risks to the mother and unborn child
- Commissioner of DOC must ensure that all reasonable and appropriate measures consistent with public safety are made to transport a pregnant inmate in a manner that:
  - Prevents physical and psychological trauma;
  - Respects privacy; and
  - Represents the least restrictive means necessary for the safety of the inmate, medical/ correctional staff, and public.
- Unless the pregnant inmate is a substantial flight risk or there are other extraordinary circumstances, mechanical restraints cannot be used once an inmate is declared in active labor. The inmate shall remain unrestrained after delivery while recovering at the hospital. If any mechanical restraints were used during labor or in the hospital during recovery, the Commissioner must make written findings as to the reasons why restraints were necessary.

§ 801b. Medication-assisted treatment in correctional facilities

- (a) When an inmate receiving MAT prior to entering the correctional facility continues to receive medication prescribed in the course of MAT, the inmate shall be authorized to receive medication for as long a medically necessary.
- (b)(1) If the inmate ever screens positive as having an OUD, the inmate can choose to commence buprenorphine-specific MAT if it is deemed medically necessary by a provider authorized to prescribe buprenorphine. This medication shall be available as soon as possible and for as long as medically necessary.
  - (2) This section does not prohibit an inmate who commences MAT while in a correctional facility to transfer from buprenorphine to methadone if:
    - Methadone is deemed medically necessary by a provider authorized to prescribe methadone; and
    - The inmate chooses to commence methadone.
- (c) The practitioner who decides to discontinue a medication shall cause the specific reason to be entered into the inmate's record. A specific-explanation of the discontinuance decision shall be provided to the inmate, both orally and in writing, with notice of the right to have the inmate's community-based prescriber notified. If the inmate provides signed authorization, DOC shall notify the community-based prescriber.
- (d)(1) As part of reentry planning, DOC must commence MAT prior to inmate's release if:
  - Inmate screened positive for OUD;
  - MAT is medically-necessary; and
  - Inmate chooses to commence MAT.
  - (2) If MAT, is indicated and despite best efforts induction is not possible prior to release, DOC shall ensure comprehensive care coordination with a community-based provider.
- (e) Counseling/behavioral therapies must be provided in conjunction with the use of medication for MAT as provided for in VDH's MAT rule.

## **Serious Functional Impairment (“SFI”) Designation**

### **§ 905. Legislative Intent**

- GA intends that SFI designation apply solely to individuals residing in a correctional facility and not to individuals reentering the community after incarceration

### **§ 906. Definitions**

- “‘Serious functional impairment’ means:
  - (A) a disorder of thought, mood, perception, orientation, or memory as diagnosed by a qualified mental health professional, which substantially impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life and which substantially impairs the ability to function within the correctional setting; or
  - (B) a developmental disability, traumatic brain injury or other organic brain disorder, or various forms of dementia or other neurological disorders, as diagnosed by a qualified mental health professional, which substantially impairs the ability to function in the correctional setting. “

### **§ 907. Mental health service for inmates; powers and responsibilities of Commissioner**

- Requires the Commissioner to administer a program of trauma-informed MH services that are available to all inmates and to provide adequate staff support to the program
- Requires that following services are provided:
  - W/in 24 hours of correctional facility admittance, all inmates must be screened for signs of mental illness, mental condition, psychiatric disability, or SFI and if the result of screening is that the inmate is receiving services under the DD HCBS waiver or is currently receiving community rehabilitation and treatment services, the inmate will be designated as SFI
    - Inmates identified as the result of a screening by a mental health professional as requiring inpatient evaluation, treatment, or services shall receive such evaluation, treatment, or services in an appropriate clinical setting w/in 48 hours of the screening
  - Trauma-informed evaluation by a QMHP, including a review of available medical records, for an inmate who:
    - Has a history of a mental condition or psychiatric disability;
    - Has received community rehabilitation and treatment services;
    - Shows signs and symptoms of a mental condition or psychiatric disability or disorder or SFI at the initial screening or observed since entering the correctional facility
  - Development and implementation of an individual treatment plan, when there is a clinical diagnosis mental condition, psychiatric disability, or SFI
  - Access to a variety of services and levels of care consistent with the treatment plan to individuals with a clinical diagnosis mental condition, psychiatric disability, or SFI, including

- Follow-up evaluations;
  - Crisis intervention;
  - Crisis beds;
  - Residential care w/in correctional facility;
  - Clinical services provided w/in the general population;
  - Services in designated special needs units;
  - Implementation of discharge planning (w/ DMH and/or DAIL) that coordinates access to eligible services and consistent with reentry case planning; and
  - Other services that DAIL/DOC or DMH/DOC jointly determine to be appropriate.
- Proactive procedures to identify inmates who have not received enhanced screening, evaluation, and access to MH services
  - Special training for medical and correctional staff to enable them to ID and initially address inmates with a mental condition, psychiatric disability, or SFI, including:
    - Recognition of signs/symptoms of a mental condition, psychiatric disability, or SFI;
    - Recognition of signs/symptoms of chemical dependence and withdrawal;
    - Recognition of adverse reactions to psychotropic medication;
    - Recognition of improvement in inmate's general condition;
    - Recognition of DD;
    - Recognition of MH emergencies and instructions for contacting the appropriate professional and taking appropriate action;
    - Suicide potential and prevention;
    - Precise instructions on procedures for MH referrals; and
    - Any other training determined to be appropriate.

§ 908. Access to mental health services; notice

- Commissioner of DOC must ensure that notice of services available to inmates and manner in which those services are made available is widely disseminated on staff & inmates