



## 14 NYCRR 527

14 NYCRR Part 527 governs the rights of patients including the receipt of mail. This proposal would permit the opening of mail in a secure location away from patients, to prevent potential patient and staff exposure to fentanyl and other synthetic opioids through Office approved safety devices such as fume hoods. The device operates by creating a negative pressure area where loose particulates are dragged through multiple filters to filter out any dangerous particulates that may be present. The amendments would ensure that the person opening the mail has PPE, and that no particulates are disseminated into an area where bystanders could be affected.

The opioid epidemic is worsening and there has been an increase in confirmed exposures in both DOCCS and OMH facilities across the state. Conversations with DOCCS' Associate Industrial Hygienist have determined that the implementation of these safety devices has prevented multiple additional exposures in DOCCS operated facilities. New York State Department of Labor's Public Employee Safety and Health (PESH) recently completed an investigation into OMH's mail handling procedures and indicated that while there's no current violations, OMH's procedure needed to be evaluated. Further, the proposed changes have incorporated union and mental health legal services feedback to balance patient rights with health and safety concerns.

### **Section 527.1. Background and intent**

#### **(a) Applicability.**

(1) Except as otherwise indicated by the specific context, and with the exception of sections 527.4 and 527.6, this Part shall apply to all psychiatric hospitals operated by the Office of Mental Health, all residential treatment facilities for children and youth, and to all psychiatric hospital services required to have an operating certificate from the Office of Mental Health, and provided further that section 527.8, 527.11 and 527.12 of this Part shall also apply to all secure treatment facilities operated by the Office of Mental Health as defined in section 10.03 of the Mental Hygiene Law. Only section 527.8(c)(5) of this Part shall apply to regional medical units operated by the Department of Corrections and Community Supervision at which the Office of Mental Health provides outpatient psychiatric treatment, and to correctional facilities operated by the Department of Corrections and Community Supervision at which the Office of Mental Health operates a residential crisis treatment program, except that section 527.8(c)(5) of this Part shall not be applicable under circumstances in which it is inconsistent with the Correction Law or Department of Corrections and Community Supervision regulations.

(2) Section 527.4 of this Part applies to all facilities which are operated or licensed by the Office of Mental Health. For family care home, the program sponsor shall be responsible for ensuring compliance with the regulations.

(3) Section 527.6 of this Part applies to all psychiatric hospitals operated by the Office of Mental Health, all residential treatment facilities for children and youth, all community residences, all residential care centers for adults, and all psychiatric hospital services required to have an operating certificate from the Office of Mental Health.

(b) The intent of this Part is to define the rights of patients receiving treatment at psychiatric hospitals and to extend certain rights provided in section 527.8 of this Part to persons confined or committed to secure treatment facilities operated by the Office of Mental Health as defined in section 10.03 of the Mental Hygiene Law. Only section 527.8(c)(5) of this Part shall apply to the regional medical units operated by the Department of Corrections and Community Supervision at which the Office of Mental Health provides outpatient psychiatric treatment, and to correctional facilities operated by the Department of Corrections and Community Supervision at which the Office of Mental Health operates a residential crisis treatment program, except that section 527.8(c)(5) of this Part shall not be applicable under circumstances in which it is inconsistent with the Correction Law and Department of Corrections and Community Supervision regulations.

(c) This Part supersedes inconsistent provisions of Part 27 of this Title, as applied to services operated or subject to regulation by the Office of Mental Health. Those provisions of Part 27 which are not superseded by this Part remain in effect.

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#### **Section 527.11. Communicating freely with others within and outside the facility**

(a) Residents of facilities or programs operated or licensed by the Office of Mental Health have the right to communicate freely and privately with persons within and outside the facility, subject to the provisions of section 527.12 of this Part.

(b) To assist in the exercise of this right, facilities shall provide residents with reasonable access to stationery and telephones to assist them in freely communicating with others outside the facility.

(c) Residents shall have full opportunity to communicate freely with clergy and with their legal representatives, and these communications shall not be restricted. With respect to other correspondence, there shall be no censorship or restriction of incoming or outgoing letters or packages, except in the following circumstances:

(1) To ~~assure~~ensure the safety and welfare of residents, facilities subject to this Part may institute policies governing possession or contraband. Letters or packages which are reasonably suspected to contain contraband or, in the case of facilities operated by the Office, otherwise implicate significant security or safety concerns, shall be processed in accordance with such facility policies.

(2) For persons confined or committed to secure treatment facilities operated by the Office of Mental Health as defined in section 10.03 of the Mental Hygiene Law or forensic facilities as named in section 7.17 of the Mental Hygiene Law, all incoming letters or packages may be

opened in a central designated location by staff members wearing personal protective equipment and/or with such Office approved safety device or equipment. Such letters or packages shall be opened for the sole purpose to mitigate the transfer of any potentially hazardous materials into the facility. Upon conclusion of that process, such letter or package shall then be placed back in the original packaging, unless impossible or impracticable, and brought to the individual resident, unless there is reason to believe that the provisions of paragraph (1), of subdivision (c) are applicable.

[(2)3] To ~~assure~~ensure the safety and welfare of residents and avoid harassment to others, any resident whose condition, in the opinion of the treatment team, warrants some selectivity, may have incoming and/or outgoing letters or packages not subject to a facility's contraband policy censored or restricted in accordance with section 527.12 of this Part.

(d) With the exception of mail that is processed or restricted in accordance with subdivision (c) of this section, incoming letters and packages should be delivered sealed and unopened to all residents, and all outgoing letters and packages shall be mailed in a like manner, provided, however, in an individual case where there exists an unanticipated, overriding compelling safety or security concern, the reasons why the letter or package was not delivered sealed or unopened to the resident, and a description of how the matter was handled (e.g., in consultation with the United States Postal Service, or other appropriate security intervention) should be appropriately documented in accordance with facility procedure.

#### **527.12 Restriction of rights.**

(a) A right set forth in article 33 of the Mental Hygiene Law and this Part may be restricted within the resident's treatment plan by a written order signed by a physician stating the clinical justification for the restriction. The order imposing the restriction and a notation detailing the clinical justification therefor and the specific period of time in which the restriction shall be in effect must be entered into the resident's record. In no event may any right set forth in this section be restricted or limited as a punishment or for the convenience of staff.

(b) Any restriction on a right identified in this section shall be the least restrictive appropriate method for protecting the interest or interests involved.

(c) The treatment team or its designee shall discuss any restrictions of a right set forth in this section and the reason for such decision with the resident, and his or her family (if the resident does not object), and/or other authorized representative of the resident, and shall advise such persons of the resident's right to appeal this decision to the director of the facility. A notation that such persons were advised of the restriction, and the resident's right to appeal the decision, must be entered in the resident's record.

(d) In cases where a restriction is placed on incoming and/or outgoing mail in accordance with section 527.11(c)[(2)3] of this Part, such mail may be withheld from the resident during the time the restriction is in place, or may be opened by a member of the treatment team in the presence of the resident. In no case may a staff member other than a member of the treatment team open such packages or letters, unless there exists an overriding compelling safety or security concern, or such facility has been designated to fall under 527.11(c)(2). In such cases, the reason why a treatment team member did not open a package or document, and a description of how the matter was handled (e.g., in consultation

with the United States Postal Service, or other appropriate security intervention) must be appropriately documented in accordance with facility procedure.

(e) Appeals. Residents whose rights have been restricted in accordance with this section shall be notified of their right to appeal such decision in accordance with section 27.8 of this Title.