

## **ANTICIPATED CAPA REGULATORY AGENDA FY 2022**

### **BOARD OF CORRECTION**

Pursuant to section 626 of the New York City Charter, the New York City Board of Correction (the “Board”) sets forth its regulatory agenda for the City’s fiscal year (“CFY”) 2022:

1. **SUBJECT:** A new Chapter of Board Rules (“Minimum Standards”) containing amendments to the variance process.
  - A. Reason: Currently, the Minimum Standards contain four separate chapters (Correctional Facilities, Mental Health, Health Care, and Elimination of Sexual Abuse and Sexual Harassment in Correctional Facilities), with each chapter containing its own variance section. These four variance sections are substantially similar, but not identical, and have led to confusion and inefficiency. The proposed amendments would create new variance procedures that would apply uniformly to all current and future chapters of the Board’s rules.
  - B. Anticipated Contents: Repeal of certain rules in the four Chapters and their replacement with a new Chapter containing variance provisions that would apply uniformly to all current and future chapters of the Minimum Standards.
  - C. Objective: Eliminate confusion and streamline the process pursuant to which the Department of Correction (DOC) and the relevant Correctional Health Authority would apply for variances from existing rules and the Board would determine these applications.
  - D. Legal basis: Section 626(e) of the New York City Charter.
  - E. Types of individuals and entities likely to be affected: All incarcerated people in the custody of the New York City Department of Correction (DOC) (“people in custody”), DOC, and the relevant Correctional Health Authority.
  - F. Other relevant laws: None.
  - G. Approximate Schedule: Fourth Quarter of FY 2022.

Agency contact: Kate McMahon (Interim General Counsel) (212-669-7994).

2. **SUBJECT:** Updating of the rules contained in Chapter 1: “Minimum Standards for Correctional Facilities” to regulate the use of Separation Status for individuals who refuse to consent to a contraband body scan or for whom a body scan yields a positive result.
  - A. Reason: In 2018, the Governor signed a law allowing correctional facilities to resume use of low-dose ionizing radiation body scanners to detect nonmetallic weapons hiding in clothing and body cavities; jails had been previously prevented

from using these devices since 2014, when the State Commission on Correction stopped the practice due to concerns under the Public Health Law. DOC began using body scanners again in July 2019. Now, when someone has a positive scan or refuses to be scan, DOC assumes the person possesses contraband and places them in a highly restrictive housing area called Separation Status which includes the person's confinement to an isolation cell for nearly 24 hours. DOC removes a person from the unit only when they have a negative scan indicating the absence of contraband.

- B. Anticipated contents: Rules to ensure that the use of body scanner technology is effective, fair, and safe (including safeguards to ensure that officers operating this equipment are appropriately trained), and that the conditions of the Separation Status unit are the least restrictive and most humane as possible.
- C. Objective: Propose rules that codify existing Board variances, conditions, and recommendations regarding body scanners and Separation Status units, as well as robust reporting to ensure the Board can perform proper oversight of this practice.
- D. Legal Basis: Section 626(e) of the New York City Charter.
- E. Types of individuals and entities likely to be affected: All incarcerated people, DOC, and the relevant Correctional Health Authority.
- F. Other Relevant Laws: Humane Alternatives to Solitary Confinement Act (“HALT Solitary Act”) and the New York Public Health Law.
- G. Approximate Schedule: Fourth Quarter of FY 2022.

Agency Contact: Kate McMahon, Interim General Counsel (212-669-7994).

- 3. **SUBJECT:** Updating of the rules contained in Chapter 2: “Mental Health Minimum Standards”
  - A. Reason: The current mental health rules have not been updated since they were first enacted in 1985, over 30 years ago. In that time, there have been significant changes to the way the Correctional Health Authority and DOC coordinate the delivery of mental health services to incarcerated people. One consequence of this is that the Board has been granting the Health Authority a renewed variance from one obsolete section of the standards for the past 16 years.
  - B. Anticipated contents: Amendments to the current mental health rules to reflect the relevant Correctional Health Authority’s and DOC’s policies and procedures regarding the provision of mental health care to incarcerated people and current correctional best practices for the delivery of mental health care services. The Board expects these amendments will also codify the longstanding variance allowing psychiatrists to see and evaluate stable adult

patients on psychotropic medication in general population at least every 28 days, rather than every 14 days.

- C. Objective: Propose mental health rules that incorporate the relevant Correctional Health Authority's and DOC's policies and procedures regarding the provision of mental health care to incarcerated people and current correctional best practices in this area.
- D. Legal Basis: Section 626(e) of the New York City Charter.
- E. Types of individuals and entities likely to be affected: All incarcerated people, DOC, and the relevant Correctional Health Authority.
- F. Other Relevant Laws: None.
- G. Approximate Schedule: Fourth Quarter of FY 2022.

Agency Contact: Kate McMahon, Interim General Counsel (212-669-7994).

- 4. **SUBJECT:** Updating a section of the rules contained in Chapter 3: "Health Care Minimum Standards"
  - A. Reason: Since 2013, the Board has been granting variances to allow the Correctional Health Authority to use either interferon gamma release assays (IGRA) or tuberculin skin test (TST) for tuberculosis screening, and to exempt from repeat screening those prisoners who have a documented negative test in the six months prior to their admission.
  - B. Anticipated contents: Amendments to codify this practice in the Health Care Standards so that the Board is not granting long-term variances.
  - C. Objective: Propose amendments to the health rules that incorporate the relevant Correctional Health Authority's policies and procedures regarding tuberculosis testing.
  - D. Legal Basis: Section 626(e) of the New York City Charter.
  - E. Types of individuals and entities likely to be affected: All incarcerated people, and the relevant Correctional Health Authority.
  - F. Other Relevant Laws: None.
  - G. Approximate Schedule: Fourth Quarter of FY 2022.

Agency Contact: Kate McMahon, Interim General Counsel (212-669-7994).