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Via email

Dwayne Sampson, *Chair*
Jasmine Georges-Yilla, *Executive Director*
The New York City Board of Correction
2 Lafayette, Ste 1221
New York, NY 10007

Dear Chair Sampson, Executive Director Georges-Yilla, and Members of the Board:

The Legal Aid Society submits this comment on the Board of Correction's proposal to amend §§2-05(b)(2)(i-ii) and 3-04(b)(2)(v)(A) of Title 40 of the Rules of the City of New York ("RCNY"), on psychotropic medication and tuberculosis screening, respectively; and to amend Chapters 2 and 3 of Title 40 of the RCNY (hereinafter referred to as the Board's "Minimum Standards" or "Standards") to correct language and align variance procedures across all sections of the Standards, and remove references to seclusion.

The Legal Aid Society is the nation's oldest and largest non-profit criminal defense and civil rights law firm. Legal Aid's Criminal Defense Practice, which serves as the primary defender of low-income people in New York City prosecuted in the state court system, hears daily from incarcerated people and their families about their experiences in DOC custody. In addition, since its inception 50 years ago, the Prisoners' Rights Project has investigated and remedied unconstitutional and unlawful conditions in the city jails through individual and class action lawsuits and administrative advocacy. Our litigation has included reform of the systems for oversight of use of force and violence in the jails; relief from dangerous conditions such as fire risks, overcrowding, and unsafe sanitation; successful efforts to bring high school education to youth held in these adult facilities; and redress of the failures of medical and mental health care systems that result in needless deaths in custody. We routinely engage with the Board of Correction to ensure that they perform their oversight role in promulgating and monitoring Minimum Standards for correctional practices in the jails.

We welcome the Board's initiative to update the minimum standards. Below, we offer comments on the proposed rule changes which we believe will better effectuate the Board's stated objectives and more fully protect the rights of people in custody to adequate mental health treatment.

More broadly, we urge the Board to undertake a comprehensive rulemaking process concerning the Health Care Minimum Standards. As the Board is well aware, thousands of people with complex medical and mental health needs pass through the city jails each year. A majority of people on Rikers have mental health conditions, with nearly a quarter of the jail population diagnosed with serious mental illness and an even higher proportion diagnosed with substance abuse disorders. Many people in the jails also live with serious and chronic medical conditions. In the time since the current rules were adopted, new units have come online that were not explicitly contemplated by the minimum

standards and may warrant regulation. More urgently, DOC routinely fails to facilitate access to care resulting in unnecessary suffering and death. We urge the Board to engage with directly impacted people and communities, advocates and healthcare experts in a fulsome rulemaking process focused on improving access to quality medical and mental health treatment for New Yorkers in custody.

1. Mental Health Standard § 2-06(b)(2)(i-ii); Psychotropic Medication

Legal Aid welcomes the Board’s initiative to codify longstanding variances via rulemaking and supports aligning the cadence of psychiatry visits with current mental healthcare standards. However, the proposed rule lacks specificity, resulting in a rule that would be broader than the prior variances and lacks critical protections for people with the most need.

The long-standing variance to the Mental Health Standards extends psychiatry follow-up timeframes from 14 days to 28 days for “stable adult patients on psychotropic medication in general population.”¹ When seeking the variance, Correctional Health Services (CHS) made clear that the extension sought did not apply to those individuals held in mental observation units, “where, by [CHS] policy, orders are for 14 days or less.”² This limitation formed part of the basis for the Board’s granting the variance. However, the proposed rule contains no such limitation, but instead applies to “every person in custody” who is “stabilized” on psychotropic medication, without reference to housing area. Any amended rule should retain the 14-day psychiatry follow-up cadence for people in mental observation and other specialized mental health units who require a higher level of mental health care. We understand CHS’ current internal policy may be to provide such 14-day follow-ups, but such policies are subject to change without Board oversight or public input and are therefore no substitute for robust protections in the Board’s Minimum Standards.

Similarly, in support of renewing the existing variance, CHS has asserted that “CHS by policy does not consider GP inmates stable for a 28-day prescription until they have received a follow-up visit from a mental health provider who has determined there is no need for a medication adjustment.”³ This definition should likewise be incorporated into the Minimum Standards to ensure that changes to medication orders and psychiatry follow-up are appropriate and consistent.

The rule amended to incorporate these recommendations could read:

(2) Psychotropic medication shall be dispensed only when clinically indicated, consistent with the treatment plan:

(i) all prescriptions for psychotropic medication must include a stop order; no prescription for psychotropic medication shall be valid for longer than two weeks for persons in persons in custody in mental observation or specialized mental health units and four weeks for other persons;

(ii) every [inmate] person in custody receiving psychotropic medication shall be seen and evaluated by the prescribing psychiatrist, or, in cases of emergency when a physician other than a psychiatrist prescribes medication under 40 RCNY § [2-05(b)(1)(i)] 2-06(b)(1)(i) by the

reviewing psychiatrist, at least once a week until stabilized and thereafter shall be seen by medical personnel at least every two weeks for persons in custody in mental observation or specialized mental health units and at least every four weeks for persons in custody elsewhere [by medical personnel];

(iii) A person in custody shall not be considered stabilized for the purpose of receiving a four-week prescription until they have received a follow-up visit from a psychiatrist who has determined there is no need for a medication adjustment and the person in custody agrees with that determination;

2. Mental Health Standard § 2-07; Seclusion and Restraints

Seclusion. Legal Aid appreciates that CHS does not permit the use of seclusion as a matter of policy, and we recognize the Board's intent to harmonize the Minimum Standards with CHS' conclusion that the practice should not be utilized. But simply removing the seclusion regulations does not achieve this. If the Board has concluded that seclusion should never be utilized, the amended standard should reflect this conclusion and prohibit it. To the extent CHS may later change its policy or authorize seclusion on an ad hoc basis in exceptional circumstances, it is essential that the Minimum Standards regulate the practice.

Restraints. The Board's proposed rule eliminates one of four determinations that a psychiatrist must make before restraints may be used in a mental health setting under § 2-03(3)(iii), specifically that restraints "are absolutely necessary to avert the danger and will be therapeutically beneficial." This change is proposed without any explanation. It is possible that there are legitimate reasons justifying this change, but they are not presented for the public to evaluate and comment on. Lowering the threshold for the use of restraints on people experiencing mental health crises without justification or meaningful opportunity for public comment is inappropriate.

3. Mental Health Standard § 2-03(d); Observation Aides

Legal Aid appreciates the Board's attentiveness to the important role that Observation Aides play in reducing self-harm and suicide, and ensuring that they are present in all areas where people are at heightened risk. In addition to the housing areas included in the amended rules, we recommend additional language that would ensure that Observation Aides are present wherever people in custody may be subjected to prolonged cell confinement, even if the unit in question is not designated for this purpose. We propose the following amendment to Minimum Standard § 2-03(d)(3), using a cell confinement threshold (10 hours) consistent with Local Law 42:

(3) Observation aides shall operate in all correctional facilities in the following housing areas: mental observation, [punitive segregation] wherever people in custody are held in cell confinement for more than 10 hours per day or have limitations on their contact with other incarcerated people, including restrictive housing, administrative segregation, protective

custody, or the West Facility Contagious Disease Unit; intake areas, and new admission. They shall be employed in other areas as required.

4. Mental Health Standard § 2-10; Variances

Legal Aid appreciates the Board's desire to synthesize variance requirements and processes for § 1-15 and § 2-10. This does raise, however, serious concerns about the "continuing variance" mechanism that the Board should address in this rulemaking.

Continuing variances should not be permitted to extend for an indefinite period of time, as § 1-15(a) and the proposed amendment for § 2-10(a)(2) would allow. If a variance does not have an end date, it is no longer a variance—it is a rule change, and it should go through the necessary rulemaking process to allow for due consideration and input. If the goal of permitting a continuing variance is to ensure that renewals are not required every six months, which may be reasonable in some limited circumstances for which the additional showing such as the one found in § 1-15(c)(2) is necessary, that goal can be accomplished by permitting a longer time period.

The Board should consider modifying § 1-15 and § 2-10 to permit only emergency or limited variances, making clear the requirements of limited variances of shorter or longer durations. This would require:

1. Removing the term "continuing variance" from sections 1 and 2;
2. Conforming the definition of "limited variance" in § 2-10 to the one in § 1-15(a) ("A "limited variance" is an exemption granted by the Board from full compliance with a particular subdivision or section for a specified period of time") rather than one limited to six months; and
3. Indicating that the application requirements in § 1-15(c)(1) are appropriate for a limited variance sought for a term of six months or less, while designating the requirements in § 1-15(c)(2) as appropriate for a limited variance sought for a term of more than six months.

This approach permits variances to remain variances, rather than de facto rulemaking. It also permits the Board to balance its obligation to oversee and enforce its Minimum Standards with the necessary flexibility in permitting appropriate time frames.

Finally, we appreciate the attempt to synthesize the variance procedures in sections 1 and 2 of the Minimum Standards. But by removing § 2-10(d-i) and relying only on the procedures in § 1-15(c-f), the Board strikes requirements to provide notice to the public and hearings on variance requests within specific timeframes. Instead, § 1-15(c)(1) requires only that the variance application be made "as soon as a determination is made that continued compliance will not be possible" and says in § 1-15(d)(2) that the Board need only hold public hearings "[w]henever practicable." Explicit requirements for both notice to the public and public hearings are necessary to be consistent with

the Board’s obligation in § 1-15(d)(1) to “consider the position of all interested parties, including correctional employees, prisoners and their representatives, other public officials and legal, religious and community organizations.” Absent such requirements—with specific timeframes—the Department is free to send variance requests the morning of a public meeting, thereby preventing any meaningful discussion of that request by other stakeholders and the public. Indeed, DOC has done so in the past. The Board should require that non-emergency variance requests are submitted on a specific timeframe and be discussed at a public hearing.

We sincerely appreciate the opportunity to submit these comments to the Board, and look forward to the hearing on February 10, 2026. As always, we welcome questions from, and discussions with, the Board on these important issues.

Respectfully,

/s/

Riley Evans
Kayla Simpson
Mary Lynne Werlwas

The Legal Aid Society
Prisoners’ Rights Project