

# **Guidelines for the Safe Transport of Special Patients and Special Care Recipients in the Care of Regional Forensic Mental Health Services**

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# 1 Introduction

These guidelines have been developed to provide general guidance to Regional Forensic Mental Health Services (RFMHSs) in facilitating the safe transport of certain special patients and special care recipients from secure forensic mental health facilities to other services, including courts, prisons and medical appointments in general hospitals.

Each RFMHS has its own arrangements with local Police and the Department of Corrections (Corrections). Such relationships need to be maintained and these guidelines are intended to complement rather than replace local relationships that work well.

The Ministry of Health (the Ministry) has signed a Memorandum of Understanding (MOU) with Corrections for the transport of special patients detained under the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the MH(CAT) Act) and special care recipients under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (the ID(CCR) Act) who are subject to custodial sentences or active criminal proceedings. These guidelines should be read in conjunction with the MOU.

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## 2 Underlying principles, scope and legal authority

### 2.1 Statement of principle

RFMHSs have specific skills in the management of people with serious mental illness. RFMHSs are also responsible for the safe management of certain mentally impaired offenders and defendants (special patients and special care recipients), while those individuals are detained by an RFMHS. The legal custody for special patients and special care recipients in the care of an RFMHS, including during transport, remains with the responsible authority (see MOU 3.1).

Corrections officers have the experience and resources to transport certain special patients and special care recipients between RFMHSs and court or other external appointments (see MOU 3.2).

When transporting a special patient or special care recipient, the focus should be on **the welfare of that person** while maintaining the safety of others. This principle applies irrespective of whether the RFMHS, Corrections or a contracted private provider are providing the transport (see MOU 3.7).

These guidelines and the accompanying MOU should form the basis of local agreements between RFMHS and Corrections facilities. Depending on local arrangements and requirements, RFMHSs may also enter into agreements with Police and, in some cases, with private transport providers contracted to Corrections. The MOU between Police and the Ministry should form the basis of any local agreement between RFMHSs and Police.

### 2.2 Scope of these guidelines

These guidelines apply to all RFMHSs and also to hospitals and other inpatient mental health services involved in the interim custody of a special patient (such as during court processes). Other people or entities providing care for special care recipients may also find these guidelines helpful.

Special patients and special care recipients who are potentially affected by the guidelines are those subject to the following legislation:

- special patients detained at an RFMHS under section 45 or 46 of the MH(CAT) Act, who are granted leave under section 49 or 52 of the Act to attend medical or dental appointments
- section 45 or 46 patients being returned to prison under section 47 of the MH(CAT) Act
- section 45 or 46 patients who are required to appear before the court
- special care recipients detained in a care facility under section 35(1) of the ID(CCR) Act
- special patients and special care recipients detained under section 34(1)(a) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (the CP(MIP) Act)
- special patients detained under section 23(2)(b), 35(2)(b) or 38(2)(c) of the CP(MIP) Act.

These categories and an accompanying explanation are in Schedule 1 of the MOU.

Occasions when these patients may need to be transported from the RFMHS to another service include transfers to:

- general hospital or specialist clinics for health treatment
- court in relation to charges against the individual, or as a witness
- prison or Police custody where it is no longer necessary for a person to be treated by the RFMHS.

The destinations covered by transportation are set out in Schedule 1 of the MOU.

## **2.3 Legal authority for exercise or change of custody**

The MH(CAT) Act provides authority for the detention of special patients in hospital. It also states that every patient 'is entitled to medical treatment and other health care appropriate to his or her condition' (section 66). There are times when such treatment will need to be undertaken outside of a secure forensic mental health unit. Leave is often sought for special patients so that they can access health care.

Special patients under section 45 or section 46 must not be prevented from attending court appointments (section 45(5)).

The CP(MIP) Act provides for the transfer of people detained in a hospital or secure facility for assessment (section 38(2)(c)) to court, penal or police custody (section 42) for three purposes:

1. hearing or trial of a charge against the person
2. sentencing of the person
3. an appeal against the conviction of the person or against a sentence or order imposed on the person.

The Act does not expressly determine responsibility for transporting special patients who have been transferred to hospital from prison under section 45 or 46 of the MH(CAT) Act where criminal proceedings are pending or where the person is serving a custodial sentence.

The person who has **legal custody** of a special patient is responsible for transporting that patient to and from court. RFMHSs have legal custody of special patients under section 45 of the MH(CAT) Act once a section 11(1) notice has been delivered to the special patient. That responsibility includes during transport between hospital and courts or other agencies. An RFMHS's responsibility for section 45 and 46 special patients ends when custody passes to Police or Corrections.

A patient being held in hospital for medical or surgical treatment remains the responsibility of the RFMHS, as the patient is on leave from the service but remains in the legal care of the RFMHS. This responsibility does not preclude the RFMHS from seeking the support of a security agency or of Police for the purposes of transport or security, if required.



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## 3 Procedures for transport

### 3.1 Making transport arrangements

Arrangements for the transport of special patients will differ between services. Where special patients are detained under section 45 or 46 of the MH(CAT) Act, transportation arrangements will or may involve Corrections or providers operating on its behalf.

Although the details of any agreement between an RFMHS and Corrections will vary according to need, the MOU between the Corrections and the Ministry requires the following to be specified:

- **risks:** self harm, suicide, risk to the public or to a particular person, risk of absconding, and/or any physical health concerns must be documented
- **clinical staff escorts:** it will be necessary for staff from the RFMHS to accompany the special patient while in transit
- **vehicle:** the type and characteristics of vehicles used by the transporting service
- **long-distance travel:** Corrections' operating procedures refer to 'long-distance' travel as involving a period of over four hours. This appears to be a useful definition, as it is based on time (rather than distance) and is consistent with processes used by Corrections, as the main transport provider for this group of special patients and special care recipients
- **gender considerations.**

#### 3.1.1 Risks

All patients who are to be transported by Corrections or another external provider **must** have a risk assessment before they are transported. That assessment (or a summary of it) must be recorded in a form that can accompany the patient. In providing this information, RFMHSs will need to consider the privacy implications of releasing information. Usually these issues should not present difficulties, as the information released is required for a lawful purpose or function. However, it should not contain material that is not required to ensure safety and dignity. The Ministry's *Guidelines for Clinical Risk Assessment and Management in Mental Health Services* (Ministry of Health 1998) may be used as a basis for producing this information.

#### 3.1.2 Clinical staff escorts

In some cases it will be necessary for staff from the forensic psychiatric services to accompany the patient while in transit. Decisions about the number and gender of staff involved will be based on assessed risk, safety considerations and the gender of the patient.

### **3.1.3 Vehicle**

Corrections and security firms involved in transporting prisoners and/or patients have their own requirements for vehicles. If an RFMHS wishes to use its own vehicle, key points to consider are:

- whether it can ensure staff and patient safety – this may include avoiding fittings that could be used as a weapon or a means of self harm
- mandatory safety requirements (eg, seatbelts), any exemptions that may be required and an explanation for the exemption
- whether it can provide privacy and safety from others – particularly when dealing with high-profile individuals. This means that RFMHS staff need to be able to sit in the cab of the vehicle, away from the patient.

### **3.1.4 Long-distance travel (lasting over four hours)**

For long-distance trips, the patient and escorting staff must have a break at least once every two hours. Achieving this may require forward planning to ensure the safe and humane management of the patient.

The following are additional issues to consider.

- Will overnight accommodation be required?
- If so, what arrangements need to be made for accommodation – staff and patient?
- Does the patient have physical needs that require regular clinical intervention (eg, diabetes) or present a special risk?

If Police have agreed to assist, and the journey crosses Police district boundaries, RFMHS staff will need to ensure their local Police have arranged a continued police escort across the boundaries.

### **3.1.5 Specific gender considerations**

Women may need to use or change sanitary protection. This should always be available and a stop facilitated to ensure feminine hygiene needs are accommodated. These needs apply irrespective of the length of the journey, and may arise at any time.

Particular consideration must be given to the safety, risks and needs of pregnant women during transport and while away from the hospital.

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## 4 Use of restraint

There is no specific provision in the MH(CAT) Act or the ID(CCR) Act that regulates the restraint of a person during transportation. Some manner of restraint, depending on the circumstances, may be necessary when transporting special patients and special care recipients.

Whether restraining a patient is justifiable will depend on the circumstances of each individual case. Assistance may be found in the *Health and Disability Services (Restraint Minimisation and Safe Practice) Standards* (NZS 8134.2.2008). The New Zealand Bill of Rights Act 1990 requires that the use of restraint must be reasonable, minimally infringing of the patient's rights, and necessary for the patient's wellbeing. It must also be used in a way that respects the dignity of the patient (section 23(5)).

Primarily, services should ensure that they have transport policies in place that **actively minimise** the use of restraint.

Two types of restraint may be used when transporting a special patient:

1. personal restraint, where the patient is restrained by one or more staff members
2. mechanical restraint, where the patient is restrained with hand/leg cuffs and/or a waist restraint (see glossary).

The use of sedation during transport will not be appropriate except in emergencies.

To minimise risk to the patient, each RFMHS should have restraint guidelines in place that clearly identify:

- specific types of restraint that can be used
- processes to be used when considering restraint
- processes for reviewing the use of restraint on each occasion that it is used.

RFMHS staff must have a sound knowledge of the key principles, legal requirements, guidelines and the local district health board's policies and procedures relating to mechanical restraint. Mechanical restraint should **only** be used when recommended by the RFMHS, and in negotiation with Corrections or other transport staff. Special patients who require mechanical restraint must be within visual range of RFMHS staff at all times.

Corrections has policy and procedures regarding the use of restraint on prisoners who are being transported. These procedures include cases where exceptions can be considered, such as after a health practitioner has assessed that restraint is not suitable for the prisoner. Although the procedures relate to prisoners rather than patients, they may be a useful reference for RFMHS staff in working with Corrections staff, and can be accessed on the Department of Corrections website (*Prison Service Operations Manual M.04.02*).

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## 5 Competencies of staff accompanying patients during transport

A minimum set of skills and abilities is required for RFMHS staff who accompany special patients during transportation to courts and other locations. Staff should have a medical qualification and appropriate experience, such as being a psychiatrist or a mental health nurse, that enables them to diagnose a forensic patient, administer medications and treat or adjust their treatment.<sup>1</sup>

RFMHSs should also satisfy themselves that the Corrections staff (including those employed by private providers) have the appropriate skills and understanding to safely transport this client group. Such qualities may include having knowledge of de-escalation and physical restraint, basic resuscitation and stabilisation, and understanding of and skills for interacting with people with mental illnesses or intellectual disability.

<sup>1</sup> The World Health Organization describes a mental health/psychiatric nurse as ‘A graduate from a recognized, university level nursing school with specialisation in mental health nursing or have completed a three-year psychiatric nurse training programme. Psychiatric nurses are registered at the local nursing board (or equivalent) and work in a mental health care setting’.

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## 6 Patients who abscond or present a threat to others

Some patients may be assessed as presenting a high risk of absconding or a serious risk to others. RFMHS staff and the escorting service (if used) should be fully briefed on these risks. The RFMHS should also work with the escorting service to enable risks to be managed appropriately.

Section 53 of the MH(CAT) Act deals with escape and absence without leave of a special patient, and enables that patient to be retaken at any time if they escape.

### **Section 53: Escape and absence without leave**

Any special patient who escapes, or who fails to return on the expiry or cancellation of any period of leave may be retaken at any time by the Director, or by the Director of Area Mental Health Services, or by a duly authorised officer, or by any person to whom the charge of the patient had been entrusted during the period of leave, and taken to the hospital from which the patient escaped or was on leave or to any other hospital specified by the Director.

Sections 122A and 122B of the MH(CAT) Act also provide guidance on these powers and on the ability of a person who ‘takes or retakes’ a special patient, to use reasonable force.

### **Section 122A: Certain sections of Crimes Act 1961 apply to powers to take and retake**

Sections 32(1), 38(4)(d), 40(2), 41(4), 41(5), 41(6), 50(4), 51(3), 53, 109(1), 109(4), 110C(2), 111(2), and 113A contain a power to take or retake a person, a proposed patient, or a patient. In respect of each of these powers, sections 30, 31, and 34 of the Crimes Act 1961 apply –

- (a) as if the power were a power of arrest; and
- (b) with any necessary modifications.

**Section 122B: Use of force**

- (1) A person exercising a power specified in subsection (2) may, if he or she is exercising the power in an emergency, use such force as is reasonably necessary in the circumstances.
- (2) The powers are –
  - (a) a power to take or retake a person, proposed patient, or patient in any of sections 32(1), 38(4)(d), 40(2), 41(4), 41(5), 41(6), 50(4), 51(3), 53, 109(1), 109(4), 110C(2), 111(2), or 113A:
  - (b) a power to detain a person, proposed patient, or patient in any of sections 41(3), 41(4), 41(5), 109(4), 110C(2), 111(2), or 113:
  - (c) a power to enter premises in either of sections 41(2) or 110C(1).
- (3) A person treating a patient to whom section 58 or section 59 applies may use such force as is reasonably necessary in the circumstances.
- (4) If force has been used under this section, –
  - (a) the circumstances in which the force was used must be recorded as soon as practicable; and
  - (b) a copy of the record must be given to the Director of Area Mental Health Services as soon as practicable.

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## 7 Police escort

It is not the responsibility of Police to transport special patients once they are in residence at an RFMHS except in certain circumstances, negotiated on a case-by-case basis. Police may sometimes be asked to provide an escort for a particular special patient. Factors leading to a request for Police escort may include:

- high public profile of the offence, offender or defendant
- the seriousness of the (alleged) offence
- high degree of risk arising from the behaviour of the patient (eg, absconding or assaults)
- risk to the patient from members of the public.

Provision of Police escort and any associated compensation should be incorporated into the Memorandum of Understanding with local Police. If a patient is appearing in court outside your region, escort may need to be negotiated between Police districts and Police should receive as much advance notice as possible.



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## 8 Transport by air

RFMHSs sometimes need to transport patients by plane. This is one of the rare situations in which physical restraints may be required. In such cases, the *Health and Disability Services (Restraint Minimisation and Safe Practice) Standards* apply. Each RFMHS should have its own policies and/or procedures that incorporate the Standards for restraining patients during transportation.

Transport by air will almost always require two escorting staff. The transporting airline should be advised of the reason for transport and the arrangements that have been made for the safe escort of the patient.

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## 9 Record keeping

The RFMHS should keep basic records of transport, including:

- date(s) of transport
- patient name and legal status
- duration of time away from hospital
- risk assessment
- physical or mental health issues and their proposed management
- security measures undertaken
- incidents or events while absent from the RFMHS
- actual time away from hospital.

This information will assist the Ministry in reviewing the MOU with Corrections.

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## 10 Review

These guidelines will be reviewed six months following their implementation. To assist in this process, RFMHSs should collect the following information for each transport provider, by recording the particular section of legislation to which each patient is subject. The required information covers:

- the number of patients transferred to court, and transferred back to the RFMHS
- the number of patients transferred to other external appointments, and transferred back to the RFMHS
- the number of transfer events requiring police assistance
- the number and gender of staff required to accompany the patient
- any adverse events occurring during transport or while the patient is absent from hospital, including harm to self or others, absconding or attempt to abscond
- the number of transport events requiring overnight stay, and details of the location of overnight stay.

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# Glossary

**Care recipient** means a person who is –

- (a) a special care recipient; or
- (b) a care recipient no longer subject to the criminal justice system.

[Section 6(1) Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003]

**Prison** has the same meaning as in section 3(1) of the Corrections Act 2004; and in section 45 of this Act includes a hospital or a Police station while it is deemed by section 36 of the Corrections Act 2004 to be a prison.

[Section 2 Mental Health (Compulsory Assessment and Treatment) Act 1992]

**Patient** means a person who is:

- (a) required to undergo assessment under section 11 or section 13; or
- (b) subject to a compulsory treatment order made under Part 2; or
- (c) a special patient.

[Section 2 Mental Health (Compulsory Assessment and Treatment) Act 1992]

**Restraint** is any intervention that restricts the free movement of an individual. It is an approved, skilled intervention to prevent individuals from harming themselves, endangering others or seriously compromising the therapeutic environment. It includes personal restraint and mechanical restraint.

**Personal restraint:** a hands-on method of physical restraint involving one or preferably more designated health professionals. Its purpose is to safely immobilise the individual concerned.

**Mechanical restraint:** a method of physical restraint involving the use of authorised equipment applied in an approved manner by designated health professionals. Its purpose is to safely immobilise or restrict movement of part/s of the body of the individual concerned.

[Procedural Guidelines for the Use of Restraint, Ministry of Health<sup>2</sup> 1993]

<sup>2</sup> These guidelines have, to a large extent, been superseded by the New Zealand Standards. However, the definition of ‘restraint’ remains appropriate in the context of these guidelines.

**Special care recipient** means –

- (a) a person who is liable to be detained in a secure facility under an order made under –
  - (i) section 24(2)(b) or section 38(2)(c) or section 44(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
  - (ii) section 171(2) of the Summary Proceedings Act 1957; or
- (b) a person who is remanded to a secure facility under an order made under section 23 or section 35 of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
- (c) a person who is liable to be detained in a secure facility under an order made under section 34(1)(a)(ii) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 and who has not ceased, under section 69(3), to be a special care recipient; or
- (d) a person who –
  - (i) is liable to be detained in a secure facility under a compulsory care order, made under section 45; and
  - (ii) is also liable to detention under a sentence; and
  - (iii) has not ceased, under section 69(3), to be a special care recipient; or
- (e) a prisoner who is required, under section 35, to stay in a facility; or
- (f) a person who, in accordance with section 47A(5) of the Mental Health (Compulsory Assessment and Treatment) Act 1992, must be held as a special care recipient.

[Section 6(2) Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003]

**Special patient** means –

- (a) a person who is liable to be detained in a hospital under an order made under –
  - (i) section 24(2)(a) or section 38(2)(c) or section 44(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
  - (ii) section 184T(3) of the Summary Proceedings Act 1957; or
- (b) a person who is remanded to a hospital under section 23 or section 35 of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
- (c) a person who is liable to be detained in a hospital under section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, and who has not ceased, under section 48 of this Act, to be a special patient; or
- (d) a person who is liable to be detained in a hospital, either following an application under section 45(2) or arrangements made under section 46, and who has not ceased, under section 48, to be a special patient; or

- (e) a person who is liable to be detained in a hospital under section 191(2)(a) of the Armed Forces Discipline Act 1971; or
- (f) a person who, in accordance with section 136(5)(a) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, must be held as a special patient.

[Section 2 Mental Health (Compulsory Assessment and Treatment) Act 1992]

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# References

Department of Corrections. *Prison Service Operations Manual M.04.02*. URL: [www.corrections.govt.nz/policy-and-legislation/ps-operations-manual.html](http://www.corrections.govt.nz/policy-and-legislation/ps-operations-manual.html) (accessed 7 June 2012).

Ministry of Health. 1993. *Procedural Guidelines for the Use of Restraint*. Wellington: Ministry of Health.

Ministry of Health. 1998. *Guidelines for Clinical Risk Assessment and Management in Mental Health Services*. Wellington: Ministry of Health.

New Zealand Standards. 2008. *Health and Disability Services (Restraint Minimisation and Safe Practice) Standards (NZS 8134.2.2008)*.