

PART H--REQUIREMENT RELATING TO THE RIGHTS OF RESIDENTS OF CERTAIN FACILITIES

SEC. 591. REQUIREMENT RELATING TO THE RIGHTS OF RESIDENTS OF CERTAIN FACILITIES.

(a) **IN GENERAL-** A public or private general hospital, nursing facility, intermediate care facility, or other health care facility, that receives support in any form from any program supported in whole or in part with funds appropriated to any Federal department or agency shall protect and promote the rights of each resident of the facility, including the right to be free from physical or mental abuse, corporal punishment, and any restraints or involuntary seclusions imposed for purposes of discipline or convenience.

(b) **REQUIREMENTS-** Restraints and seclusion may only be imposed on a resident of a facility described in subsection (a) if--

1. the restraints or seclusion are imposed to ensure the physical safety of the resident, a staff member, or others; and
2. the restraints or seclusion are imposed only upon the written order of a physician, or other licensed practitioner permitted by the State and the facility to order such restraint or seclusion, that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary until such an order could reasonably be obtained).

(c) **CURRENT LAW-** This part shall not be construed to affect or impede any Federal or State law or regulations that provide greater protections than this part regarding seclusion and restraint.

(d) **DEFINITIONS-** In this section:

1. **RESTRAINTS-** The term 'restraints' means--

(A) any physical restraint that is a mechanical or personal restriction that immobilizes or reduces the ability of an individual to move his or her arms, legs, or head freely, not including devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or any other methods that involves the physical holding of a resident for the purpose of conducting routine physical examinations or tests or to protect the resident from falling out of bed or to permit the resident to participate in activities without the risk of physical harm to the resident (such term does not include a physical escort); and

(B) a drug or medication that is used as a restraint to control behavior or restrict the resident's freedom of movement that is not a standard treatment for the resident's medical or psychiatric condition.

2. **SECLUSION-** The term 'seclusion' means a behavior control technique involving locked isolation. Such term does not include a time out.
3. **PHYSICAL ESCORT-** The term 'physical escort' means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a resident who is acting out to walk to a safe location.
4. **TIME OUT-** The term 'time out' means a behavior management technique that is part of an approved treatment program and may involve the separation of the resident from the group, in a non-locked setting, for the purpose of calming. Time out is not seclusion.

SEC. 592. REPORTING REQUIREMENT.

(a) **IN GENERAL-** Each facility to which the Protection and Advocacy for Mentally Ill Individuals Act of 1986 applies shall notify the appropriate agency, as determined by the Secretary, of each death that occurs at each such facility while a patient is restrained or in seclusion, of each death occurring within 24 hours after the patient has been removed from restraints and seclusion, or where it is reasonable to assume that a patient's death is a result of such seclusion or restraint. A notification under this section shall include the name of the resident and shall be provided not later than 7 days after the date of the death of the individual involved.

(b) **FACILITY-** In this section, the term 'facility' has the meaning given the term facilities' in section 102(3) of the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10802(3)).

SEC. 593. REGULATIONS AND ENFORCEMENT.

(a) **TRAINING-** Not later than 1 year after the date of enactment of this part, the Secretary, after consultation with appropriate State and local protection and advocacy organizations, physicians, facilities, and other health care professionals and patients, shall promulgate regulations that require facilities to which the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.) applies, to meet the requirements of subsection (b).

(b) **REQUIREMENTS-** The regulations promulgated under subsection (a) shall require that--

1. facilities described in subsection (a) ensure that there is an adequate number of qualified professional and supportive staff to evaluate patients, formulate written individualized, comprehensive treatment plans, and to provide active treatment measures;
2. appropriate training be provided for the staff of such facilities in the use of restraints and any alternatives to the use of restraints; and

3. such facilities provide complete and accurate notification of deaths, as required under section 592(a).

(c) ENFORCEMENT- A facility to which this part applies that fails to comply with any requirement of this part, including a failure to provide appropriate training, shall not be eligible for participation in any program supported in whole or in part by funds appropriated to any Federal department or agency

SEC. 3208. REQUIREMENT RELATING TO THE RIGHTS OF RESIDENTS OF CERTAIN NON-MEDICAL, COMMUNITY-BASED FACILITIES FOR CHILDREN AND YOUTH.

Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.), as amended by section 3207, is further amended by adding at the end the following:

PART I--REQUIREMENT RELATING TO THE RIGHTS OF RESIDENTS OF CERTAIN NON-MEDICAL, COMMUNITY-BASED FACILITIES FOR CHILDREN AND YOUTH

SEC. 595. REQUIREMENT RELATING TO THE RIGHTS OF RESIDENTS OF CERTAIN NON-MEDICAL, COMMUNITY-BASED FACILITIES FOR CHILDREN AND YOUTH.

(a) PROTECTION OF RIGHTS-

1. IN GENERAL- A public or private non-medical, community-based facility for children and youth (as defined in regulations to be promulgated by the Secretary) that receives support in any form from any program supported in whole or in part with funds appropriated under this Act shall protect and promote the rights of each resident of the facility, including the right to be free from physical or mental abuse, corporal punishment, and any restraints or involuntary seclusions imposed for purposes of discipline or convenience.
2. NONAPPLICABILITY- Notwithstanding this part, a facility that provides inpatient psychiatric treatment services for individuals under the age of 21, as authorized and defined in subsections (a)(16) and (h) of section 1905 of the Social Security Act, shall comply with the requirements of part H.
3. APPLICABILITY OF MEDICAID PROVISIONS- A non-medical, community-based facility for children and youth funded under the medicaid program under title XIX of the Social Security Act shall continue to meet all existing requirements for participation in such program that are not affected by this part.

(b) REQUIREMENTS-

1. IN GENERAL- Physical restraints and seclusion may only be imposed on a resident of a facility described in subsection (a) if--

(A) the restraints or seclusion are imposed only in emergency circumstances and only to ensure the immediate physical safety of the resident, a staff member, or others and less restrictive interventions have been determined to be ineffective; and

(B) the restraints or seclusion are imposed only by an individual trained and certified, by a State-recognized body (as defined in regulation promulgated by the Secretary) and pursuant to a process determined appropriate by the State and approved by the Secretary, in the prevention and use of physical restraint and seclusion, including the needs and behaviors of the population served, relationship building, alternatives to restraint and seclusion, de-escalation methods, avoiding power struggles, thresholds for restraints and seclusion, the physiological and psychological impact of restraint and seclusion, monitoring physical signs of distress and obtaining medical assistance, legal issues, position asphyxia, escape and evasion techniques, time limits, the process for obtaining approval for continued restraints, procedures to address problematic restraints, documentation, processing with children, and follow-up with staff, and investigation of injuries and complaints.

2. INTERIM PROCEDURES RELATING TO TRAINING AND CERTIFICATION-

(A) IN GENERAL- Until such time as the State develops a process to assure the proper training and certification of facility personnel in the skills and competencies referred in paragraph (1)(B), the facility involved shall develop and implement an interim procedure that meets the requirements of subparagraph (B).

(B) REQUIREMENTS- A procedure developed under subparagraph (A) shall--

(i) ensure that a supervisory or senior staff person with training in restraint and seclusion who is competent to conduct a face-to-face assessment (as defined in regulations promulgated by the Secretary), will assess the mental and physical well-being of the child or youth being restrained or secluded and assure that the restraint or seclusion is being done in a safe manner;

(ii) ensure that the assessment required under clause (i) take place as soon as practicable, but in no case later than 1 hour after the initiation of the restraint or seclusion; and

(iii) ensure that the supervisory or senior staff person continues to monitor the situation for the duration of the restraint and seclusion.

3. LIMITATIONS-

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(A) IN GENERAL- The use of a drug or medication that is used as a restraint to control behavior or restrict the resident's freedom of movement that is not a standard treatment for the resident's medical or psychiatric condition in nonmedical community-based facilities for children and youth described in subsection (a)(1) is prohibited.

(B) PROHIBITION- The use of mechanical restraints in non-medical, community-based facilities for children and youth described in subsection (a)(1) is prohibited.

(C) LIMITATION- A non-medical, community-based facility for children and youth described in subsection (a)(1) may only use seclusion when a staff member is continuously face-to-face monitoring the resident and when strong licensing or accreditation and internal controls are in place.

(c) RULE OF CONSTRUCTION-

1. IN GENERAL- Nothing in this section shall be construed as prohibiting the use of restraints for medical immobilization, adaptive support, or medical protection.
2. CURRENT LAW- This part shall not be construed to affect or impede any Federal or State law or regulations that provide greater protections than this part regarding seclusion and restraint.

(d) DEFINITIONS- In this section:

1. MECHANICAL RESTRAINT- The term 'mechanical restraint' means the use of devices as a means of restricting a resident's freedom of movement.
2. PHYSICAL ESCORT- The term 'physical escort' means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a resident who is acting out to walk to a safe location.
3. PHYSICAL RESTRAINT- The term 'physical restraint' means a personal restriction that immobilizes or reduces the ability of an individual to move his or her arms, legs, or head freely. Such term does not include a physical escort.
4. SECLUSION- The term 'seclusion' means a behavior control technique involving locked isolation. Such term does not include a time out.
5. TIME OUT- The term 'time out' means a behavior management technique that is part of an approved treatment program and may involve the separation of the resident from the group, in a non-locked setting, for the purpose of calming. Time out is not seclusion.

SEC. 595A. REPORTING REQUIREMENT.

Each facility to which this part applies shall notify the appropriate State licensing or regulatory agency, as determined by the Secretary--

1. of each death that occurs at each such facility. A notification under this section shall include the name of the resident and shall be provided not later than 24 hours after the time of the individual's death; and
2. of the use of seclusion or restraints in accordance with regulations promulgated by the Secretary, in consultation with the States.

SEC. 595B. REGULATIONS AND ENFORCEMENT.

(a) TRAINING- Not later than 6 months after the date of enactment of this part, the Secretary, after consultation with appropriate State, local, public and private protection and advocacy organizations, health care professionals, social workers, facilities, and patients, shall promulgate regulations that--

1. require States that license non-medical, community-based residential facilities for children and youth to develop licensing rules and monitoring requirements concerning behavior management practice that will ensure compliance with Federal regulations and to meet the requirements of subsection (b);
2. require States to develop and implement such licensing rules and monitoring requirements within 1 year after the promulgation of the regulations referred to in the matter preceding paragraph (1); and
3. support the development of national guidelines and standards on the quality, quantity, orientation and training, required under this part, as well as the certification or licensure of those staff responsible for the implementation of behavioral intervention concepts and techniques.

(b) REQUIREMENTS- The regulations promulgated under subsection (a) shall require--

1. that facilities described in subsection (a) ensure that there is an adequate number of qualified professional and supportive staff to evaluate residents, formulate written individualized, comprehensive treatment plans, and to provide active treatment measures;
2. the provision of appropriate training and certification of the staff of such facilities in the prevention and use of physical restraint and seclusion, including the needs and behaviors of the population served, relationship building, alternatives to restraint, de-escalation methods, avoiding power struggles, thresholds for restraints, the physiological impact of restraint and seclusion, monitoring physical

Sections Relevant to Seclusion and Restraint

signs of distress and obtaining medical assistance, legal issues, position asphyxia, escape and evasion techniques, time limits for the use of restraint and seclusion, the process for obtaining approval for continued restraints and seclusion, procedures to address problematic restraints, documentation, processing with children, and follow-up with staff, and investigation of injuries and complaints; and

3. that such facilities provide complete and accurate notification of deaths, as required under section 595A(1).

(c) ENFORCEMENT- A State to which this part applies that fails to comply with any requirement of this part, including a failure to provide appropriate training and certification, shall not be eligible for participation in any program supported in whole or in part by funds appropriated under this Act.