

Seclusion and Restraint in Medicaid Programs

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Interagency Autism Coordinating Committee

Joint Services/Safety Subcommittee Meeting



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THE CHILDREN'S HEALTH ACT OF 2000

Public Law 106-310

- Signed by President Clinton in October, 2000
- Addressed numerous issues including arthritis, diabetes, asthma, birth defects, hearing loss, epilepsy, adoption awareness, childhood obesity, muscular dystrophy, mental health, substance abuse
- Parts H & I directly related to Seclusion and Restraint (S/R)
- Title I- Autism created the Interagency Autism Coordinating Committee (IACC)

The Children's Health Act of 2000

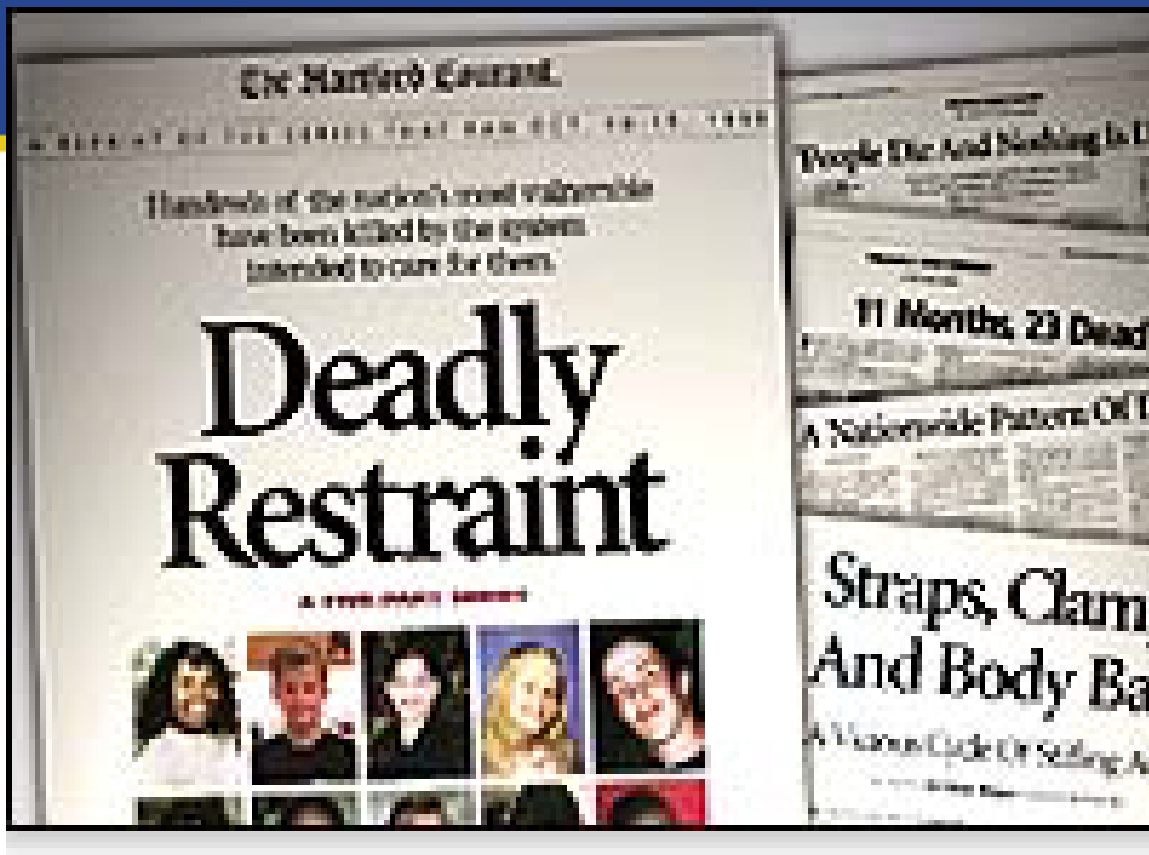
Section 3207

- Requires any health care facility receiving Federal funds to protect resident rights:
 - freedom from physical or mental abuse or corporal punishment
 - specifies circumstances when seclusion or restraint (S/R) may be used
 - requires notification to agencies when S/R related death occurs
 - requires staff training on S/R and alternatives

The Children's Health Act of 2000

Section 3208

- Requires a public or private non-medical, community-based facility for children and youth:
 - protect and promote the rights of each resident including the right to be free from physical or mental abuse or corporal punishment
 - specifies circumstances when S/R may be used
 - requires notification to State agencies when S/R related death occurs
 - use of S/R in accordance with Federal regulations



In late 1998 and early 1999 *The Hartford Courant* published a series of articles documenting deaths and serious injuries resulting from the inappropriate use of S/R in residential treatment facilities serving children.

Hartford Courant Article

- Included a survey conducted by the Harvard Center for Risk Analysis
- Estimated 50-150 S/R deaths occur each year across the U.S. in facilities that served people with behavioral health or ID/DD
- S/R was mostly used for discipline, punishment, and staff convenience
- Causes of S/R death included asphyxia, cardiac complications, drug overdoses/interactions, blunt force trauma, strangulation, choking, fire/smoke inhalation, and aspiration

Congressional Response to “Deadly Restraint” Series

- Members of the Congress requested additional information from the then General Accounting Office (GAO) to help formulate legislative response
- GAO was asked to:
 - examine dangers of S/R and extent used
 - review numbers of S/R injuries/deaths nationwide
 - examine State policies governing S/R
 - describe State experiences
 - review S/R in facilities that receive Medicare/Medicaid funds

1999 GAO Report – “Improper Restraint or Seclusion Use Places People At Risk”

- Report focused on people with mental disorders and/or intellectual disabilities
- Report did not address schools, outpatient treatment, sheltered workshops, drug/alcohol rehabilitation programs, or correctional facilities
- Recommended HCFA issue policies on the use of S/R to individuals in any setting funded by Medicare/Medicaid
- Also suggested HCFA improve requirements for staff training and reporting
- <http://www.gpo.gov/fdsys/pkg/GAOREPORTS-HEHS-99-176/pdf/GAOREPORTS-HEHS-99-176.pdf>

Health Care Financing Administration (now CMS) Actions 1999-2001

- 64 FR 36070: “Medicare and Medicaid Programs; Hospital Conditions of Participation; Patients’ Rights”
- HCFA-2065-IFC: “Medicaid Program; Use of Restraint and Seclusion in Psychiatric Residential Treatment Facilities Providing Psychiatric Services to Individuals Under Age 21
- HCFA-2065-IFC2 – Amendment and Clarification with Request for Comment

Hospital Patients' Rights Condition of Participation

- Located at 42 CFR 482.13(f)(7)
- Issued July 2, 1999
- HCFA conducted research on S/R in adults that it believed translated to children under age 2
- Advocates comments noted S/R of children involves special concerns, including higher rates of restraint
- HCFA indicated it would be more prescriptive regarding S/R use in PRTFs

Interim Final Rule for S/R in Psychiatric Residential Facilities (PRTFs) for Individuals Under the Age of 21

- Issued January 22, 2001
- Children receiving services in PRTFs have the right to be free from restraint or seclusion as a means of coercion, discipline, convenience, or retaliation
 - S/R may only be used to ensure safety of the person or others during an emergency situation
 - S/R must terminate when the situation concludes and safety can be ensured, irrespective of time remaining on any medical order(s)
 - The least restrictive emergency safety intervention must be used
 - Written or “as needed” S/R orders are prohibited
 - Simultaneous use of restraint and seclusion is prohibited

PRTFs

- A non-hospital facility with a provider agreement with the State Medicaid Agency (SMA) to provide the inpatient services benefit to beneficiaries under the age of 21
- Must be accredited by an accrediting organization (e.g. JCAHO)
- Complies with Medicaid Condition of Participation regarding S/R
- Requires reporting of all serious occurrences to the SMA and the State Protection and Advocacy agency

Additional Provisions of the Interim Final Rule

- Defines S/R
- Describes who may order S/R
- Addresses time limits
- Requires one-hour face-to-face assessment and ongoing monitoring
- Requires parental/guardian notification of S/R
- Requires two immediate debriefing sessions
- Describes reporting requirements
- Sets forth staff education and training competencies

Amendment and Clarification with Request for Comment

- Issued May 22, 2001
- Was written primarily in response to concerns raised by commenters regarding RN and psychiatrist shortages
- Clarifies which facilities are subject to the rule
- Modifies reporting requirements to facilitate resident monitoring and death reporting
- Amends “personal restraint” to include safe escorts
- IFC effective May 22, 2001

State Medicaid Director Letter #01-023

- Issued July 22, 2001
- Describes Section 483.474, which describes facility attestation process for compliance with government S/R standards
- Outlines death reporting
- Available at:
http://www.napas.org/images/Documents/Issues/Restraint_and_Seclusions/NDRN_CMS_smd071101.pdf
- CMS also issued guidance to State Survey Agency Directors on July 11, 2001 for the oversight and survey process for PRTFs

Condition of Participation (CoP) for Use of S/R in PRTFs

- Located at 42 CFR § 483.350-76, Subpart G
- Requires that PRTFs “must meet the requirements in § 441.151 through § 441.182”
- Also imposes CHA reporting/training requirements for the use of S/R
- Defines certain terms (drug used as restraint, emergency safety intervention, emergency safety situation, mechanical restraint, minor, personal restraint, restraint, seclusion, serious injury, staff, time out)

What Happened After the IFC?

- PRTFs must report all deaths (not just S/R-related deaths)
- Since 2001, there have been four deaths reported in PRTFs
- One death occurred after “struggling with staff in a protective hold”

CMS Providers with S/R Related Regulations

- Hospitals, including Psychiatric Hospitals
- Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR)
- Nursing Facilities
- Psychiatric Residential Facilities for Individuals Under the Age of 21
- Intermediate Care Facilities for the Mentally Retarded (ICFs/MR)

PRTFs in Medicaid

- PRTF services are covered under Medicaid's Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) benefit [Section 1905(a)(16) of the Social Security Act]
- States are not required to use PRTFs to provide particular Medicaid services to children

ICFs/MR in Medicaid

- Congress added the optional ICF benefit in 1967, following reports about dismal conditions in large institutions
- More than 6,000 ICFs/MR in the United States
- Most are privately owned
- Most ICFs/MR are small - <9 beds
- Most clients are served in large ICFs/MR (9+beds)
- Average cost of an ICF/MR is about \$118,000/year per person
- Some States no longer operate any ICFs/MR

Condition of Participation (CoP) for ICFs/MR

- Located at 42 CFR § 483.450(a)(1)(i)
- “Client Behavior & Facility Practices”
- Specifies behavior management not be used for discipline, staff convenience, or substitute for active treatment
- Time-out room only with supervision & as part of approved program
- Physical restraints used only when in the person’s plan, or as emergency measure, no standing orders, requires record of use, checks, and quick release
- Special requirements for use of drugs for behavior

S/R in Medicare/Medicaid Hospitals

- 2006 Office of the Inspector General (OIG) report “Hospital Reporting of Deaths Related to Restraint and Seclusion”: <http://oig.hhs.gov/oei/reports/oei-09-04-00350.pdf>
- CMS immediately issued a letter to State Survey Agency Directors reminding them of their responsibilities associated with the CoP
- CMS has increased its capacity to monitor and triage, is gathering statistics on S/R and analyzing findings, and developing tools for S/R follow-up

Service Settings Funded by Medicaid that CMS Does Not Directly Monitor

- Home and Community-Based Settings (private home, group homes, residential care facilities, adult care homes, etc.)
- Residential Treatment Facilities or Centers for Children
- Assisted Living Facilities
- Other Facilities (e.g. day habilitation programs, adult day programs)
- Schools

Medicaid in Schools

- 1965 – the Early and Periodic Diagnostic, Screening, and Treatment Service (EPSDT)
- 1975 – The Education for All Handicapped Children Act (now the Individuals with Disabilities Education Improvement Act of 2004 (IDEA))
- 1988 – Section 1903(c) of the Act

Section 1903(c) of the Social Security Act

- Medicaid is the first payor for Medicaid-covered services if they are included in a child's Individualized Education Program (IEP) or Individual Family Service Plan (IFSP), and might alternatively be paid for by Education funds
- Services must be included among those listed in Section 1905(a) of the Social Security Act
- Services must be described according to Medicaid statutory, regulatory, and policy requirements

Home and Community Based Services (HCBS) in Medicaid

- Section 1915(c) HCBS waivers
- Section 1915(i) State Plan coverage
- Section 1905(a) State plan services
- Section 1115 Research and Demonstration Projects
- Section 1915(a) contracts (State-provider)

Quality Requirements in HCBS Waivers

- States must describe a Quality Improvement Strategy (QIS), tied to six assurances:
 - level of care
 - service plan
 - qualified providers
 - health and welfare*
 - administrative authority
 - financial accountability

HCBS Waiver Application

- States must provide CMS with assurances that safeguards are in place to protect the health and welfare of waiver participants
- Requires States describe:
 - Response to critical events or incidents
 - Safeguards concerning restraints and restrictive interventions
 - Medication management and administration

Waiver Application – Appendix G-2

- States must specify:
 - the State entity or entities responsible for oversight/operation of the State based incident management system
 - oversight procedures other than those of the SMA or its operating agency (e.g. developmental disabilities agency)
 - methods for operation of the State incident management system including data collection, trends and patterns, and how data is used to prevent recurrences
 - frequency of oversight activities

State Requirements for Use of S/R in HCBS Waivers

- States must describe the types of restrictive interventions permitted and circumstances under which they are allowed
- For each restrictive method, the State must specify protocols, methods to detect unauthorized use, required documentation, education/training of authorizing personnel

Section 1915 (i) State Plan Coverage Quality Management Strategy

- Service plans address individual needs
- Providers are qualified
- The SMA retains program oversight
- The SMA has financial authority
- Remediation and systems improvement are described
- “State identifies, addresses and seeks to prevent incidents of abuse, neglect and exploitation, including the use of restraints”

Section 2402 of the Affordable Care Act of 2010

- Directs the HHS Secretary to promulgate regulations that allocate HCBS resources; provide support for individualized, self-directed life; and improve provider coordination
- Section 2402(a)(3) mentions oversight and monitoring of service system functions
- CMS is part of a cross-HHS workgroup to help achieve consistency across government programs

Medicaid Waivers and Demonstrations List

- <http://www.cms.gov/MedicaidStWaivProg/DemoPGI/MWDL/list.asp>

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