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Restraint Rules for Children's Psychiatric Residential Treatment Centers

The Health Care Financing Administration (HCFA—now called CMS) has released federal regulations governing the use of restraint and seclusion in "psychiatric residential treatment facilities." Issued as an interim final rule with comment in the January 22, 2001 Federal Register and re-released with changes on May 22, Federal Register, the regulations also set forth the long-awaited definition of these facilities as a non-hospital setting. The definition may make the Medicaid inpatient psychiatric services benefit available to individuals under 21.

Release of the regulations comes on the heels of congressional passage of the Child Health Act, Public Law No. 106-310 (see the Bazelon Center's October 4, 2000 Information Alert), setting seclusion and restraint standards for health care facilities receiving federally appropriated funds and certain "non-medical community-based facilities for children and youth." In addition, in July 1999 HCFA issued restraint and seclusion rules for hospitals (both general and psychiatric) that participate in the Medicare and Medicaid program.

The Child Health Act's requirements set a federal floor of protections but allow other state and federal laws and regulations to be more protective of patients' rights in the use of restraint and seclusion. Both the federal rule for Medicaid- and Medicare-funded hospitals and these new children's rules include stronger protections. For example, the HCFA rule requires a physician or a licensed independent practitioner to make a face-to-face assessment of the patient within one hour of the initiation of restraint or seclusion; this is more stringent than the requirement in the Child Health Act.

General Requirements

Under the Conditions of Participation for psychiatric residential treatment facilities providing "inpatient psychiatric services to individuals under 21"under the Medicaid program, all resident children and youth now have the right to be free from restraint or seclusion as a means of coercion, discipline, convenience or retaliation. Specifically:

- Restraint and seclusion may only be used to ensure the safety of the resident or others during an emergency safety situation.
- The restraint or seclusion must terminate when the emergency safety situation has ended and the safety of both the resident and others can be ensured, notwithstanding time remaining on orders.

- The least restrictive emergency safety intervention likely to be effective (based on consultation with the staff) must be used. Written standing orders or "as-needed" orders are prohibited. Also prohibited is the simultaneous use of restraint and seclusion.

Definitions of Restraints and Seclusion

Drugs that are not a standard treatment for the resident child or youth's medical or psychiatric condition, that temporarily restrict freedom of movement or that are given to control behavior in a way that reduces the safety risk to the resident or others are considered restraints. Restraints also involve mechanical devices and physical force that is applied to restrict freedom of movement. *Briefly holding a resident without undue force for the purpose of comforting him or her, or holding a resident's hand or arm to safely escort him or her from one area to another is not considered a restraint.*

Time out is not considered a form of seclusion. Seclusion is when the resident child or youth is involuntarily confined to an area or room and physically prevented from leaving. Time out involves restricting an individual in a designated area for a period of time to give him or her an opportunity to regain self-control. Under the rules, children and youth in time out must be monitored by staff and may not be physically prevented from leaving the area.

Orders for Restraint or Seclusion

The use of restraint or seclusion may only be ordered by a *physician or other licensed practitioner permitted by the state and the facility to order restraint or seclusion and trained in the use of emergency safety interventions*.

If the child's or youth's treating physician is available, only he or she can order restraint or seclusion. If the physician or other licensed practitioner permitted by the state and the facility to order restraint or seclusion orders the restraint or seclusion, the resident's treatment team physician must be contacted (unless the ordering physician is the resident's treatment team physician). The patient's record must contain the date and time of this consultation

If the physician, *or other licensed practitioner permitted by the state and the facility to order restraint or seclusion and trained in the use of emergency safety interventions*, is not available to order the restraint or seclusion, and a verbal order is obtained, a registered nurse *or other licensed staff, such as a licensed practical nurse,* must receive (at the time the emergency safety intervention is initiated) the verbal order. This verbal order should be verified by the physician's *or licensed practitioner's* signature. The physician or *licensed practitioner* must be available for consultation with staff, in person or by phone, throughout the emergency.

Time Limits

An order for restraint or seclusion must:

- not exceed the duration of the emergency safety situation;
- be limited to four hours for youth ages 18-21, two hours for 9-17 year-olds and one hour for children under age 9;

- include the ordering physician's *or licensed practitioner's (permitted by the state and the facility to order restraint or seclusion)* name, the date and time the order was obtained, the time limit, and what emergency safety intervention was used.

If the emergency safety situation (restraint or seclusion) extends beyond the time limit for the use of restraint or seclusion, a registered nurse *or other licensed staff, such as a licensed practical nurse* must immediately contact the ordering physician *or other licensed practitioner permitted by the state and the facility to order restraint or seclusion* for instructions.

One-Hour Assessment

A physician or *other licensed practitioner trained in the use of emergency safety interventions, and permitted by the state and the facility to assess the physical and psychological well being of residents'* must perform a face-to-face evaluation of the patient, including a physical and psychological assessment, no more than one hour after the restraint or seclusion is initiated.

Information that must be recorded in the resident's record includes an explanation of the situation that required the use of restraint or seclusion and the results of the one-hour assessment. This documentation must be recorded by staff at the end of the shift in which the use of restraint or seclusion is terminated.

Ongoing Monitoring

Clinical staff trained in the use of emergency safety interventions must continually monitor (in person) and assess the physical and psychological status of the resident throughout the use of restraints. After the restraint is removed, a physician or *other licensed practitioner permitted by the state and the facility to evaluate the resident's well-being and trained in the use of emergency safety interventions* must evaluate the resident.

For emergency safety situations involving the use of seclusion, a clinical staff member (trained in the use of emergency safety interventions) must continually monitor and assess the resident's physical and psychological status by being either physically inside or immediately outside the seclusion room. Video monitoring does not meet this requirement. After the resident is removed from seclusion, a physician or *other licensed practitioner permitted by the state and the facility to evaluate the resident's well-being and trained in the use of emergency safety interventions* must assess the resident's well-being.

Parental Notification

At admission, the facility is required to notify and supply a copy of the facility's restraint and seclusion policy to all incoming residents or, for a minor, to the parent or legal guardian. The facility must communicate this policy in an accessible format and obtain a written acknowledgment of this communication from the resident or parent or legal guardian of a minor, and must file it in the resident's record. Contact information on the state protection and advocacy system must be included in the facility's policy.

In addition, after each initiation of an emergency safety situation for a minor resident, the facility is required to notify the parent(s) or legal guardian(s) as soon as possible. A record of the facility's contact with the parent or legal guardian must be documented in the resident's record. The information must

include the date and time of notification and the name of the staff member who provided the notification.

Debriefing Sessions

Two debriefing sessions must occur within 24 hours after use of restraint or seclusion:

- a face-to-face discussion between the resident and all staff involved (excluding any staff whose presence may jeopardize the well-being of the resident) about the circumstances that led to the use of restraint or seclusion and strategies that could be used to prevent future use. Parents or legal guardians may participate, when appropriate as determined by the facility.
- a meeting among all staff involved in the emergency safety situation and appropriate supervisory and administrative staff. The session must, at the least, include a discussion of:
    - the emergency safety situation that led to the use of restraint or seclusion;
    - alternative techniques;
    - any staff procedure that may be used to prevent the reoccurrence; and
    - the outcomes.

Both debriefing sessions must be documented in the resident's record, including any changes to the resident's treatment plan as a result of the session.

Reporting

All facilities are required to report any serious occurrence, such as death, serious injury or a suicide attempt, to the state Medicaid agency and the state protection and advocacy agency, unless prohibited by state law. This reporting must occur by the close of business of the next business day after the occurrence and include the name of the resident; a description of the occurrence; and the name, street address and telephone number of the facility. Staff must document in the resident's record that this report was made and keep a copy of the report in the resident's record.

Reporting of the death of any resident must also be made to the Health Care Financing Administration (HCFA) regional office.

When a minor is involved, the parent or legal guardian must be notified as soon as possible, but not later than 24 hours after the occurrence.

Education and Training

Before participating in the use of restraint or seclusion, staff must have certification in the use of cardiopulmonary resuscitation (competency-demonstrated yearly) and demonstrate knowledge (every two years) of:

- techniques to identify staff and resident behaviors, events and environmental factors that trigger emergency safety situations;
- the use of nonphysical interventions (such as de-escalation, active listening, etc) that can be use to prevent emergency safety situations; and
- the safe use of restraint and seclusion, including ability to recognize signs of physical distress.

The facility is required to document in the resident's record successful completion of these demonstrated competencies. HCFA, the state Medicaid agency and the state survey agency must be able to review all training programs and materials used by the facility.

Effective Date and Comments

The regulations became effective the same day they were reissued: May 22, 2001. The comment period ended at 5:00pm on July 23, 2001.

Initially issued in the Federal Register on January 22, 2001 (Volume 66, Number 14; pages 7147-7167) with an effective date of March 23, 2001, these rules were delayed by the Bush Administration, then re-issued on May 22, 2001 (Volume 66, Number 99; pages 28110-28117) with amendments {see text added in italics and text deleted in strikeout}. The regulations (42 C.F.R. Parts 441 and 483) became immediately effective upon re-release on May 22, 2001]. You can access the regulations online.