RIGHTS OF ADULTS IN MASSACHUSETTS HOSPITALS AND EMERGENCY ROOMS REGARDING RESTRAINT AND SECLUSION

Prepared by the Mental Health Legal Advisors Committee
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Hospitals, including hospital emergency rooms, may use restraint and seclusion only in cases of emergency and in compliance with strict standards.[1] THIS PAMPHLET DESCRIBES THE RIGHTS OF INDIVIDUALS AGES 21 AND OLDER.[2]

WHAT IS RESTRAINT?

Restraint is physical force, mechanical devices, chemicals, seclusion, or any other means which unreasonably limit freedom of movement. Types of restraint include:

- **Physical restraint –** any manual method, physical or mechanical device that immobilizes or reduces the ability of a patient to move his or her arms, legs, body, or head freely.[3] This does not include devices or methods of holding for the purpose of conducting routine physical examinations or tests, or to protect the patient from falling out of bed, or to permit the patient to participate in activities without the risk of physical harm.[4]

- **Chemical restraint –** medication used to control behavior or restrict freedom of movement that is not a standard treatment or dosage for the patient's medical or psychiatric condition;[5]

- **Seclusion –** the involuntary confinement of a person in a room where the person is physically prevented from leaving.[6]

WHEN MAY RESTRAINT BE USED?

Restraint or seclusion may only be imposed to ensure the immediate physical safety of the patient, a staff member, or others.[7]

Restraint only may be used when less restrictive interventions have been determined to be ineffective to protect the patient, a staff member, or others from harm.[8] The patient's medical record must document alternatives or other less restrictive interventions attempted if applicable.[9]

The type or technique of restraint or seclusion used must be the least restrictive intervention that will be effective to protect the patient, a staff member, or others from harm.[10] Restraint may only be used in accordance with safe, appropriate restraining techniques as determined by hospital policy in accordance with state law.[11]

WHO MAY ORDER RESTRAINT?

Restraint and seclusion must be in accordance with an order from a physician or other licensed independent practitioner who is responsible for the care of the patient and authorized by the state and hospital to order a restraint.[12] The attending physician must be consulted as soon as possible, if he or she does not order the restraint.[13]

Orders for restraint and seclusion may not be written as standing orders or on an as-needed basis (that is, PRN).[14]

HOW LONG MAY RESTRAINT CONTINUE?

Each order for restraint or seclusion must be renewed every four hours for adults.[15]

The original order may be renewed for up to a total of 24 hours.[16]

After the original order expires, a physician or licensed independent practitioner must see and assess the patient before issuing a new order.[17] Restraint or seclusion must be discontinued at the earliest possible time, regardless of the length of time identified in the order.[18]

WHAT ARE THE OBSERVATIONAL REQUIREMENTS FOR RESTRAINT?

When restraint or seclusion is used for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the patient, a staff member, or others, the patient must be seen face-to-face within 1 hour of the intervention.[19]

The face-to-face evaluation can be conducted by a physician or other licensed independent practitioner, registered nurse or physician assistant who has been trained in accordance with the federal requirements.[20] If the evaluation is conducted by a registered nurse or physician assistant, the evaluator must consult the attending physician or other licensed independent practitioner who is responsible for the care of the patient as soon as possible.[21]

The purpose of the face-to-face interview is to evaluate the patient's immediate situation, reaction to the intervention, medical and behavioral condition, and the need to continue or terminate the restraint or seclusion.[22] This evaluation must be documented in the patient's medical record.[23]

WHAT SHOULD YOU DO IF YOU BELIEVE YOU HAVE BEEN IMPROPERLY RESTRAINED?

If you believe that you were illegally restrained while at a program or facility operated by, contracted for, or licensed by DMH, ask to speak with the Human Rights Officer.

You may also file a written **complaint** with the Person in Charge of the program or facility. You can give your complaint to any facility employee; he or she must forward it to the Person in Charge. If you are dissatisfied with the response of the Person in Charge and believe that additional fact-finding should occur, you have 10 days to request **reconsideration.** You also may file an **appeal** to a higher level up to 10 days after receiving a decision. The person to whom the appeal is made depends upon the type of complaint and the type of facility. In most cases, you have the right to a **further appeal,** which must be filed within 10 days of receiving the appeal decision.

If you have questions about the complaint process, contact the Human Rights Officer or the Mental Health Legal Advisors Committee.

ENDNOTES

[1] This pamphlet describes rights established in federal regulations by the federal Center for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services. Additional protections regarding restraint for individuals in hospitals exist in the Children's Health Act of 2000 and The Joint Commission Conditions of Participation for Hospitals.

[2] Individuals under age 21 have additional protections under the Children's Health Act of 2000 and correspondingCMS regulations. CITE

[3] 42 CFR 482.13(e)(1)(A).

[4] 42 CFR 482.13(e)(1)(C).

[5] 42 CFR 482.13(e)(1)(B).

[6] 42 CFR 482.13(e)(1)(ii).

[7] 42 CFR 482.13(e).

[8] 42 CFR 482.13(e)(2).

[9] 42 CFR 482.13(e)(16)(iii).

[10] 42 CFR 482.13(e)(3).

[11] 42 CFR 482.13(e)(4)(ii).

[12] 42 CFR 482.13(e)(5).

[13] 42 CFR 482.13(e)(7).

[14] 42 CFR 482.13(e)(6).

[15] 42 CFR 482.13(e)(8)(i)(A).

[16] 42 CFR 482.13(e)(8)(i).

[17] 42 CFR 482.13(e)(8)(ii).

[18] 42 CFR 482.13(e)(9).

[19] 42 CFR 482.13(e)(12).

[20] 42 CFR 482.13(e)(12)(i).

[21] 42 CFR 482.13(e)(14).

[22] 42 CFR 482.13(e)(12)(ii).

[23] 42 CFR 482.13(e)(16)(i).