

**RESTRAINT AND SECLUSION IN FACILITIES LICENSED BY,
CONTRACTED FOR, OR OPERATED BY THE MASSACHUSETTS
DEPARTMENT OF MENTAL HEALTH**

**Prepared by the Mental Health Legal Advisors Committee
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Staff at facilities licensed by, contracted for, or operated by the Massachusetts Department of Mental Health (DMH) may use restraint and seclusion only in cases of emergency and in compliance with strict standards. These standards are found in Massachusetts law and DMH regulation.

In some instances, DMH regulations impose shorter time frames for the duration of restraint than does Massachusetts law. When the time frames are not the same, this flier presents these shorter time frame requirements found in the DMH regulations.¹

HOWEVER, on May 1, 2020, DMH issued a Bulletin in response to the COVID-19 pandemic. That Bulletin removed some requirements of the DMH restraint regulations, including some of the shorter time frames for restraint orders. That Bulletin ordered facilities to follow the longer statutory time frames. This flier doesn't describe the changes in the Bulletin.

THEREFORE, if you are reading this during the COVID-19 state of emergency, **it is important to read that bulletin**, available at <https://www.mass.gov/doc/dmh-licensing-bulletin-20-03-admission-and-treatment/download>. **Look at** the Bulletin's requirements for the frequency of orders and documentation of restraint and seclusion.

MUST A FACILITY DEVELOP AN INDIVIDUAL CRISIS PREVENTION PLAN FOR EACH PATIENT?

Yes, facility staff must develop an individual crisis prevention plan for each patient. The plan must be appropriate to your biological age and developmental stage. The plan must include:

- a list of the triggers that might cause you to feel agitated or distressed;
- strategies to help calm you down and de-escalate the situation.

your preferences, such as the type of restraint and positioning, the gender of the staff person restraining you, and ways in which you would like to be calmed.²

The plan must be developed as soon as possible after admission.³ Facility staff should work with you, your legally authorized representative, and, when appropriate, with

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others.⁴ If you refuse to participate, the staff should develop the plan on their own. Even if you refuse, the staff should make continuing efforts to include you in review and revision of the plan.⁵ The plan should be kept updated.⁶

WHAT IS RESTRAINT?

The term "restraint" includes medication, mechanical or physical restraint. Restraint means bodily physical restriction, mechanical devices, or medication that unreasonably limits freedom of movement. Restraint does not include restraints used in acute medical or surgical care, adaptive support in response to assessed physical needs, or standard practices in various types of medical care.⁷

- **Medication restraint** – giving medication against your will for the purpose of restraint.⁸
- **Mechanical restraint** -- using a device, such as four-point or full-sheet restraint, to restrict your movement or the movement of a body part.⁹

Additional protection for children under age 13

No minor under age 13 may be placed in mechanical restraint, except when the facility medical director is notified prior to the use of such restraint or immediately after the initiation of the restraint, if an emergency occurs.¹⁰ The facility director also shall be informed immediately of the use of such restraint and report it in writing to the Commissioner or designee by the next business day.¹¹

- **Physical restraint** – holding you in a way that restricts your freedom of movement or normal access to the body. Physical restraint does not include non-forcible staff guiding you to another area or taking reasonable steps to prevent an imminent danger (such as blocking a blow, breaking up a fight, or preventing a fall).¹² Using force to physically hold a patient in order to administer a medication against the patient's wishes, including court ordered medication, is considered a physical restraint.¹³

WHAT IS SECLUSION?

Seclusion is when you are placed against your will in a room so that you are physically prevented from leaving or believe that you cannot leave.¹⁴ There are a number of situations that might lead you to believe that you cannot leave a room (and which thereby constitute seclusion). These include situations in which you are threatened with coercive measures, such as threat of restraint, sanctions, or a loss of privileges for leaving the room.¹⁵

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Seclusion does not include your decision to voluntarily separate from a group to calm down.¹⁶

Seclusion may not be used on someone in mechanical restraints.¹⁷

WHEN MAY RESTRAINT OR SECLUSION BE USED?

Restraint or seclusion “**may only be used in an emergency, such as the occurrence of, or serious threat of, extreme violence, personal injury, or attempted suicide.**”¹⁸ Such emergencies only include situations where there is a substantial risk of, or occurrence of, either serious self-destructive behavior or serious physical assault.¹⁹

Restraint or seclusion may only be used after the failure of less restrictive interventions.²⁰

Your preferences, which you stated in the individual crisis prevention plan that you made upon admission, must be considered in ordering a restraint.²¹

Restraint or seclusion may not be used on an "as needed" basis (PRN orders).²² They cannot be used for treatment, punishment, behavior modification, or staff convenience.

A medication restraint may only be used if it is the least restrictive and most appropriate alternative available.²³

WHO MAY ORDER RESTRAINT OR SECLUSION AND FOR HOW LONG?

Only a designated physician or a qualified advanced practice registered nurse may order **medication restraint**, but that clinician may issue the order over the telephone by speaking to a physician, qualified advanced practice registered nurse, registered nurse or certified physician's assistant who is present at the time and site of the emergency and who has personally examined you.²⁴ If ordered in this way, the ordered medication must have been previously authorized as part of your current treatment plan.²⁵ If the designated physician or qualified advanced practice registered nurse authorizes the restraint by phone, a clinician authorized to order medication restraint must evaluate you in person as soon as possible, and no later than one hour after the beginning of the restraint.²⁶

Mechanical restraint, physical restraint and seclusion require a written order by the superintendent or director of the facility, or by a designated physician or qualified advanced practice registered nurse who is present when the emergency occurs.²⁷ Such orders authorize use for no more than two hours.²⁸

If these clinicians are not present, another authorized staff person may authorize restraint or seclusion for no more than one hour, barring exceptional circumstances described below.²⁹

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At the time of initiation, an authorized person must observe and write notes of your physical status.³⁰

A superintendent, director, designated physician, or designated qualified advanced practice registered nurse must examine you, in person, as soon as possible but no later than one hour after the initiation of the intervention.³¹

In exceptional circumstances, when a superintendent, director, designated physician or designated qualified advanced practice registered nurse has not examined you within the first hour of restraint or seclusion, the restraint may continue for one more hour until such examination is conducted and the superintendent, director, designated physician or designated qualified advanced practice registered nurse shall attach to the restraint form a written report as to why the examination was not completed by the end of the first hour of restraint.³²

If you are released from restraint or seclusion prior to the expiration of the original order and an emergency occurs prior to the expiration of the order and more than a half hour has passed, a new order must be obtained prior to reinitiating the use of restraint or seclusion.³³

Continuation of a restraint or seclusion requires documentation that restraint or seclusion is still needed, as evidenced by the patient's symptoms.³⁴

ARE THERE ADDITIONAL LIMITS ON HOW LONG A RESTRAINT OR SECLUSION MAY CONTINUE?

Yes. When an emergency no longer exists, you must be released. Thus, staff should release you when, upon examination, you appear calm. The total time for which you may be restrained is limited. The following limits, in addition to those discussed in the preceding section, apply regarding the duration of restraint and seclusion.

- An incident of physical restraint may not exceed two hours.³⁵
- If a mechanical restraint or seclusion has exceeded five hours and staff expect to issue a new order to extend the episode beyond six hours, or if there are two or more episodes of any restraint or seclusion within 12 hours, staff must notify the facility director and facility medical director.³⁶ At that point, the facility medical director must take certain steps.³⁷
- If a mechanical restraint or seclusion has exceeded 11 hours and staff expect to issue a new order to extend the episode beyond 12 hours, or if episodes of restraint and/or seclusion have exceeded 12 hours in any 48 hours, the facility staff must take the following steps:
 - medically assess you;

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- notify the facility director and facility medical director and the facility medical director must take additional steps;
- report the episode to the DMH Commissioner or designee by the next business day.³⁸

Special provisions for children

- No minor under age 9 may be restrained or secluded for more than one hour in any 24-hour period.³⁹
- No minor age 9 through 17 may be restrained or secluded for more than two hours in any 24-hour period.⁴⁰
- Parents or legal guardians of a minor must be informed by staff of any incidents of restraint or seclusion.⁴¹

WHAT PROTECTIONS EXIST FOR PATIENTS IN RESTRAINT OR SECLUSION?

- You shall be placed in a position that allows airway access and does not compromise respiration.⁴²

A **face down position should not be used** unless you inform staff that this is your preference (and there is no medical contradiction to its use) or there is an overriding psychological or medical justification for its use. This information needs to be documented.

- Staff will give appropriate attention to your personal needs, including access to food, drink and toileting facilities.⁴³
- When in restraints or seclusion, you will be fully clothed, limited only by safety concerns.⁴⁴
- The physical environment should be as conducive as possible to aiding early release.⁴⁵
- The staff should use sensory interventions to calm you.⁴⁶
- The staff must be able to observe you visually while you are in seclusion.⁴⁷
- No locked mechanical restraint devices requiring the use of a key for their release may be used.⁴⁸

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WHAT ARE THE MONITORING AND ASSESSMENT REQUIREMENTS FOR PATIENTS IN RESTRAINT OR SECLUSION?

- If you are in a physical or mechanical restraint or seclusion, you will have a staff member assigned to monitor you one-on-one.⁴⁹
 - When you are secluded without a mechanical restraint, the staff member must keep you in full view and be able to observe you at all times.⁵⁰
 - When you are in a mechanical or physical restraint, the staff member must be able to hear and be heard by you and visually observe you at all times.⁵¹
- Every 15 minutes, the staff will monitor your vital signs, physical and psychological status, body alignment and circulation, and readiness for release.⁵²
- Staff will use appropriate interventions designed to calm you throughout the episode of restraint or seclusion.⁵³
- Staff will ensure that you have access to a means of marking the passage of time, either visually or verbally.⁵⁴

WHAT ARE THE DOCUMENTATION REQUIREMENTS?

Staff must complete a form each time a patient is placed in restraint and seclusion. The facility will produce three copies of this form: one for your record; one for your comments; and one for review by the DMH Commissioner.⁵⁵

At the end of each month, a facility will submit copies of all restraint forms to the DMH Commissioner and the human rights committee at the facility.⁵⁶

WHAT DEBRIEFING ACTIVITIES MUST OCCUR?

Within 24 hours after you are released from restraint or seclusion, you will be asked to debrief and comment on the episode.⁵⁷ A staff member will assist you in the debriefing activities and in completing the comment form. Preferably, this staff member should not have been involved in the restraint or seclusion.⁵⁸ Staff efforts to encourage the patient to provide comments shall be documented on the debriefing and comment form.⁵⁹ During this process, you will also be notified of the DMH complaint procedure.⁶⁰

You may complete the comment form either in writing or verbally (with a staff member transcribing it). It should include:

- the circumstances leading to the episode;
- the actions (either your own or the staff's) that may have helped to prevent it;

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- the type of restraint or seclusion used;
- any physical or psychological effects you may be experiencing from the restraint or seclusion.⁶¹

A copy of the comment form will be included in your record and another forwarded to the treatment team and the facility’s Human Rights Officer.⁶²

The Human Rights Officer should offer to meet with you if your comments or description suggest a possible rights violation or other harmful consequence.⁶³

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

If you believe that you were illegally restrained, you should ask to speak with the facility’s Human Rights Officer. You can find out who the Human Rights Officer is by asking staff. If you experience difficulty in accessing the Human Rights Officer, contact Mental Health Legal Advisors Committee at 800-342-9092 or 617-338-2345.

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. That employee must forward it to the person in charge. For more information about the complaint process, see http://mhlac.org/wp-content/uploads/2018/10/dmh_complaint_process.pdf

ENDNOTES

¹ We note here two provisions of the statute with time frames that are longer than those in the regulations. First, the statute provides that no order for restraint is valid for more than three hours. After that period, the order may be renewed by the personal examination of the superintendent, director, designated physician or designated qualified advanced practice registered nurse or, for adults, by a registered nurse or a certified physician assistant. Second, the statute provides that no adult may be restrained for more than six hours. After that period, the order may be renewed by the personal examination of a physician or qualified advanced practice registered nurse. Mass. Gen. L. ch. 123, § 21 (last amended by emergency statute Chapter 260 of the Acts of 2020).

² 104 CMR 27.12(4)(b). This and subsequent citations to 104 Code of Massachusetts Regulations (CMR) refer to regulations of the Massachusetts Department of Mental Health which are applicable to all hospitals licensed by, contracted for, or operated by the Department of Mental Health. These regulations will soon be revised to be consistent with Chapter 260 of the Acts of 2020, which gave new powers to Advanced Practice Registered Nurses. In this flier, because the regulations have not yet been revised, some of the endnotes cite the statute and then also reference the regulations using the term “see also.” This “see also” language is used because the regulations are not exactly the same as the statute, but still discuss the same situations.

³ 104 CMR 27.12(4)(b).

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- ⁴ 104 CMR 27.12(4)(b).
⁵ 104 CMR 27.12(4)(b).
⁶ 104 CMR 27.12(4)(c).
⁷ 104 CMR 27.12(8)(a)(3).
⁸ 104 CMR 27.12(8)(a)(3)(a).
⁹ 104 CMR 27.12(8)(a)(3)(b).
¹⁰ 104 CMR 27.12(8)(g)(5)(a).
¹¹ 104 CMR 27.12(8)(g)(5)(b).
¹² 104 CMR 27.12(8)(a)(3)(c).
¹³ 104 CMR 27.12(8)(a)(3)(c).
¹⁴ 104 CMR 27.12(8)(a)(4)(a).
¹⁵ 104 CMR 27.12(8)(a)(4)(a).
¹⁶ 104 CMR 27.12(8)(a)(4)(b).
¹⁷ 104 CMR 27.12(8)(b)(4).
¹⁸ 104 CMR 27.12(8)(b).
¹⁹ 104 CMR 27.12(8)(b).
²⁰ 104 CMR 27.12(8)(b)(1).
²¹ 104 CMR 27.12(8)(b)(1).
²² 104 CMR 27.12(8)(b)(3).
²³ 104 CMR 27.12(8)(b)(1).
²⁴ Mass. Gen. L. ch. 123, § 21 (last amended by emergency statute Chapter 260 of the Acts of 2020); see also 104 CMR 27.12(8)(d).
²⁵ Mass. Gen. L. ch. 123, § 21 (last amended by emergency statute Chapter 260 of the Acts of 2020).
²⁶ Mass. Gen. L. ch. 123, § 21 (last amended by emergency statute Chapter 260 of the Acts of 2020); see also 104 CMR 27.12(8)(d)(4).
²⁷ Mass. Gen. L. ch. 123, § 21 (last amended by emergency statute Chapter 260 of the Acts of 2020); see also 104 CMR 27.12(8)(e)(1).
²⁸ See 104 CMR 27.12(8)(e)(1)(b).
²⁹ Mass. Gen. L. ch. 123, § 21 (last amended by emergency statute Chapter 260 of the Acts of 2020); see also 104 CMR 27.12(8)(e)(2)(c).
³⁰ 104 CMR 27.12(8)(e)(3).
³¹ Mass. Gen. L. ch. 123, § 21 (last amended by emergency statute Chapter 260 of the Acts of 2020); see also 104 CMR 27.12(8)(e)(2)(d).
³² Mass. Gen. L. ch. 123, § 21 (last amended by emergency statute Chapter 260 of the Acts of 2020); see also 104 CMR 27.12(8)(f)(1).
³³ 104 CMR 27.12(8)(g)(8).
³⁴ 104 CMR 27.12(f)(2)(d).
³⁵ 104 CMR 27.12(8)(g)(1).
³⁶ 104 CMR 27.12(8)(g)(6).
³⁷ 104 CMR 27.12(8)(g)(6).
³⁸ 104 CMR 27.12(8)(g)(7).
³⁹ 104 CMR 27.12(8)(g)(3); 42 CFR 482.13(e)(8)(i)(C).
⁴⁰ 104 CMR 27.12(8)(g)(4); 42 CFR 482.13(e)(8)(i)(B).

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- 41 42 CFR § 483.366(a).
 - 42 104 CMR 27.12(8)(c)(1)
 - 43 104 CMR 27.12(8)(c)(2).
 - 44 104 CMR 27.12(8)(c)(3).
 - 45 104 CMR 27.12(8)(c)(4).
 - 46 104 CMR 27.12(8)(c)(4).
 - 47 104 CMR 27.12(8)(c)(5).
 - 48 104 CMR 27.12(8)(c)(6).
 - 49 104 CMR 27.12(8)(h)(1).
 - 50 104 CMR 27.12(8)(h)(2)
 - 51 104 CMR 27.12(8)(h)(3).
 - 52 104 CMR 27.12(8)(h)(4).
 - 53 104 CMR 27.12(8)(h)(5).
 - 54 104 CMR 27.12(8)(h)(5).
 - 55 104 CMR 27.12(8)(i)(1)(b).
 - 56 104 CMR 27.12(8)(i)(3), (4).
 - 57 104 CMR 27.12(5)(b)(1)
 - 58 104 CMR 27.12(5)(b)(2).
 - 59 104 CMR 27.12(5)(b)(3)(d).
 - 60 104 CMR 27.12(5)(b)(5).
 - 61 104 CMR 27.12(5)(b)(1).
 - 62 104 CMR 27.12(5)(b)(4).
 - 63 104 CMR 27.12(5)(b)(5).

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