420-5-10-.03 ADMINISTRATIVE MANAGEMENT.

(j) Unusual Occurrences. Occurrences such as catastrophes and unusual occurrences which threaten the welfare, safety or health of residents, personnel, or visitors shall be documented within 24 hours of the incident or occurrence. This documentation shall be retained in the facility for at least 2 years. All records required by this subsection shall be, upon request, made immediately available to surveyors employed by the Alabama Department of Public Health. Copies of such records shall be forwarded to the Alabama Department of Public Health promptly upon request. The term, “Unusual occurrences” includes life threatening burns, and deaths under unusual circumstances.

420-5-10-.07 Resident Behavior and Facility Practices.

(1) Resident behavior and facility practices.
(a) Restraints. The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident’s medical symptoms.
(b) Abuse. The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.
(c) Staff treatment of residents. The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.
1. The facility must:
(i) Not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion.
(ii) Not employ individuals who:
(I) Have been found guilty of abusing, neglecting, or mistreating residents by a court of law; or
(II) Has had a finding entered into the State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property; and
(III) Report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the State nurse aide registry or licensing authorities.
(d) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including suspicious injuries of an unknown source and misappropriation of resident
property are reported immediately to the administrator of the facility. Alleged violations that would constitute violations of criminal statutes, such as murders, rapes, and assaults must also be reported to the appropriate local law enforcement agency.

(e) The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.

(f) The results of all investigations must be reported to the administrator or his designated representative and to the Alabama Department of Public Health within 5 working days of the incident, and if the alleged violation is verified, appropriate corrective action must be taken.

Author: Rick Harris

ALASKA

07 AAC 012.258. Use of Restraints or Psychoactive Drugs.

(a) In addition to the rights of patients specified in 7 AAC 12.890, residents of nursing facilities have the right to be free from physical restraints imposed or psychoactive drugs administered for purposes of discipline or convenience and that are not required to treat the resident’s medical symptoms.

(b) A resident’s medical records must contain evidence of consultation with appropriate health professionals, such as occupational or physical therapists, in the use of less restrictive supportive devices before using physical restraints. The record must also contain evidence of an interdisciplinary team’s identification of less restrictive approaches to be used before or in conjunction with the use of psychoactive drugs.

(c) If, after a trial period of less restrictive measures, a nursing facility decides that a physical restraint or psychoactive drug would enable and promote greater functional or social independence, the nursing facility must explain the use of the restraint or psychoactive drug to the resident, before its use. If the resident has a legal representative, the explanation must also be given to the resident’s legal representative, before its use. The explanation must include a description of the risks and benefits of the use of the restraint or drug.

(d) Approval of the use of a restraint or psychoactive drug by a resident or legal representative must precede its use, except in the case of a medical emergency in which there is a risk of harm to the resident or others. The approval, or the circumstances of the emergency, must be documented in the resident’s medical records at the nursing facility.

(e) A resident’s medical records must contain evidence of an interdisciplinary team’s periodic reassessment of the restraint or psychoactive drug to determine its effectiveness and appropriateness for continued use.
(f) A nursing home must also meet the requirements at 42 C.F.R. 483.10, 483.12, 483.13, and 483.15, as amended July 1, 1991, regardless of whether the nursing home is certified to receive Medicaid payments under 7 AAC 43.170.

History - Eff. 5/28/92, Register 122; am 8/15/92, Register 123.
Authority: AS 18.20.010 AS 18.20.060

ARIZONA

R9-10-904. Administration

... E. An administrator shall ensure that:

2. An allegation of abuse of a resident or misappropriation of resident property is:
   a. Investigated by an individual designated by the administrator;
   b. Reported to the Department within five calendar days of the allegation; and
   c. Reported to Adult Protective Services of the Department of Economic Security if required by A.R.S. § 46-454;

3. During an investigation conducted according to subsection (E)(2), further abuse of a resident or misappropriation of resident property is prevented;

... 7. An injury to a resident from an unknown source that requires medical services, a disaster, or an incident is investigated by the nursing care institution and reported to the Department within 24 hours or the first business day after the injury, disaster, or incident occurs;

R9-10-907. Resident Rights

An administrator shall ensure that:
1. A resident:
   b. Is free from:
      i. Restraint and seclusion if not medically indicated unless necessary to prevent harm to self or others and the reason for restraint or seclusion is documented in the resident's medical records;
      ii. Abuse and misappropriation of property...

ARKANSAS

302 GENERAL ADMINISTRATION
306 REPORTING SUSPECTED ABUSE, NEGLECT, EXPLOITATION, INCIDENTS, ACCIDENTS, DEATHS FROM VIOLENCE AND MISAPPROPRIATION OF RESIDENT PROPERTY

Pursuant to federal regulation 42 CFR 483.13 and state law Ark. Code Ann. § 5-28-101 et seq. and 12-12-501 et seq., the facility must develop and implement written policies and procedures to ensure incidents, including:

a) alleged or suspected abuse or neglect of residents;
b) accidents, including accidents resulting in death;
c) unusual deaths or deaths from violence;
d) unusual occurrences; and,
e) exploitation of residents or any misappropriation of resident property, are prohibited, reported, investigated and documented as required by these regulations.

A facility is not required under this regulation to report death by natural causes. However, nothing in this regulation negates, waives or alters the reporting requirements of a facility under other regulations or statutes.

Facility policies and procedures regarding reporting, as addressed in these regulations, must be included in orientation training for all new employees, and must be addressed at least annually during in-service training for all facility staff.

306.1 NEXT-BUSINESS-DAY REPORTING OF INCIDENTS

The following events shall be reported to the Office of Long Term Care by facsimile transmission to telephone number 501-682-8551 of the completed Incident & Accident Intake Form (Form DMS-7734) no later than 11:00 a.m. on the next business day following discovery by the facility.

a. Any alleged, suspected or witnessed occurrences of abuse or neglect to residents.
b. Any alleged, suspected or witnessed occurrence of misappropriation of resident property, or exploitation of a resident.
c. Any alleged, suspected or witnessed occurrences of verbal abuse. For purposes of this regulation, "verbal abuse" means the use of oral, written, or gestured language that willfully includes disparaging and derogatory terms to residents, or within their hearing distance, regardless of their age, ability to comprehend, or disability. Examples of verbal abuse include, but are not limited to: threats of harm; saying things to frighten a resident, such as telling a resident that he or she will never be able to see his or her family again.
d. Any alleged, suspected or witnessed occurrences of sexual abuse to residents by any individual.

In addition to the requirement of a facsimile report by the next business day on Form DMS-7734, the facility shall complete a Form DMS-762 in accordance with Section 306.2.

306.2 INCIDENTS OR OCCURRENCES THAT REQUIRE INTERNAL REPORTING ONLY - FACSIMILE REPORT OR FORM DMS-762 NOT REQUIRED.

The following incidents or occurrences shall require the nursing facility to prepare an internal report only and does not require a facsimile report, or form DMS-762 to be made to
the Office of Long Term Care. The internal report shall include all content specified in Section 306.3, as applicable. Nursing facilities must maintain these incident record files in a manner that allows verification of compliance with this provision.

a. Incidents where a resident attempts to cause physical injury to another resident without resultant injury. The facility shall maintain written reports on these types of incidents to document "patterns" of behavior for subsequent actions.
b. All cases of reportable disease, as required by the Arkansas Department of Health.
c. Loss of heating, air conditioning or fire alarm system of greater than two (2) hours duration.

306.3 INTERNAL-ONLY REPORTING PROCEDURE

Written reports of all incidents and accidents included in section 306.2 shall be completed within five (5) days after discovery. The written incident and accident reports shall be comprised of all information specified in forms DMS-7734 and 762 as applicable.

All written reports will be reviewed, initialed and dated by the facility administrator or designee within five (5) days after discovery. All reports involving accident or injury to residents will also be reviewed, initialed and dated by the Director of Nursing Services or other facility R.N.

Reports of incidents specified in Section 306.2 will be maintained in the facility only and are not required to be submitted to the Office of Long Term Care.

All written incident and accident reports shall be maintained on file in the facility for a period of three (3) years.

306.4 OTHER REPORTING REQUIREMENTS

The facility's administrator is also required to make any other reports of incidents, accidents, suspected abuse or neglect, actual or suspected criminal conduct, etc. as required by state and federal laws and regulations.

306.5 ABUSE INVESTIGATION REPORT

The facility must ensure that all alleged or suspected incidents involving resident abuse, exploitation, neglect or misappropriations of resident property are thoroughly investigated. The facility's investigation must be in conformance with the process and documentation requirements specified on the form designated by the Office of Long Term Care, Form DMS-762, and must prevent further potential incidents while the investigation is in progress.

The results of all investigations must be reported to the facility's administrator, or designated representative, and to other officials in accordance with state law, including the Office of Long Term Care. Reports to the Office of Long Term Care shall be made via facsimile transmission by 11:00 a.m. the next business day following discovery by the facility, on form DMS-7734. The follow-up investigation report, made on form DMS-762, shall be submitted to the Office of Long Term Care within 5 working days of the date of the submission of the DMS-7734 to the Office of Long Term Care. If the alleged violation is verified, appropriate corrective action must be taken.
The DMS-762 may be amended and re-submitted at any time circumstances require.

306.6 REPORTING SUSPECTED ABUSE OR NEGLECT

The facility’s written policies and procedures shall include, at a minimum, requirements specified in this section.

306.6.1 The requirement that the facility’s administrator or his or her designated agent immediately reports all cases of suspected abuse or neglect of residents of a long-term care facility as specified below:
   a. Suspected abuse or neglect of an adult (18 years old or older) shall be reported to the local law enforcement agency in which the facility is located, as required by Arkansas Code Annotated 5-28-203(b).
   b. Suspected abuse or neglect of a child (under 18 years of age) shall be reported to the local law enforcement agency and to the central intake unit of the Department of Human Services, as required by Act 1208 of 1991. Central intake may be notified by telephone at 1-800-482-5964.

306.6.2 The requirement that the facility's administrator or his or her designated agent report suspected abuse or neglect to the Office of Long Term Care as specified in this regulation.

306.6.3 The requirement that facility personnel, including but not limited to, licensed nurses, nursing assistants, physicians, social workers, mental health professionals and other employees in the facility who have reasonable cause to suspect that a resident has been subjected to conditions or circumstances which have or could have resulted in abuse or neglect are required to immediately notify the facility administrator or his or her designated agent.

306.6.4 The requirement that, upon hiring, each facility employee be given a copy of the abuse or neglect reporting and prevention policies and procedures and sign a statement that the policies and procedures have been received and read. The statement shall be filed in the employee’s personnel file.

306.6.5 The requirement that all facility personnel receive annual, in-service training in identifying, reporting and preventing suspected abuse/neglect, and that the facility develops and maintains policies and procedures for the prevention of abuse and neglect, and accidents.

[Note: Incident & Accident Next Day Reporting Form, OLTC Incident and accident Report (I&A), and Facility Investigation Report for Resident Abuse, Neglect, Misappropriation of Property & Exploitation of Residents in Long Term Care Facilities follow section 306.]

309 RESTRAINT OF RESIDENTS

Patients shall not be unduly restrained. Patients shall not be confined to rooms or restrained except when necessary to prevent injury to the patient or others and when alternative measures are not sufficient to accomplish these purposes. In any event, no locked doors or locked restraints are to be used at any time to restrain a patient. Doors (screen type), or the lower one half of a dutch door or approved type louvered doors may be
hooked on the hall side of the door. Restraints, of the non-locking type, may be used only upon the order of a physician. In the event the order is obtained by phone, the signature of a physician shall be obtained within five days. (Note: The aforementioned restraining type doors shall be installed in addition to the regular door to the room. They shall be removed during periods when they are not needed for the restraint of patients.) Upon the advice of the attending physician, unruly or excessively noisy patients shall be transferred from the home to an institution equipped for such patient care, since this type patient creates a disturbance for other patients in the home.

The written policy and procedures governing the use of restraints shall specify which staff member may authorize the use of restraints and clearly delineate at least the following:

a. Orders indicating the specific reasons for the use of restraints.

b. Their use is temporary, and the resident will not be restrained for an indefinite amount of time.

c. Orders for restraints shall not be enforced for longer than twelve (12) hours, unless the patient's condition warrants.

d. Restraints must be checked every thirty (30) minutes and loosened every two (2) hours for range of motion to restrained extremities.

516 NURSING CARE REQUIREMENTS

516.1 Charting

516.1.e.4 Use of physical restraints to include the type applied, time of application, checks, releases and exercise of resident, (Flow sheet may be used.);

3000 RESIDENTS' RIGHTS

...3028 Residents shall be free from mental and physical abuse, chemical and physical restraints (except in emergencies) unless authorized, in writing, by a physician, and only for such specified purposes and limited time as is reasonably necessary to protect the resident from injury to himself or others.

3029 Mental abuse includes humiliation, harassment, and threats of punishment or deprivation.

3030 Physical abuse refers to corporal punishment or the use of restraints as a punishment.

3031 Drugs shall not be used to limit, control, or alter resident behavior for convenience of staff.

3032 Physical restraint includes the use of devices designed or intended to limit residents' total mobility.

3033 Physical restraints are not to be used to limit resident mobility for the convenience of staff, as a means of punishment, or when not medically required to treat the resident's medical symptoms. If a resident's behavior is such that it will result in injury to himself or others any form of physical restraint utilized shall be in conjunction with a treatment procedure designed to modify the behavioral problems for which the resident is restrained and only after failure of therapy designed or intended to modify the threatening behavior.
The facility’s written policy and procedures governing the use of restraint shall specify which staff members may authorize the use of restraints and must clearly specify the following:

a. Orders shall indicate the specific reasons for the use of restraints.
b. Use of restraints must be temporary and the resident will not be restrained for an indefinite or unspecified amount of time.
c. Application of restraints shall not be allowed for longer than 12 hours unless the resident’s condition warrants and specified medical authorization is maintained in the resident’s medical record.
d. A resident placed in restraints shall be checked at least every thirty (30) minutes by appropriately trained staff. A written record of this activity shall be maintained in the resident’s medical record. The opportunity for motion and exercise shall be provided for a period of not less than ten (10) minutes during each two (2) hours in which restraints are employed, except at night.
e. Reorder, extensions or re-imposition of restraints shall occur only upon review of the resident’s condition by the physician, and shall be documented in the physician’s progress notes.
f. The use of restraints shall not be employed as punishment, the convenience of staff, or a substitute for supervision.
g. Mechanical restraints must be employed in such manner as to avoid physical injury to the resident and provide a minimum of discomfort.
h. The practice of locking residents behind doors or other barriers also constitutes physical restraint and must conform to the policies and procedures for the use of restraints.

§72319. Nursing Service--Restraints and Postural Supports.
(a) Written policies and procedures concerning the use of restraints and postural supports shall be followed.

(b) Restraints shall only be used with a written order of a physician or other person lawfully authorized to prescribe care. The order must specify the duration and circumstances under which the restraints are to be used. Orders must be specific to individual patients. In accordance with Section 72317, there shall be no standing orders and in accordance with Section 72319(i)(2)(A), there shall be no P.R.N. orders for physical restraints.

(c) The only acceptable forms of physical restraints shall be cloth vests, soft ties, soft cloth mittens, seat belts and trays with spring release devices. Soft ties mean soft cloth which does not cause abrasion and which does not restrict blood circulation.
(d) Restraints of any type shall not be used as punishment, as a substitute for more effective medical and nursing care, or for the convenience of staff.

(e) No restraints with locking devices shall be used or available for use in a skilled nursing facility.

(f) Seclusion, which is defined as the placement of a patient alone in a room, shall not be employed.

(g) Restraints shall be used in such a way as not to cause physical injury to the patient and to insure the least possible discomfort to the patient.

(h) Physical restraints shall be applied in such a manner that they can be speedily removed in case of fire or other emergency.

(i) The requirements for the use of physical restraints are:

(1) Treatment restraints may be used for the protection of the patient during treatment and diagnostic procedures such as, but not limited to, intravenous therapy or catheterization procedures. Treatment restraints shall be applied for no longer than the time required to complete the treatment.

(2) Physical restraints for behavior control shall only be used on the signed order of a physician or other person lawfully authorized to prescribe care, except in an emergency which threatens to bring immediate injury to the patient or others. In such an emergency an order may be received by telephone, and shall be signed within 5 days. Full documentation of the episode leading to the use of the physical restraint, the type of the physical restraint used, the length of effectiveness of the restraint time and the name of the individual applying such measures shall be entered in the patient's health record.

(A) Physical restraints for behavioral control shall only be used with a written order designed to lead to a less restrictive way of managing, and ultimately to the elimination of, the behavior for which the restraint is applied. There shall be no PRN orders for behavioral restraints.

(B) Each patient care plan which includes the use of physical restraint for behavior control shall specify the behavior to be eliminated, the method to be used and the time limit for the use of the method.

(C) Patients shall be restrained only in an area that is under supervision of staff and shall be afforded protection from other patients who may be in the area.

(j) When drugs are used to restrain or control behavior or to treat a disordered thought process, the following shall apply:

(1) The specific behavior or manifestation of disordered thought process to be treated with the drug is identified in the patient's health record.

(2) The plan of care for each patient specifies data to be collected for use in evaluating the effectiveness of the drugs and the occurrence of adverse reactions.

(3) The data collected shall be made available to the prescriber in a consolidated manner at least monthly.

(4) PRN orders for such drugs shall be subject to the requirements of this section.

(k) "Postural support" means a method other than orthopedic braces used to assist patients to achieve proper body position and balance. Postural supports may only include soft ties,
seat belts, spring release trays or cloth vests and shall only be used to improve a patient’s mobility and independent functioning, to prevent the patient from falling out of a bed or chair, or for positioning, rather than to restrict movement. These methods shall not be considered restraints.

1. The use of postural support and the method of application shall be specified in the patient’s care plan and approved in writing by the physician or other person lawfully authorized to provide care.

2. Postural supports shall be applied:
   A. Under the supervision of a licensed nurse.
   B. In accordance with principles of good body alignment and with concern for circulation and allowance for change of position.


HISTORY 1. Amendment of subsection (b) and Note filed 5-25-95; operative 6-26-95 (Register 95, No. 21).

s 72455. Special Treatment Program Service Unit - Abuse and Corporal Punishment.
Patients shall not be subjected to verbal or physical abuse of any kind. Corporal punishment of patients is prohibited. Patients shall not discipline other patients.
Note: Authority cited: Sections 208(a) and 1275, Health and Safety Code. Reference: Section 1276, Health and Safety Code.

s 72457. Special Treatment Program Service Unit - Restraint and Seclusion.
(a) Restraint and seclusion shall only be used as emergency measures to protect the patient from injury to self or to others. Restraint and seclusion shall not be used as punishment or the convenience of the staff.
(1) Restraints may be used:
   A. For the protection of the patient during treatment and diagnostic procedures, including but not limited to, intravenous therapy, tube feeding and catheterization.
   B. To prevent infirm patients from falling out of bed or chairs or otherwise injuring themselves.
Note: Authority cited: Sections 208 (a) and 1275, Health and Safety Code. Reference: Section 1276, Health and Safety Code.

s 72459. Special Treatment Program Service Unit - Acceptable Forms of Restraints.
(a) Mechanical or behavior restraints are defined as any apparatus that interferes with the free movement of a patient.
(1) Physical restraint means restraint to control an acutely disturbed person to prevent the person from causing harm to self or others. The tying of hands or feet, whether or not the person is restrained in a bed, chair or wheelchair, shall be considered a physical restraint. A physical restraint shall not be confused with a postural support as defined in Section 72319(k). Only the following types of physical restraint may be used:
   A. Soft tie consisting of cloth which prevents movements of a patient.
   B. Mittens without thumbs which are securely fastened around the wrist with a small tie.
   C. Cloth vests consisting of sleeveless cloth webbing.
   D. Belts and cuffs, which are well padded, used to control a seriously disturbed, assaultive
Patient.
Note: Authority cited: Sections 208 (a) and 1275, Health and Safety Code. Reference: Section 1276, Health and Safety Code.

§ 72461. Special Treatment Program Service Unit -Orders for Restraint and Seclusion.
(a) Restraint and seclusion shall only be used on the signed order of a physician which shall be renewed every 24 hours. In a documented case of emergency, which threatens to bring immediate injury to the patient or others, a restraint may be applied, and a physician shall give an order for application of the restraint within one hour. A physician may give the order by telephone. In such an event, the physician shall sign the order within 5 days.
(b) A daily log shall be maintained in each facility exercising behavior restraint and seclusion indicating the name of the patient for whom behavior restraint or seclusion is ordered.
(c) Full documentation of the episode leading to the behavior restraint or seclusion, the type of behavior restraint or seclusion used, the length of time that the restraint or seclusion was applied or utilized, and the name of the individual applying such measures shall be entered in the patient's health record.

Note: Authority cited: Sections 208 (a) and 1275, Health and Safety Code. Reference: Section 1276, Health and Safety Code.

§ 72463. Special Treatment Program Service Unit -Restrictions on Applying Restraints and Utilizing Seclusion.
(a) In applying physical restraints, each of the following requirements shall be met in addition to those set forth in Section 72319:
(1) Careful consideration shall be given to the methods by which the restraints may be speedily removed in the event of fire or other emergency.
(2) Patients placed in restraint shall be observed by qualified treatment personnel at least every half hour. This observation shall be noted and initialed in the patient's health record following each observation.
(3) Each individual program plan authorizing restraint shall specify the behavior to be modified, the method to be used, the schedule for use of the method, the person responsible for the program and the effectiveness of the modality in attaining stated objectives.
(4) Opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two hours in which restraint is applied. The exercise periods shall be documented in the patient's record.

(b) In utilizing seclusion each of the following requirements shall be met:
(1) Patients placed in seclusion shall be observed by qualified treatment personnel at least every half hour. This observation shall be noted and initialed in the patient's health record.
(2) Each individual program plan authorizing seclusion shall specify the behavior to be modified, the method to be used, the schedule for use of the method, the person responsible for the program and the effectiveness of the modality in attaining stated goals.
(3) Opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two hours in which seclusion is applied. The exercise periods shall be documented in the patient's record.

(c) Medication shall not be used as punishment, as a substitute for a program or for the convenience of staff.
§72523. Patient Care Policies and Procedures.
(...(c) Each facility shall establish and implement policies and procedures, including but not limited to:
(...(2) Nursing services policies and procedures which include:
(...(E) Conditions under which restraints are used, the application of restraints, and the mechanism used for monitoring and controlling their use.
Authority cited: Sections 208(a) and 1275, Health and Safety Code. Reference: Section 1276, Health and Safety Code.

§72527. Patients' Rights.
(a) ... Patients shall have the right:
...(5) To receive all information that is material to an individual patient's decision concerning whether to accept or refuse any proposed treatment or procedure. The disclosure of material information for administration of psychotherapeutic drugs or physical restraints or the prolonged use of a device that may lead to the inability to regain use of a normal bodily function shall include the disclosure of information listed in Section 72528(b).
...(9) To be free from mental and physical abuse.
...(23) To be free from psychotherapeutic drugs and physical restraints used for the purpose of patient discipline or staff convenience and to be free from psychotherapeutic drugs used as a chemical restraint as defined in Section 72018, except in an emergency which threatens to bring immediate injury to the patient or others. If a chemical restraint is administered during an emergency, such medication shall be only that which is required to treat the emergency condition and shall be provided in ways that are least restrictive of the personal liberty of the patient and used only for a specified and limited period of time.

§72541. Unusual Occurrences.
Occurrences such as epidemic outbreaks, poisonings, fires, major accidents, death from unnatural causes or other catastrophes and unusual occurrences which threaten the welfare, safety or health of patients, personnel or visitors shall be reported by the facility within 24 hours either by telephone (and confirmed in writing) or by telegraph to the local health officer and the Department. An incident report shall be retained on file by the facility for one year. The facility shall furnish such other pertinent information related to such occurrences as the local health officer or the Department may require. Every fire or explosion which occurs in or on the premises shall be reported within 24 hours to the local fire authority or in areas not having an organized fire service, to the State Fire Marshal.

COLORADO

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Part 2. ADMINISTRATION
2.5 OCCURRENCE REPORTING.  [Eff. 07/30/2008]
Notwithstanding any other reporting required by state regulation, each facility shall report the following to the department within 24 hours of discovery by the facility.
(1) Any occurrence involving neglect of a resident by failure to provide goods and services necessary to avoid the resident’s physical harm or mental anguish.
(2) Any occurrence involving abuse of a resident by the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish.
(3) Any occurrence involving an injury of unknown source where the source of the injury could not be explained and the injury is suspicious because of the extent or location of the injury.
(4) Any occurrence involving misappropriation of a resident’s property including the deliberate misplacement, exploitation, or wrongful use of a resident’s belongings or money without the resident’s consent.

7.11 RESTRAINTS.
(A) A PHYSICAL RESTRAINT is any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident’s body that the individual cannot remove easily which restricts freedom of movement or normal access to one’s body.
(B) A CHEMICAL RESTRAINT is anything that is used for discipline or convenience and not required to treat medical symptoms. Any medication that can be used both to treat a medical condition and to alter or control behavior shall be evaluated to determine its use for the resident. If a medication is used solely or primarily to treat a medical condition, it is not a chemical restraint.

7.11.1 Linen shall not be used as restraints.

7.11.2 The facility shall establish written policies and procedures governing the use of physical and chemical restraints and shall assure that they are followed by all staff members.

7.11.3 Physical and chemical restraints shall only be used upon the order of a physician and only when necessary to prevent injury to the resident or others, based on a physical, functional, emotional and medication assessment.

7.11.4 Restraints shall not be used for disciplinary purposes, for staff convenience or to reduce the need for care of residents during periods of understaffing.

7.11.5 Whenever restraints are used, a call signal switch or similar device within reach or other appropriate method of communication shall be provided to the resident.

7.11.6 If the resident needs emergency care, restraints may be used for brief periods to permit medical treatment to proceed, unless the resident or legal representative has previously made a valid refusal of the treatment in question. A resident whose unanticipated violent or aggressive behavior places the resident or others in imminent danger does not have the right to refuse the use of restraints as long as those restraints are used as a last resort to protect the safety of the resident or others and use is limited to the immediate episode.
7.11.7  Residents in physical restraints shall be monitored at least every 15 minutes to assure that the resident is properly positioned, blood circulation is not restricted, and other resident needs are met.

7.11.8  At least every two hours during waking hours, residents shall have the physical restraint removed and shall have the opportunity to: drink fluids, be toileted, and be exercised, moved, or repositioned, which activity shall be documented in the health record.

Part 12. RESIDENTS' RIGHTS

12.1  RESIDENTS' RIGHTS. The facility shall adopt a statement of the rights and responsibilities of their residents, post it conspicuously in a public place, and provide a copy to each resident or guardian before admission. The facility and staff shall observe these rights in the care, treatment, and supervision of the residents. Rights shall include at least:

...12.1.8  The right to be free from mental and physical abuse and from physical and chemical restraints, except those restraints initiated through the judgment of professional staff for a specified and limited period of time or on the written authorization of a physician;

Part 19. SECURE UNITS

...19.3.2  Placement on a secure unit shall not be used for the punishment of a resident or the convenience of the staff and shall be the least restrictive alternative available.

CONNECTICUT

19-13-D8t. Chronic and convalescent nursing homes and rest homes with nursing supervision

(g) Reportable event(s)

(1) Classification. All reportable events shall be classified as follows:

Class A: an event that has caused or resulted in a patient's death or presents an immediate danger of death or serious harm;
Class B: an event that indicates an outbreak of disease or foodborne outbreaks as defined in section 19a-36-A1 of the Regulations of Connecticut State Agencies; a complaint of patient abuse or an event that involves an abusive act to a patient by any person; for the purpose of this classification, abuse means a verbal, mental, sexual, or physical attack on a patient that may include the infliction of injury, unreasonable confinement, intimidation, or punishment;
Class C: an event (including but not limited to loss of emergency electrical generator power, loss of heat, loss of water system) that will result in the evacuation of one (1) or more patients within or outside of the facility and all fires regardless of whether services are disrupted;
Class D: an event that has caused or resulted in a serious injury or significant change in a patient's condition, an event that involves medication error(s) of clinical significance, or an
adverse drug reaction of clinical significance which for the purpose of this classification, shall mean an event that adversely alters a patient's mental or physical condition, or Class E: an event that has caused, or resulted in minor injury, distress or discomfort to a patient.

(2) All reportable events shall be documented in a format required by the Department. All documentation of reportable events shall be maintained at the facility for not less than three (3) years.

(3) Report. The licensed administrator or his/her designee shall report any reportable event to the Department as follows: Classes A, B and C: immediate notice by telephone to the Department, to be confirmed by written report as provided herein within seventy-two (72) hours of said event; Class D: written report to the Department as provided herein within seventy-two (72) hours of said event; and Class E: written report of event at time of occurrence or discovery shall be maintained on file at the facility for review by the Department.

(4) Each written report required by subdivision (3) of this subsection shall contain the following information:
(A) date of report and date of event;
(B) licensed level of care and bed capacity of the facility;
(C) identification of the patient(s) affected by the event including:
   i. name;
   ii. age;
   iii. injury; distress or discomfort; disposition;
   vi. date of admission;
   vii. current diagnosis;
   viii. physical and mental status prior to the event; and
   ix. physical and mental status after the event;
(D) the location, nature and brief description of the event;
(E) the name of the physician consulted, if any, and time of notification of the physician and a report summarizing any subsequent physical examination, including findings and orders;
(F) the names of any witnesses to the event;
(G) any other information deemed relevant by the reporting authority or the licensed administrator; and
(H) the signatures of the person who prepared the report and the licensed administrator.

(5) All reportable events, which have occurred in the facility, shall be reviewed on a monthly basis by the administrator and director of nurses. All situations which have a potential for risk shall be identified. A determination shall be made as to what preventative measures shall be implemented by the facility staff. Documentation of such determination shall be submitted to the active organized medical staff. This documentation shall be maintained for not less than three years.

(6) An investigation shall be initiated by the facility within twenty-four (24) hours of the discovery of a patient(s) with an injury of suspicious or unknown origin or receipt of an allegation of abuse. The investigation and the findings shall be documented and submitted...
to the facility’s active organized medical staff for review. This document shall be maintained at the facility for a period of not less than three (3) years.

(7) Numbering. Each report shall be identified on each page with a number as follows: the number appearing on the facility license, the last two digits of the year and the sequential number of the report during the calendar year.

(8) Subsequent Reports. The licensed administrator shall submit subsequent reports relevant to any reportable event as often as is necessary to inform the Department of significant changes in the status of affected individuals or changes in material facts originally reported. Such reports shall be attached to a photocopy of the original reportable event report.

6.3 Nursing Administration

6.3.8 The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident’s medical symptoms.

6.3.8.1 The resident’s comprehensive assessment shall document the medical symptom(s) potentially requiring the use of restraints.

6.3.8.2 The facility shall follow a comprehensive, systematic process of evaluation and care planning to ameliorate medical and psychosocial indicators prior to restraint use.

6.3.8.3 The resident’s care plan shall document the facility’s use of interventions, such as modifying the resident’s environment to increase safety, and use of assistive devices to enhance monitoring in order to avoid the use of restraints.

6.3.8.4 Should such interventions and assistive devices fail to provide for the resident’s safety, a physician’s written order permitting the use of restraints shall be required and shall specify the type of restraint ordered.

6.3.8.5 The facility shall be accountable for the safe and effective implementation of the physician’s order permitting the use of restraints.

6.3.8.6 When the use of restraints has been implemented, the facility shall initiate a systematic process, on an ongoing basis, documented in the care plan, in an effort to employ the least restrictive restraint.

6.3.8.7 In an emergency, when the resident’s unanticipated violent or aggressive behavior places him/her or others in imminent danger, restraints may be used as a last resort to protect the safety of the resident or others, and such use shall not extend beyond the immediate episode.
9.0 Records and Reports

9.5 Incident reports, with adequate documentation, shall be completed for each incident. Adequate documentation shall consist of the name of the resident(s) involved; the date, time and place of the incident; a description of the incident; a list of other parties involved, including witnesses; the nature of any injuries; resident outcome; and follow-up action, including notification of the resident’s representative or family, attending physician and licensing or law enforcement authorities, when appropriate.

9.6 All incident reports whether or not required to be reported shall be retained in facility files for three years. Reportable incidents shall be communicated immediately, which shall be within eight hours of the occurrence of the incident, to the Division of Long Term Care Residents Protection. The method of reporting shall be as directed by the Division.

9.7 Incident reports which shall be retained in facility files are as follows:

9.7.1 All reportable incidents as detailed below.

9.7.2 Falls without injury and falls with minor injuries that do not require transfer to an acute care facility or neurological reassessment of the resident.

9.7.3 Errors or omissions in treatment or medication.

9.7.4 Injuries of unknown source.

9.7.5 Lost items which are not subject to financial exploitation.

9.7.6 Skin tears.

9.7.7 Bruises of unknown origin.

9.8 Reportable incidents are as follows:

9.8.1 Abuse as defined in 16 Delaware Code, §1131.

9.8.1.1 Physical abuse with injury if resident to resident and physical abuse with or without injury if staff to resident or any other person to resident.

9.8.1.2 Any sexual act between staff and a resident and any non-consensual sexual act between residents or between a resident and any other person such as a visitor.

9.8.1.3 Emotional abuse whether staff to resident, resident to resident or any other person to resident.

9.8.2 Neglect, mistreatment or financial exploitation as defined in 16 Delaware Code, §1131.

9.8.3 Resident elopement under the following circumstances:

9.8.3.1 A resident’s whereabouts on or off the premises are unknown to staff and the resident suffers harm.
9.8.3.2 A cognitively impaired resident’s whereabouts are unknown to staff and the resident leaves the facility premises.

9.8.3.3 A resident cannot be found inside or outside a facility and the police are summoned.

9.8.4 Significant injuries.

9.8.4.1 Injury from an incident of unknown source in which the initial investigation or evaluation supports the conclusion that the injury is suspicious. Circumstances which may cause an injury to be suspicious are: the extent of the injury, the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma), the number of injuries observed at one particular point in time, or the incidence of injuries over time.

9.8.4.2 Injury which results in transfer to an acute care facility for treatment or evaluation or which requires periodic neurological reassessment of the resident’s clinical status by professional staff for up to 24 hours.

9.8.4.3 Areas of contusions or bruises caused by staff to a dependent resident during ambulation, transport, transfer or bathing.

9.8.4.4 Significant error or omission in medication/treatment, including drug diversion, which causes the resident discomfort, jeopardizes the resident’s health and safety or requires periodic monitoring for up to 48 hours.

9.8.4.5 A burn greater than first degree.

9.8.4.6 Any serious unusual and/or life-threatening injury.

9.8.5 Entrapment which causes the resident injury or immobility of body or limb or which requires assistance from another person for the resident to secure release.

9.8.6 Suicide or attempted suicide.

9.8.7 Poisoning.

9.8.8 Fire within a facility.

9.8.9 Utility interruption lasting more than eight hours in one or more major service including electricity, water supply, plumbing, heating or air conditioning, fire alarm, sprinkler system or telephones.

9.8.10 Structural damage or unsafe structural conditions.

9.8.11 Water damage which impacts resident health, safety or comfort.
3216 FREEDOM FROM RESTRAINTS

3216.1 Each resident has the right to be free from physical and chemical restraints.

3216.2 Each facility shall have written policies which define the use of physical and chemical restraints.

3216.3 If the facility employs a chemical or physical restraint, the facility shall include in the resident’s care plan a program to reduce or eliminate the use of the restraint.

3216.4 Physical restraints shall not be applied unless:
   (a) The facility has explored or tried less restrictive alternatives to meet the resident’s needs and such trials have been documented in the resident’s medical record as unsuccessful;
   (b) The restraint has been ordered by a physician for a specified period of time;
   (c) The resident is released, exercised and toileted at least every two (2) hours, except when a resident’s rest would be unnecessarily disturbed.
   (d) The use of the restraint does not result in a decline in the resident’s physical, mental, psychosocial or functional status; and
   (e) The use of the restraint is assessed and re-evaluated when there is a significant change in the resident’s condition.

3216.5 In an emergency and when alternative actions are not successful, a physical or chemical restraint may be authorized by a registered nurse only to protect the resident from immediate injury to himself or herself or to protect others, in which case a written physician’s order shall be obtained by a licensed nurse within four hours.

3216.6 Chemical restraints shall not be administered unless:
   (a) Ordered by a physician after thorough interdisciplinary assessment and care planning, including an evaluation of alternatives to the use of chemical restraints and behavioral interventions to manage and improve behavioral symptoms, which must be carried out and documented in the resident’s medical record;
   (b) The use of the chemical restraint does not result in a decline in the resident’s physical, mental, psychosocial or functional status; and
   (c) The use of the restraint is re-evaluated periodically.

3213 RESTORATIVE NURSING CARE PROGRAM

3213.2 Each nursing employee shall provide restorative nursing in his or her daily care of residents, which shall include the following:

   (h) Assessing the nature, causes and extent of behavioral disorientation difficulty and implementing appropriate strategies and practices to improve the same

3232 INCIDENT REPORTING

3232.1 Each facility shall maintain and keep for three (3) years, from the date of the incident, summaries and analyses of unusual incidents within the facility or on the premises with regard to a resident, visitor or employee, including but not limited to accidents, injuries, drug errors, abuse, neglect and misappropriation of resident funds.

3232.2 A summary and analysis of each incident shall be completed immediately and reviewed within forty-eight (48) hours of the incident by the Medical Director or the Director of Nursing.
and shall include the following:
(a) The date, time and description of the incident;
(b) The name of the witnesses;
(c) The statement of the victim;
(d) A statement indicating whether there is a pattern of occurrence; and
(e) A description of the corrective action taken.

3232.3 Summaries and analyses of incidents shall be reviewed at least monthly by the
Administrator or designee in order to identify and correct health and safety hazards and
patterns of occurrence.

3232.4 Each incident shall be documented in the resident’s record and reported to the licensing
agency within forty-eight (48) hours of occurrence, except that incidents and accidents that
result in harm to a resident shall be reported to the licensing agency within eight (8) hours of
occurrence.

3232.5 Incidents of abuse or neglect resulting in injury to a resident, or incidents of
misappropriation of a resident’s funds, shall be reported immediately to the appropriate
agencies, including the Department of Health, the Metropolitan Police Department, the Long-
Term Care Ombudsman and Adult Protective Services.

3233 GRIEVANCES

3233.1 Each facility shall provide each resident, or Resident’s Representative, an opportunity to
file a grievance with the Administrator, either orally or in writing, concerning any aspect of the
resident’s care, treatment or living conditions at the facility.

3233.2 Each facility shall provide each resident a written form on which a grievance may be
filed, and an opportunity to file a copy of the grievance with the Director.

3233.3 If a grievance is filed orally, the Administrator shall ensure that the grievance is
immediately reduced to writing and sets forth the name of the resident, date and time of the
grievance, and the specific details of the grievance. The facility shall ensure that the resident has
an opportunity to review the grievance as recorded and to file a copy thereof with the Director.

3233.4 The Administrator or designee of each facility shall review each grievance filed within
seventy-two (72) hours of its filing and shall respond in writing to the resident or the Resident’s
Representative within five (5) business days.

3233.5 Each facility shall use its best efforts to resolve each grievance as soon as practicable,
and shall report to the resident and the Resident’s Representative on the status of the resolution
of the grievance at least every thirty (30) days.

3233.6 Facility records on grievances shall be maintained by the facility for at least three (3)
years after the date of filing and shall be available to the Director.
400.022 Residents’ rights.

(1) All licensees of nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such residents in accordance with the provisions of that statement. The statement shall assure each resident the following:

... (o) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and from physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency. In case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and, in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter. Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety.

400.147 Internal risk management and quality assurance program.

(1) Every facility shall, as part of its administrative functions, establish an internal risk management and quality assurance program... The program must include:

... (d) The development and implementation of an incident reporting system based upon the affirmative duty of all health care providers and all agents and employees of the licensed health care facility to report adverse incidents to the risk manager, or to his or her designee, within 3 business days after their occurrence.

... (4) Each internal risk management and quality assurance program shall include the use of incident reports to be filed with the risk manager and the facility administrator. The risk manager shall have free access to all resident records of the licensed facility. The incident reports are part of the workpapers of the attorney defending the licensed facility in litigation relating to the licensed facility and are subject to discovery, but are not admissible as evidence in court. A person filing an incident report is not subject to civil suit by virtue of such incident report. As a part of each internal risk management and quality assurance program, the incident reports shall be used to develop categories of incidents which identify problem areas. Once identified, procedures shall be adjusted to correct the problem areas.

(5) For purposes of reporting to the agency under this section, the term “adverse incident” means:

(a) An event over which facility personnel could exercise control and which is associated in whole or in part with the facility's intervention, rather than the condition for which such intervention occurred, and which results in one of the following:

1. Death;
2. Brain or spinal damage;
3. Permanent disfigurement;
4. Fracture or dislocation of bones or joints;
5. A limitation of neurological, physical, or sensory function;
6. Any condition that required medical attention to which the resident has not given his or her informed consent, including failure to honor advanced directives;
7. Any condition that required the transfer of the resident, within or outside the facility, to a unit providing a more acute level of care due to the adverse incident, rather than the
resident's condition prior to the adverse incident; or
8. An event that is reported to law enforcement or its personnel for investigation; or

(b) Resident elopement, if the elopement places the resident at risk of harm or injury.

(6) The internal risk manager of each licensed facility shall:
(a) Investigate every allegation of sexual misconduct which is made against a member of the facility's personnel who has direct patient contact when the allegation is that the sexual misconduct occurred at the facility or at the grounds of the facility;
(b) Report every allegation of sexual misconduct to the administrator of the licensed facility; and
(c) Notify the resident representative or guardian of the victim that an allegation of sexual misconduct has been made and that an investigation is being conducted.

(7) The facility shall initiate an investigation and shall notify the agency within 1 business day after the risk manager or his or her designee has received a report pursuant to paragraph (1)(d). The notification must be made in writing and be provided electronically, by facsimile device or overnight mail delivery. The notification must include information regarding the identity of the affected resident, the type of adverse incident, the initiation of an investigation by the facility, and whether the events causing or resulting in the adverse incident represent a potential risk to any other resident. The notification is confidential as provided by law and is not discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the agency or the appropriate regulatory board. The agency may investigate, as it deems appropriate, any such incident and prescribe measures that must or may be taken in response to the incident. The agency shall review each incident and determine whether it potentially involved conduct by the health care professional who is subject to disciplinary action, in which case the provisions of s. 456.073 shall apply.

(8)(a) Each facility shall complete the investigation and submit an adverse incident report to the agency for each adverse incident within 15 calendar days after its occurrence. If, after a complete investigation, the risk manager determines that the incident was not an adverse incident as defined in subsection (5), the facility shall include this information in the report. The agency shall develop a form for reporting this information.
(b) The information reported to the agency pursuant to paragraph (a) which relates to persons licensed under chapter 458, chapter 459, chapter 461, or chapter 466 shall be reviewed by the agency. The agency shall determine whether any of the incidents potentially involved conduct by a health care professional who is subject to disciplinary action, in which case the provisions of s. 456.073 shall apply.
(c) The report submitted to the agency must also contain the name of the risk manager of the facility.
(d) The adverse incident report is confidential as provided by law and is not discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the agency or the appropriate regulatory board.

(9) Abuse, neglect, or exploitation must be reported to the agency as required by 42 C.F.R. s. 483.13(c) and to the department as required by chapters 39 and 415.
By the 10th of each month, each facility subject to this section shall report any notice received pursuant to s. 400.0233(2) and each initial complaint that was filed with the clerk of the court and served on the facility during the previous month by a resident or a resident's family member, guardian, conservator, or personal legal representative. The report must include the name of the resident, the resident's date of birth and social security number, the Medicaid identification number for Medicaid-eligible persons, the date or dates of the incident leading to the claim or dates of residency, if applicable, and the type of injury or violation of rights alleged to have occurred. Each facility shall also submit a copy of the notices received pursuant to s. 400.0233(2) and complaints filed with the clerk of the court. This report is confidential as provided by law and is not discoverable or admissible in any civil or administrative action, except in such actions brought by the agency to enforce the provisions of this part.

...(13) If the agency, through its receipt of the adverse incident reports prescribed in subsection (7), or through any investigation, has a reasonable belief that conduct by a staff member or employee of a facility is grounds for disciplinary action by the appropriate regulatory board, the agency shall report this fact to the regulatory board.

(14) The agency may adopt rules to administer this section.

History. s. 24, ch. 2001-45; s. 8, ch. 2002-400; s. 40, ch. 2009-223.

400.211 Persons employed as nursing assistants; certification requirement.

... (2) The following categories of persons who are not certified as nursing assistants under part II of chapter 464 may be employed by a nursing facility for a period of 4 months:

... (b) Persons who have been positively verified as actively certified and on the registry in another state with no findings of abuse, neglect, or exploitation in that state...

GEORGIA

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290-5-8-.10 Medical, Dental and Nursing Care.

...(9) Restraint and/or forcible seclusion of a patient will be used only on a signed order of a physician, except in emergency and then only until the advice of a physician can be obtained.

290-5-39-.09 Use of Restraints, Isolation or Restrictions.
Each resident must be free from actual or threatened physical restraints, isolation or restrictions on mobility within or outside the facility grounds, including the use of drugs to limit mobility, activity and functional capacity or the use of any other restrictions, except to the minimum extent necessary to protect the resident from immediate injury to the resident or to any other person. Restraints are defined to include, but not limited to, any contrivance, situation, safety device, or medication that has the purposeful or incidental effect of
restricting a resident’s mobility within or outside of the facility grounds. All authorization and use of restraints, restrictions, or isolation must be documented in the resident’s medical file.

(a) Restraints, restrictions, or isolation may not be used for punishment, incentive, behavior conditioning or modification, convenience of the facility or any purpose other than to protect the resident from immediate injury to himself or to any other person.

(b) Except in an emergency situation described in subsection (c) of this rule, below, restraints, restrictions, or isolation must be authorized as follows:
1. Prior to authorizing restraints, restrictions, or isolation, the attending physician shall make a personal examination and individualized determination that such restraint, restriction, or isolation is necessary to protect the resident or other persons from immediate injury; and
2. The physician shall specify the length of time for which such restraint, restriction, or isolation is authorized. Such authorization may not exceed 65 days for intermediate care home residents or 35 days for skilled nursing home residents, but in no event shall such restraint, restriction, or isolation be used beyond the period of actual need to protect the resident or other persons from immediate injury. Any period beyond that specified shall be regarded as a new period and all requirements for the use of such restraints, restriction or isolation must be met.

(c) In an emergency situation severely threatening the health or safety of the resident or others, restraints, restrictions, or isolation may be authorized only by the person in charge. In an emergency situation, restraints, restrictions or isolation may be used only for 12 hours from the time of onset of the emergency situation. Beyond the 12-hour period, restraints, restrictions, or isolation may not be used unless it is in accordance with subsection (b) of this rule.

(d) The resident and guardian or persons designated by the resident, if any, shall be immediately informed of the need for such restraints, restrictions or isolation, the reasons for such use, and the time specified for such use.

(e) A restrained or isolated resident shall be monitored by staff at least every hour. A restrained or isolated resident must be released and exercised every two hours except during normal sleeping hours. Such activities shall be documented in the resident’s record.

(f) A resident who is restrained, restricted or isolated pursuant to this section shall retain all other rights and responsibilities provided by these rules and regulations.

§11-94-15 Governing body and management.

...(5) Written policy shall prohibit mistreatment, neglect, or abuse of patients. Alleged violations shall be reported immediately, and thoroughly investigated and documented. The results of any investigation shall be reported to the administrator or designated representative within twenty-four hours of the report of the incident; and appropriate sanctions shall be invoked when the allegation is substantiated.

§11-94-23 Nursing services.

...(11) Physical restraint shall be used only under a physician's orders for specified and limited period of time and shall be so documented.
(A) If they are used in an emergency situation, the attending physician shall be contacted immediately for orders supporting the temporary need.
(B) Regular observation and release of a patient shall be required while restraints are in use.
(C) No restraints with locking devices shall be used.
(D) There shall be written policies and procedures governing the use of restraints.

§11-94-26 Patients' rights

(a)...The facility's policies and procedures shall provide that each individual admitted to the facility shall:
...(8) Not be humiliated, harassed, injured or threatened and shall be free from chemical and physical restraints. This does not exclude use of medication for treatment as ordered by a physician. Physical restraints may be used in an emergency, when necessary, to protect the patient from injury to the patient's self or others. In such an event, the patient's physician shall be notified as soon as possible and further orders obtained for care of the patient.

IDAHO

100.ADMINISTRATION.

03. Patient/Resident Rights and Responsibilities. The administrator, on behalf of the governing body of the facility, shall establish written policies regarding the rights and responsibilities of patients/residents and responsibility for development of, and adherence to, procedures implementing such policies. (1-1-88)
...c. These patients'/residents' rights, policies and procedures ensure that, at least, each patient/resident admitted to the facility: (1-1-88)
... vii. Is free from mental and physical abuse, and free from chemical and (except in emergencies) physical restraints except as authorized in writing by a physician for a State
specified and limited period of time, or when necessary to protect the patient/resident from injury to himself or to others (1-1-88).

05. Humane Use of Restraints. Written policies shall be developed and implemented regarding the humane use of restraints. (1-1-88)

a. Opportunity for motion and exercise, including activities of daily living, shall be provided during normal waking hours to patients/residents in mechanical restraints for a period of not less than ten (10) minutes during each two (2) hours in which restraints are employed. During normal sleeping hours, patients/residents in restraints shall continue to be checked every thirty (30) minutes, with supporting documentation. Circulation and skin integrity shall be assessed, and mechanical restraints loosened for range of motion exercises and turning and repositioning at least every two (2) hours. (1-1-88)

b. No patient/resident shall be restrained except on written order of a physician. If a patient/resident becomes suddenly disturbed and becomes a menace to himself or others, restraint may be temporarily applied by licensed nursing personnel. Where a temporary restraint is applied, a physician must be consulted immediately and approval for continuation of the restraint obtained. The written order signed by the physician shall contain the patient's/resident's name, date, time of order, and reason for restraint, means of restriction, and period of time he is to be restricted. (1-1-88)

c. The patient/resident in mechanical restraints shall be checked at least every thirty (30) minutes by the staff and a record of such checks shall be kept. (1-1-88)

d. The following types of restraints shall not be used under any conditions: canvas jackets, canvas sheets, canvas cuffs, leather belts, leather cuffs, leather hand mitts or restraints requiring a lock and key. (1-1-88)

e. Opportunity for motion and exercise shall be provided to patients/residents in mechanical restraints for a period of not less than ten (10) minutes during each two (2) hours in which restraints are employed. (1-1-88)

f. No patient/resident shall be secluded in any room by locking or fastening a door from the outside. The licensing agency may grant variances on a case-by-case basis where the facility can demonstrate the securing of a half door is in the interest of patient/resident safety, complies with the Life Safety Code, and the facility can demonstrate that provisions have been made to ensure release of the lock in an emergency. (1-1-88)

g. Chemical restraints shall not be used as punishment, for convenience of the staff, or in quantities that interfere with the ongoing normal functions of the patient/resident. They shall be used only to the extent necessary for professionally accepted patient care management and must be ordered in writing by the attending physician. (1-1-88)

12. Accident or Injury. The administrator shall show evidence of written safety procedures for handling of patients/residents, equipment lifting, and the use of equipment. (1-1-88)

...c. An incident-accident record shall be kept of all incidents or accidents sustained by employees, patients/residents, or visitors in the facility and shall include the following information: (1-1-88)

i. Name and address of employee, patient/resident, or visitor; (1-1-88)

ii. A factual description of the incident or accident; (1-1-88)

iii. Description of the condition of the patient/resident, employee or visitor including any injuries resulting from the accident; and (1-1-88)

iv. Time of notification of physician, if necessary. (1-1-88)
d. The physician shall be immediately notified regarding any patient/resident injury or accident when there are significant changes requiring intervention or assessment. (1-1-88)

e. Medical reports of the attending physician must be filed in accordance with the rules of the Idaho Industrial Accident Board. (1-1-88)

f. Immediate investigation of the cause of the incident or accident shall be instituted by the facility administrator and any corrective measures indicated shall be adopted. (1-1-88)

ILLINOIS

Section 300.625 Identified Offenders

g) If identified offenders are residents of a facility, the facility shall comply with all of the following requirements:

...p) Incident reports shall be submitted to the Division of Long-Term Care Field Operations in the Department’s Office of Health Care Regulation in compliance with Section 300.690 of this Part. The facility shall review its placement determination of identified offenders based on incident reports involving the identified offender. In incident reports involving identified offenders, the facility must identify whether the incident involves substance abuse, aggressive behavior, or inappropriate sexual behavior, as well as any other behavior or activity that would be reasonably likely to cause harm to the identified offender or others. If the facility cannot protect the other residents from misconduct by the identified offender, then the facility shall transfer or discharge the identified offender in accordance with Section 300.3300 of this Part.

Section 300.660 Nursing Assistants

a) A facility shall not employ an individual as a nurse aide unless the facility has inquired of the Department as to information in the Registry concerning the individual. (Section 3-206.01 of the Act) The Department shall advise the inquirer if the individual is on the Registry, if the individual has findings of abuse, neglect, or misappropriation of property in accordance with Sections 3-206.01 and 3-206.02 of the Act, and if the individual has a current background check. (See Section 300.661 of this Part.)

b) The facility shall ensure that each nursing assistant complies with one of the following conditions:

1) Is approved on the Department’s Nurse Aide Registry. "Approved" means that the nurse aide has met the training or equivalency requirements of Section 300.663 of this Part and does not have a disqualifying criminal background check without a waiver...

Section 300.680 Restraints

a) The facility shall have written policies controlling the use of physical restraints including, but not limited to, leg restraints, arm restraints, hand mitts, soft ties or vests, wheelchair safety bars and lap trays, and all facility practices that meet the definition of a restraint, such as tucking in a sheet so tightly that a bed-bound resident cannot move; bed rails used
to keep a resident from getting out of bed; chairs that prevent rising; or placing a resident
who uses a wheelchair so close to a wall that the wall prevents the resident from rising.
Adaptive equipment is not considered a physical restraint. Wrist bands or devices on
clothing that trigger electronic alarms to warn staff that a resident is leaving a room do not,
in and of themselves, restrict freedom of movement and should not be considered as
physical restraints. The policies shall be followed in the operation of the facility and shall
comply with the Act and this Part. These policies shall be developed by the medical advisory
committee or the advisory physician with participation by nursing and administrative
personnel.
b) No physical restraints with locks shall be used.
c) Physical restraints shall not be used on a resident for the purpose of discipline or
convenience.
d) The use of chemical restraints is prohibited.
(Source: Amended at 20 Ill. Reg. 12208, effective September 10, 1996)

Section 300.682 Nonemergency Use of Physical Restraints

a) Physical restraints shall only be used when required to treat the resident’s medical
symptoms or as a therapeutic intervention, as ordered by a physician, and based on:
1) the assessment of the resident’s capabilities and an evaluation and trial of less restrictive
alternatives that could prove effective;
2) the assessment of a specific physical condition or medical treatment that requires the use
of physical restraints, and how the use of physical restraints will assist the resident in
reaching his or her highest practicable physical, mental or psychosocial well being;
3) consultation with appropriate health professionals, such as rehabilitation nurses and
occupational or physical therapists, which indicates that the use of less restrictive measures
or therapeutic interventions has proven ineffective; and
4) demonstration by the care planning process that using a physical restraint as a
therapeutic intervention will promote the care and services necessary for the resident to
attain or maintain the highest practicable physical, mental or psychosocial well being.
(Section 2-106(c) of the Act)

b) A physical restraint may be used only with the informed consent of the resident, the
resident’s guardian, or other authorized representative. (Section 2-106(c) of the Act)
Informed consent includes information about potential negative outcomes of physical
restraint use, including incontinence, decreased range of motion, decreased ability to
ambulate, symptoms of withdrawal or depression, or reduced social contact.

c) The informed consent may authorize the use of a physical restraint only for a specified
period of time. The effectiveness of the physical restraint in treating medical symptoms or
as a therapeutic intervention and any negative impact on the resident shall be assessed by
the facility throughout the period of time the physical restraint is used.

d) After 50 percent of the period of physical restraint use authorized by the informed
consent has expired, but not less than 5 days before it has expired, information about the
actual effectiveness of the physical restraint in treating the resident’s medical symptoms or
as a therapeutic intervention and about any actual negative impact on the resident shall be
given to the resident, resident’s guardian, or other authorized representative before the
facility secures an informed consent for an additional period of time. Information about the
effectiveness of the physical restraint program and about any negative impact on the resident shall be provided in writing.

e) A physical restraint may be applied only by staff trained in the application of the particular type of restraint. (Section 2-106(d) Act)

f) Whenever a period of use of a physical restraint is initiated, the resident shall be advised of his or her right to have a person or organization of his or her choosing, including the Guardianship and Advocacy Commission, notified of the use of the physical restraint. A period of use is initiated when a physical restraint is applied to a resident for the first time under a new or renewed informed consent for the use of physical restraints. A recipient who is under guardianship may request that a person or organization of his or her choosing be notified of the physical restraint, whether or not the guardian approves the notice. If the resident so chooses, the facility shall make the notification within 24 hours, including any information about the period of time that the physical restraint is to be used. Whenever the Guardianship and Advocacy Commission is notified that a resident has been restrained, it shall contact the resident to determine the circumstances of the restraint and whether further action is warranted. (Section 2-106(e) of the Act) If the resident requests that the Guardianship and Advocacy Commission be contacted, the facility shall provide the following information in writing to the Guardianship and Advocacy Commission:
1) the reason the physical restraint was needed;
2) the type of physical restraint that was used;
3) the interventions utilized or considered prior to physical restraint and the impact of these interventions;
4) the length of time the physical restraint was to be applied; and
5) the name and title of the facility person who should be contacted for further information.

g) Whenever a physical restraint is used on a resident whose primary mode of communication is sign language, the resident shall be permitted to have his or her hands free from restraint for brief periods each hour, except when this freedom may result in physical harm to the resident or others. (Section 2-106(f) of the Act)

h) The plan of care shall contain a schedule or plan of rehabilitative/habilitative training to enable the most feasible progressive removal of physical restraints or the most practicable progressive use of less restrictive means to enable the resident to attain or maintain the highest practicable physical, mental or psychosocial well being.

i) A resident wearing a physical restraint shall have it released for a few minutes at least once every two hours, or more often if necessary. During these times, residents shall be assisted with ambulation, as their condition permits, and provided a change in position, skin care and nursing care, as appropriate.

j) No form of seclusion shall be permitted.

(Source: Added at 20 Ill. Reg. 12208, effective September 10, 1996)

Section 300.684 Emergency Use of Physical Restraints
a) If a resident needs emergency care, physical restraints may be used for brief periods to permit treatment to proceed unless the facility has notice that the resident has previously made a valid refusal of the treatment in question. (Section 2-106(c) of the Act)

b) For this Section only, "emergency care" means the unforeseen need for immediate treatment inside or outside the facility that is necessary to:
   1) save the resident's life;
   2) prevent the resident from doing serious mental or physical harm to himself/herself; or
   3) prevent the resident from injuring another individual.

c) If a resident needs emergency care and other less restrictive interventions have proved ineffective, a physical restraint may be used briefly to permit treatment to proceed. The attending physician shall be contacted immediately for orders. If the attending physician is not available, the facility's advisory physician or Medical Director shall be contacted. If a physician is not immediately available, a nurse with supervisory responsibility may approve, in writing, the use of physical restraints. A confirming order, which may be obtained by telephone, shall be obtained from the physician as soon as possible, but no later than within eight hours. The effectiveness of the physical restraint in treating medical symptoms or as a therapeutic intervention and any negative impact on the resident shall be assessed by the facility throughout the period of time the physical restraint is used. The resident must be in view of a staff person at all times until either the resident has been examined by a physician or the physical restraint is removed. The resident's needs for toileting, ambulation, hydration, nutrition, repositioning, and skin care must be met while the physical restraint is being used.

d) The emergency use of a physical restraint must be documented in the resident's record, including:
   1) the behavior incident that prompted the use of the physical restraint;
   2) the date and times the physical restraint was applied and released;
   3) the name and title of the person responsible for the application and supervision of the physical restraint;
   4) the action by the resident's physician upon notification of the physical restraint use;
   5) the new or revised orders issued by the physician;
   6) the effectiveness of the physical restraint in treating medical symptoms or as a therapeutic intervention and any negative impact on the resident; and
   7) the date of the scheduled care planning conference or the reason a care planning conference is not needed, in light of the resident's emergency need for physical restraints.

e) The facility's emergency use of physical restraints shall comply with Sections 300.682(e), (f), (g), and (j).

(Source: Added at 20 Ill. Reg. 12208, effective September 10, 1996)

Section 300.686 Unnecessary, Psychotropic, and Antipsychotic Drugs

a) A resident shall not be given unnecessary drugs in accordance with Section 300.Appendix F. In addition, an unnecessary drug is any drug used:
   1) in an excessive dose, including in duplicative therapy;
   2) for excessive duration;
3) without adequate monitoring;
4) without adequate indications for its use; or
5) in the presence of adverse consequences that indicate the drugs should be reduced or discontinued. (Section 2-106.1(a) of the Act)

b) Psychotropic medication shall not be prescribed or administered without the informed consent of the resident, the resident’s guardian, or other authorized representative. (Section 2-106.1(b) of the Act) Additional informed consent is not required for reductions in dosage level or deletion of a specific medication. The informed consent may provide for a medication administration program of sequentially increased doses or a combination of medications to establish the lowest effective dose that will achieve the desired therapeutic outcome. Side effects of the medications shall be described.

c) Residents shall not be given antipsychotic drugs unless antipsychotic drug therapy is necessary, as documented in the resident’s comprehensive assessment, to treat a specific or suspected condition as diagnosed and documented in the clinical record or to rule out the possibility of one of the conditions in accordance with Section 300.Appendix F.

d) Residents who use antipsychotic drugs shall receive gradual dose reductions and behavior interventions, unless clinically contraindicated, in an effort to discontinue these drugs in accordance with Section 300.Appendix F.

e) For the purposes of this Section:
1) "Duplicative drug therapy" means any drug therapy that duplicates a particular drug effect on the resident without any demonstrative therapeutic benefit. For example, any two or more drugs, whether from the same drug category or not, that have a sedative effect.
2) "Psychotropic medication" means medication that is used for or listed as used for antipsychotic, antidepressant, antimanic or antianxiety behavior modification or behavior management purposes in the latest edition of the AMA Drug Evaluations (Drug Evaluation Subscription, American Medical Association, Vols. IIII, Summer 1993), United States Pharmacopoeia Dispensing Information Volume I (USP DI) (United States Pharmacopoeial Convention, Inc., 15th Edition, 1995), American Hospital Formulary Service Drug Information 1995 (American Society of Health Systems Pharmacists, 1995), or the Physician's Desk Reference (Medical Economics Data Production Company, 49th Edition, 1995) or the United States Food and Drug Administration approved package insert for the psychotropic medication. (Section 2-106.1(b) of the Act)
3) "Antipsychotic drug" means a neuroleptic drug that is helpful in the treatment of psychosis and has a capacity to ameliorate thought disorders.

(Source: Added at 20 Ill. Reg. 12208, effective September 10, 1996)

Section 300.690 Incidents and Accidents
a) The facility shall maintain a file of all written reports of each incident and accident affecting a resident that is not the expected outcome of a resident’s condition or disease process. A descriptive summary of each incident or accident affecting a resident shall also be recorded in the progress notes or nurse’s notes of that resident.

b) The facility shall notify the Department of any serious incident or accident. For purposes of this Section, "serious" means any incident or accident that causes physical harm or injury to a resident.
c) The facility shall, by fax or phone, notify the Regional Office within 24 hours after each reportable incident or accident. If the facility is unable to contact the Regional Office, it shall notify the Department’s toll-free complaint registry hotline. The facility shall send a narrative summary of each reportable accident or incident to the Department within seven days after the occurrence.
(Source: Amended at 33 Ill. Reg. 9356, effective June 17, 2009)

Section 300.695 Contacting Local Law Enforcement

a) For the purpose of this Section, the following definitions shall apply:
1) "911" – an emergency answer and response system in which the caller need only dial 9-1-1 on a telephone to obtain emergency services, including police, fire, medical ambulance and rescue.
2) Physical abuse – see Section 300.30.
3) Sexual abuse – sexual penetration, intentional sexual touching or fondling, or sexual exploitation (i.e., use of an individual for another person’s sexual gratification, arousal, advantage, or profit).

b) The facility shall immediately contact local law enforcement authorities (e.g., telephoning 911 where available) in the following situations:
1) Physical abuse involving physical injury inflicted on a resident by a staff member or visitor;
2) Physical abuse involving physical injury inflicted on a resident by another resident, except in situations where the behavior is associated with dementia or developmental disability;
3) Sexual abuse of a resident by a staff member, another resident, or a visitor;
4) When a crime has been committed in a facility by a person other than a resident; or
5) When a resident death has occurred other than by disease processes.

c) The facility shall develop and implement a policy concerning local law enforcement notification, including:
1) Ensuring the safety of residents in situations requiring local law enforcement notification;
2) Contacting local law enforcement in situations involving physical abuse of a resident by another resident;
3) Contacting police, fire, ambulance and rescue services in accordance with recommended procedure;
4) Seeking advice concerning preservation of a potential crime scene;
5) Facility investigation of the situation.

d) Facility staff shall be trained in implementing the policy developed pursuant to subsection (c).

e) The facility shall also comply with other reporting requirements of this Part.
(Source: Added at 26 Ill. Reg. 4846, effective April 1, 2002)

Section 300.3240 Abuse and Neglect
a) An owner, licensee, administrator, employee or agent of a facility shall not abuse or
neglect a resident. (A, B) (Section 2-107 of the Act)
b) A facility employee or agent who becomes aware of abuse or neglect of a resident shall immediately report the matter to the facility administrator. (Section 3-610 of the Act)
c) A facility administrator who becomes aware of abuse or neglect of a resident shall immediately report the matter by telephone and in writing to the resident’s representative. (Section 3-610 of the Act)
d) A facility administrator, employee, or agent who becomes aware of abuse or neglect of a resident shall also report the matter to the Department. (Section 3-610 of the Act)
e) Employee as perpetrator of abuse. When an investigation of a report of suspected abuse of a resident indicates, based upon credible evidence, that an employee of a long-term care facility is the perpetrator of the abuse, that employee shall immediately be barred from any further contact with residents of the facility, pending the outcome of any further investigation, prosecution or disciplinary action against the employee. (Section 3-611 of the Act)
f) Resident as perpetrator of abuse. When an investigation of a report of suspected abuse of a resident indicates, based upon credible evidence, that another resident of the long-term care facility is the perpetrator of the abuse, that resident’s condition shall be immediately evaluated to determine the most suitable therapy and placement for the resident, considering the safety of that resident as well as the safety of other residents and employees of the facility. (Section 3-612 of the Act)

(Source: Amended at 15 Ill. Reg. 554, effective January 1, 1991)
(D) major accidents. If the department cannot be reached, such as on holidays or weekends, a call shall be made to the emergency telephone number ((317) 383-6144) of the division.

410 IAC 16.2-3.1-26 Resident behavior and facility practices
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1

Sec. 26. (a) Less restrictive measures must have been tried by the interdisciplinary team and shown to be ineffective before restraints are applied.
(b) Restraint or seclusion shall be employed only by order of a physician, and the type of restraint or seclusion shall be specified in the order.
(c) Per required need (PRN) restraint or seclusion shall only be employed upon the authorization of a licensed nurse. All contacts with a nurse or physician not on the premises for authorization to administer PRN restraints shall be documented in the nursing notes indicating the time and date of the contact.
(d) The facility policy manual shall designate who is authorized to apply restraints. The facility shall have written procedures in which the persons authorized to apply restraints have been properly trained.
(e) In emergencies when immediate physical restraint or seclusion is needed for the protection of the resident or others, restraint or seclusion may be authorized by a licensed nurse for a period not to exceed twelve (12) hours. A physician’s order to continue restraint or seclusion must be obtained in order to continue the restraint beyond the twelve (12) hour period.
(f) A record of physical restraint and seclusion of a resident shall be kept in accordance with this rule.
(g) Each resident under restraint and seclusion shall be visited by a member of the nursing staff at least once every hour and more frequently if the resident's condition requires.
(h) Each physically restrained or secluded individual shall be temporarily released from restraint or seclusion at least every two (2) hours or more often if necessary except when the resident is asleep. When the resident in restraint is temporarily released, the resident shall be assisted to ambulate, toileted, or changed in position as the resident's physical condition permits.
(i) A resident shall not be placed alone in a room with a full, solid locked door.
(j) Key lock restraints shall not be used or available in the facility.
(k) Chemical restraint shall be authorized in writing by a physician.
(l) An order for chemical restraints shall specify the dosage and the interval of and reasons for the use of chemical restraint.
(m) Administration of chemical restraints shall be documented in accordance with this rule.
(n) Restraints and seclusion shall be used in such a way as not to cause physical injury to the resident.
(o) Restraints of any type or seclusion shall only be used for the protection and safety of residents or others as required by medical symptoms that warrant the restraint, or safety issues that warrant the seclusion, and shall not be used as a punishment. Restraints and seclusion shall be used in such a way as to minimize discomfort to the resident.
(p) Restraints or seclusion shall be applied in a manner that permits rapid removal in case of fire or other emergency.
(q) The resident's legal representative shall be notified of the need for restraint or seclusion at the time of the physician’s initial order or within twenty-four (24) hours after emergency
restraint or seclusion is applied. Such notification shall be documented in the nursing notes. After the physician's order for restraint or seclusion is initially written, the legal representative may request in writing not to be notified.

(r) The least restrictive restraint must be used. The continued use of the restraint or seclusion must be reviewed at each care plan conference. Least or lesser restrictive measures must be considered at each meeting.

(s) The use of restraints must be reviewed by the interdisciplinary team within one (1) month after the application of the restraint, and every thirty (30) days for the first ninety (90) days of the restraints, and at least quarterly thereafter.

(t) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (j) or (n) is an offense;
(2) subsection (a), (b), (c), (d), (e), (g), (h), (i), (k), (l), (o), (p), or (r) is a deficiency; and
(3) subsection (f), (m), (q), or (s) is a noncompliance. (Indiana State Department of Health; 410 IAC 16.2-3.1-26; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1550, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2414; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; filed Jul 22, 2004, 10:05 a.m.: 27 IR 3996; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA)

410 IAC 16.2-3.1-27 Abuse and neglect
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1

Sec. 27. (a) The resident has the right to be free from:
(1) sexual, physical, and mental abuse;
(2) corporal punishment;
(3) neglect; and
(4) involuntary seclusion.

(b) The resident has the right to be free from verbal abuse.

(c) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (a) is an offense; and
(2) subsection (b) is a deficiency. (Indiana State Department of Health; 410 IAC 16.2-3.1-27; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1551, eff Apr 1, 1997; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA)

410 IAC 16.2-3.1-28 Staff treatment of residents
Authority: IC 16-28-1-7; IC 16-28-1-12
Affected: IC 16-28-5-1

Sec. 28. (a) The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

(b) The facility must:
(1) not employ individuals who have:
(A) been found guilty of abusing, neglecting, or mistreating residents or misappropriating residents’ property by a court of law; or
(B) had a finding entered into the state nurse aide registry concerning abuse, neglect, mistreatment of residents, or misappropriation of their property; and

(2) report any knowledge the facility has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the state nurse aide registry or licensing authority.

(c) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property, are reported immediately to the administrator of the facility and other officials in accordance with state law through established procedures, including to the state survey and certification agency.

(d) The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.

(e) The results of all investigations must be reported to the administrator or the administrator's designated representative and to other officials in accordance with state law (including to the department) within five (5) working days of the incident, and if the alleged violation is verified, appropriate corrective action must be taken.

(f) For purposes of IC 16-28-5-1, a breach of:
(1) subsection (b), (c), (d), or (e) is a deficiency; and
(2) subsection (a) is a noncompliance. (Indiana State Department of Health; 410 IAC 16.2-3.1-28; filed Jan 10, 1997, 4:00 p.m.: 20 IR 1551, eff Apr 1, 1997; errata filed Apr 10, 1997, 12:15 p.m.: 20 IR 2414; readopted filed Jul 11, 2001, 2:23 p.m.: 24 IR 4234; readopted filed May 22, 2007, 1:44 p.m.: 20070613-IR-410070141RFA)

IOWA

481—58.11(135C) Personnel. 58.11(1)

58.11(3) Personnel histories.
b. A person who has a criminal record or founded dependent adult abuse report cannot be employed in a health care facility unless the department of human services has evaluated the crime or founded abuse report and concluded that the crime or founded abuse report does not merit prohibition from employment. (I, II, III)

c. Each health care facility shall ask each person seeking employment in a facility "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of crime in this state or any other state?" The person shall also be informed that a criminal history and dependent adult abuse record check will be conducted. The person shall indicate, by signature, that the person has been informed that the record checks will be conducted. (I, II, III)

d. If a person has a record of founded child abuse in Iowa or any other state, the person shall not be employed in a health care facility unless the department of human services has
evaluated the crime or founded report and concluded that the report does not merit prohibition of employment. (I, II, III)
e. Proof of dependent adult abuse and criminal history checks may be kept in files maintained by the temporary employee agencies and contractors. Facilities may require temporary agencies and contractors to provide a copy of the results of the dependent adult abuse and criminal history checks. (I, II, III)

481—58.39(135C) Residents' rights in general.
...58.39(4) Policies and procedures regarding the use of chemical and physical restraints shall define the use of said restraints and identify the individual who may authorize the application of physical restraints in emergencies, and describe the mechanism for monitoring and controlling their use. (II)

481-58.43(135C)-Resident abuse prohibited
Each resident shall receive kind and considerate care at all times and shall be free from mental and physical abuse. Each resident shall be free from chemical and physical restraints except as follows: When authorized in writing by a physician for a specified period of time; when necessary in an emergency to protect the resident from injury to the resident or to others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the physician; and in the case of a mentally retarded individual when ordered in writing by a physician and authorized by a designated qualified mental retardation professional for use during behavior modification sessions. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

58.43(1) Mental abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation. (II)

58.43(2) Physical abuse includes, but is not limited to, corporal punishment and the use of restraints as punishment. (II)

58.43(3) Drugs such as tranquilizers may not be used as chemical restraints to limit or control resident behavior for the convenience of staff. (II)

58.43(4) Physicians' orders are required to utilize all types of physical restraints and shall be renewed at least quarterly. (II) Physical restraints are defined as the following:
Type I-the equipment used to promote the safety of the individual but is not applied directly to their person. Examples: divided doors and totally enclosed cribs.
Type II-the application of a device to the body to promote safety of the individual. Examples: vest devices, soft-tie devices, hand socks, geriatric chairs.
Type III-the application of a device to any part of the body which will inhibit the movement of that part of the body only. Examples: wrist, ankle or leg restraints and waist straps.

58.43(5) Physical restraints are not to be used to limit resident mobility for the convenience of staff and must comply with life safety requirements. If a resident's behavior is such that it may result in injury to the resident or others and any form of physical restraint is utilized, it should be in conjunction with a treatment procedures(s) designed to modify the behavioral problems for which the resident is restrained, or as a last resort, after failure of attempted therapy. (I, II)
58.43(6) Each time a Type II or III restraint is used documentation on the nurse's progress record shall be made which includes type of restraint and reasons for the restraint and length of time resident was restrained. The documentation of the use of Type III restraint shall also include the time of position change. (II)

58.43(7) Each facility shall implement written policies and procedures governing the use of restraints which clearly delineate at least the following:

a) Physicians' orders shall indicate the specific reasons for the use of restraints. (II)

b) Their use is temporary and the resident will not be restrained for an indefinite amount of time. (I, II)

c) A qualified nurse shall make the decision for the use of a Type II or Type III restraint for which there shall be a physician's order. (II)

d) A resident placed in a Type II or III restraint shall be checked at least every 30 minutes by appropriately trained staff. No form of restraint shall be used or applied in such a manner as to cause injury or the potential of injury and provide a minimum of discomfort to resident restrained. (I, II)

e) Reorders are issued only after the attending physician reviews the resident's condition. (II)

f) Their use is not employed as punishment, for the convenience of the staff, or as a substitute for supervision or program. (I, II)

g) The opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two hours in which Type II and Type III restraints are employed, except when resident is sleeping. However, when resident awakens, this shall be provided. This shall be documented each time. A check sheet may serve this purpose. (I, II)

h) Locked restraints or leather restraints shall not be permitted except in life-threatening situations. Straight jackets and secluding residents behind locked doors shall not be employed. (I, II)

i) Nursing assessment of the resident's need for continued application of a Type III restraint shall be made every 12 hours and documented on the nurse's progress record. Documentation shall include the type of restraint, reason for the restraint and the circumstances. Nursing assessment of the resident's need for continued application of either a Type I or Type II restraint and nursing evaluation of the resident's physical and mental condition shall be made every 30 days and documented on the nurse's progress record. (II)

j) A divided door equipped with a securing device that may be readily opened by personnel shall be considered an appropriate means of temporarily confining a resident in the resident's room. (II)

k) Divided doors shall be of the type that when the upper half is closed the lower section shall close. (II)

l) Methods of restraint shall permit rapid removal of the resident in the event of fire or other emergency. (I, II)

m) The facility shall provide orientation and ongoing education programs in the proper use of restraints.

58.43(8) In the case of a mentally retarded individual who participates in a behavior modification program involving use of restraints or aversive stimuli, the program shall be conducted only with the informed consent of the individual's parent or responsible party. Where restraints are employed, an individualized program shall be developed by the
interdisciplinary team with specific methodologies for monitoring its progress. (II)
a) The resident’s responsible party shall receive a written account of the proposed plan of
the use of restraints or aversive stimuli and have an opportunity to discuss the proposal
with a representative(s) of the treatment team. (II)
b) The responsible party must consent in writing prior to the use of the procedure. Consent
may also be withdrawn in writing. (II)

58.43(9) Upon a claim of dependent adult abuse of a resident being reported, the
administrator of the facility shall separate the victim and accused abuser immediately and
maintain that separation until the abuse investigation is completed. (I, II)

58.43(10) Suspected abuse reports. The department shall investigate all complaints of
dependent adult abuse which are alleged to have happened in a health care facility. The
department shall inform the department of human services of the results of all evaluations
and dispositions of dependent adult abuse investigations.

58.43(11) Pursuant to Iowa Code Chapter 235B, a mandatory reporter of dependent adult
abuse is any person who, in the course of employment, examines, attends, counsels, or
treats a dependent adult and reasonably believes the dependent adult has suffered abuse.
This includes a member of the staff or employee of a health care facility. (II, III)

If a staff member or employee is required to report pursuant to this subrule, the staff
member or employee shall immediately notify the person in charge of the facility or the
person’s designated agent, and the person in charge or the designated agent shall make the
report to the department of human services. (I, II)

This rule is intended to implement Iowa Code sections 135C.14, 235B.3(1), and 235B.3(11).

KANSAS

39-939. Unlawful acts. It shall be unlawful in any adult care home to house, care for or
permit:
... (b) Abuse, neglect, or cruel treatment of any resident...

Article 14.–REPORTING ABUSE, NEGLECT OR EXPLOITATION OF CERTAIN PERSONS

39-1401. Abuse, neglect or exploitation of residents; definitions.

As used in this act:

(a) "Resident" means:
(1) Any resident, as defined by K.S.A. 39-923 and amendments thereto; or
(2) any individual kept, cared for, treated, boarded or otherwise accommodated in a
medical care facility; or
(3) any individual, kept, cared for, treated, boarded or otherwise accommodated in a state
psychiatric hospital or state institution for the mentally retarded.
(b) "Adult care home" has the meaning ascribed thereto in K.S.A. 39-923 and amendments thereto.

(c) "In need of protective services" means that a resident is unable to perform or obtain services which are necessary to maintain physical or mental health, or both.

(d) "Services which are necessary to maintain physical and mental health" include, but are not limited to, the provision of medical care for physical and mental health needs, the relocation of a resident to a facility or institution able to offer such care, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from maltreatment the result of which includes, but is not limited to, malnutrition, deprivation of necessities or physical punishment and transportation necessary to secure any of the above stated needs, except that this term shall not include taking such person into custody without consent, except as provided in this act.

(e) "Protective services" means services provided by the state or other governmental agency or any private organizations or individuals which are necessary to prevent abuse, neglect or exploitation. Such protective services shall include, but not be limited to, evaluation of the need for services, assistance in obtaining appropriate social services and assistance in securing medical and legal services.

(f) "Abuse" means any act or failure to act performed intentionally or recklessly that causes or is likely to cause harm to a resident, including:
(1) Infliction of physical or mental injury;
(2) any sexual act with a resident when the resident does not consent or when the other person knows or should know that the resident is incapable of resisting or declining consent to the sexual act due to mental deficiency or disease or due to fear of retribution or hardship;
(3) unreasonable use of a physical restraint, isolation or medication that harms or is likely to harm a resident;
(4) unreasonable use of a physical or chemical restraint, medication or isolation as punishment, for convenience, in conflict with a physician's orders or as a substitute for treatment, except where such conduct or physical restraint is in furtherance of the health and safety of the resident or another resident;
(5) a threat or menacing conduct directed toward a resident that results or might reasonably be expected to result in fear or emotional or mental distress to a resident;
(6) fiduciary abuse; or
(7) omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness.

(g) "Neglect" means the failure or omission by one's self, caretaker or another person with a duty to provide goods or services which are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm or illness.

(h) "Caretaker" means a person or institution who has assumed the responsibility, whether legally or not, for the care of the resident voluntarily, by contract or by order of a court of competent jurisdiction.
(i) "Exploitation" means misappropriation of resident property or intentionally taking unfair advantage of an adult’s physical or financial resources for another individual’s personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person.

(j) "Medical care facility" means a facility licensed under K.S.A. 65-425 et seq. and amendments thereto but shall not include, for purposes of this act, a state psychiatric hospital or state institution for the mentally retarded, including Larned state hospital, Osawatomie state hospital and Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center.

(k) "Fiduciary abuse" means a situation in which any person who is the caretaker of, or who stands in a position of trust to, a resident, takes, secretes, or appropriates the resident’s money or property, to any use or purpose not in the due and lawful execution of such person’s trust.

(l) "State psychiatric hospital" means Larned state hospital, Osawatomie state hospital and Rainbow mental health facility.

(m) "State institution for the mentally retarded" means Kansas neurological institute and Parsons state hospital and training center.

(n) "Report" means a description or accounting of an incident or incidents of abuse, neglect or exploitation under this act and for the purposes of this act shall not include any written assessment or findings.

(o) "Law enforcement" means the public office which is vested by law with the duty to maintain public order, make arrests for crimes and investigate criminal acts, whether that duty extends to all crimes or is limited to specific crimes.

(p) "Legal representative" means an agent designated in a durable power of attorney, power of attorney or durable power of attorney for health care decisions or a court appointed guardian, conservator or trustee.

(q) "Financial institution" means any bank, trust company, escrow company, finance company, saving institution or credit union, chartered and supervised under state or federal law.

(r) "Governmental assistance provider" means an agency, or employee of such agency, which is funded solely or in part to provide assistance within the Kansas senior care act, K.S.A. 75-5926 et seq., and amendments thereto, including medicaid and medicare.

No person shall be considered to be abused, neglected or exploited or in need of protective services for the sole reason that such person relies upon spiritual means through prayer alone for treatment in accordance with the tenets and practices of a recognized church or religious denomination in lieu of medical treatment.

39-1402. Abuse, neglect or exploitation of residents; reporting abuse, neglect or exploitation or need of protective services; persons required to report; contents of report; posting notice of requirements of act; penalty for failure to report.

(a) Any person who is licensed to practice any branch of the healing arts, a licensed psychologist, a licensed master level psychologist, a licensed clinical psychotherapist, a chief administrative officer of a medical care facility, an adult care home administrator or operator, a licensed social worker, a licensed professional nurse, a licensed practical nurse, a licensed marriage and family therapist, a licensed clinical marriage and family therapist, licensed professional counselor, licensed clinical professional counselor, registered alcohol and drug abuse counselor, a teacher, a bank trust officer and any other officers of financial institutions, a legal representative or a governmental assistance provider who has reasonable cause to believe that a resident is being or has been abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services, shall report immediately such information or cause a report of such information to be made in any reasonable manner to the department on aging with respect to residents defined under subsection (a)(1) of K.S.A. 39-1401 and amendments thereto, to the department of health and environment with respect to residents defined under subsection (a)(2) of K.S.A. 39-1401, and amendments thereto, and to the department of social and rehabilitation services and appropriate law enforcement agencies with respect to all other residents. Reports made to one department which are required by this subsection to be made to the other department shall be referred by the department to which the report is made to the appropriate department for that report, and any such report shall constitute compliance with this subsection. Reports shall be made during the normal working week days and hours of operation of such departments. Reports shall be made to law enforcement agencies during the time the departments are not open for business. Law enforcement agencies shall submit the report and appropriate information to the appropriate department on the first working day that such department is open for business. A report made pursuant to K.S.A. 65-4923 or 65-4924 and amendments thereto shall be deemed a report under this section.

(b) The report made pursuant to subsection (a) shall contain the name and address of the person making the report and of the caretaker caring for the resident, the name and address of the involved resident, information regarding the nature and extent of the abuse, neglect or exploitation, the name of the next of kin of the resident, if known, and any other information which the person making the report believes might be helpful in an investigation of the case and the protection of the resident.

(c) Any other person, not listed in subsection (a), having reasonable cause to suspect or believe that a resident is being or has been abused, neglected or exploited, or is in a condition which is the result of such abuse, neglect or exploitation or is in need of protective services may report such information to the department on aging with respect to residents defined under subsection (a)(1) of K.S.A. 39-1401 and amendments thereto, to the department of health and environment with respect to residents defined under subsection (a)(2) of K.S.A. 39-1401, and amendments thereto, and to the department of social and rehabilitation services with respect to all other residents. Reports made to one department which are to be made to the other department under this section shall be referred by the department to which the report is made to the appropriate department for that report.
(d) Notice of the requirements of this act and the department to which a report is to be made under this act shall be posted in a conspicuous public place in every adult care home and medical care facility in this state.

(e) Any person required to report information or cause a report of information to be made under subsection (a) who knowingly fails to make such report or cause such report to be made shall be guilty of a class B misdemeanor.


39-1403. Same; immunity from liability of certain persons; employer prohibited from imposing sanctions on employee making report.

(a) Anyone participating in the making of any report pursuant to this act, or in any follow-up activity to or investigation of such report or any other report of abuse, neglect or exploitation of an adult or who testifies in any administrative or judicial proceeding arising from such report shall not be subject to any civil liability on account of such report, investigation or testimony, unless such person acted in bad faith or with malicious purpose.

(b) No employer shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that such employee made or caused to be made a report under this act.


(a) Restraints. The resident shall be free from any physical restraints imposed or psychopharmacologic drugs administered for the purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

(1) When physical restraints are used there shall be:

(A) A written physician's order which includes the type of restraint to be applied, the duration of the application and the justification for the use of the restraint;

(B) evidence that at least every two hours the resident is released from the restraint, exercised, and provided the opportunity to be toileted;

(C) regular monitoring of each resident in restraints at intervals of at least 30 minutes;

(D) documentation in the resident's clinical record which indicates that less restrictive methods to ensure the health and safety of the resident were not effective or appropriate; and

(E) evaluation of the continued necessity for the physical restraint at least every three months and more frequently when there is a significant change in the resident's condition.

(2) Equipment used for physical restraints shall be designed to assure the safety and dignity of the resident.

(3) Staff who works with residents in physical restraints shall be trained in the appropriate application of the restraint and the care of a resident who is required to be physically restrained.
(4) In the event of an emergency, a physical restraint may be applied following an
assessment by a licensed nurse which indicates that the physical restraint is necessary to
prevent the resident from harming him or herself or other residents and staff members. The
nursing facility shall obtain physician approval within 12 hours after the application of any
physical restraint.

(b) The facility staff and consultant pharmacist shall monitor residents who receive
psychopharmacologic drugs for desired responses and adverse effects.

c) Abuse. Each resident shall have a right to be free from the following:
(1) Verbal, sexual, physical, and mental abuse;
(2) corporal punishment; and
(3) involuntary seclusion.

d) Staff treatment of residents. Each facility shall develop and implement written policies
and procedures that prohibit abuse, neglect, and exploitation of residents. The facility shall:
(1) Not use verbal, mental, sexual, or physical abuse, including corporal punishment, or
involuntary seclusion;
(2) not employ any individual who has been identified on the state nurse aide registry as
having abused, neglected, or exploited residents in an adult care home in the past;
(3) ensure that all allegations of abuse, neglect, or exploitation are investigated and
reported immediately to the administrator of the facility and to the Kansas department of
health and environment;
(4) have evidence that all alleged violations are thoroughly investigated, and shall take
measures to prevent further potential abuse, neglect and exploitation while the
investigation is in progress;
(5) report the results of all facility investigations to the administrator or the designated
representative;
(6) maintain a written record of all investigations of reported abuse, neglect, and
exploitation; and
(7) take appropriate corrective action if the alleged violation is verified.

(Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21,
1997.)


...(b) Policies and procedures.

(1) Each licensee shall adopt and enforce written policies and procedures to ensure all of
the following:

...(B) Each resident is protected from abuse, neglect, and exploitation.
Section 5. Resident Behavior and Facility Practices [nursing facilities].

(1) Restraints. The resident shall have the right to be free from any physical restraints imposed or psychoactive drug administered for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

(2) Abuse. The resident shall have the right to be free from verbal sexual, physical or mental abuse, corporal punishment, and involuntary seclusion.

(3) Staff treatment of residents. The facility shall develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of residents.

(a) The facility shall:
1. Not use verbal, mental, sexual, or physical abuse, including corporal punishment, or involuntary seclusion; and
2. Not employ individuals who have been convicted of abusing, neglecting or mistreating individuals.

(b) The facility shall have evidence that all alleged violations are thoroughly investigated, and shall prevent further potential abuse while the investigation is in progress.

(c) The results of all investigations shall be reported to the administrator or his designated representative within five (5) working days or to other officials in accordance with applicable provisions of KRS Chapter 209 or 620, if the alleged violation is verified appropriate corrective action is taken.

(d) The facility shall document alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, are reported immediately to the administrator of the facility or to other officials in accordance with KRS Chapters 209 and 620.

(e) The facility shall have evidence that all alleged violations are thoroughly investigated, and shall prevent further potential abuse while the investigation is in progress.

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**LOUISIANA**

§9731. Complaint Process

A. Provisions for Complaints. In accordance with R.S. 40:2009.13 et seq., the following requirements are established for receiving, evaluating, investigating, and correcting grievances pertaining to resident care in licensed nursing homes. They also provide for mandatory reporting of abuse and neglect in nursing homes.

B. Nursing Home Complaints, Procedure, Immunity

1. Any person having knowledge of the alleged abuse or neglect of a resident of a nursing home; or who has knowledge that a state law, licensing requirement, rule, or regulation, or correction order promulgated by the department, or any federal certification rule pertaining to a nursing home has been violated; or who otherwise
has knowledge that a nursing home resident is not receiving care and treatment to which he is entitled under state or federal laws, may submit a complaint regarding such matter to the secretary (Department of Health and Hospitals). The complaint shall be submitted to the Health Standards Section of DHH in writing, by telephone, or by personal visit where the complainant will complete and sign a form furnished by the member of the secretary’s staff receiving the complaint.  
2. The secretary shall designate a staff member whose responsibility shall be to assure that all complaints received are referred to the appropriate office of the department (Health Standards Section).  
3. If the complaint involves an alleged violation of any criminal law pertaining to nursing homes, the secretary shall refer the complaint to the appropriate office.  
4. If the complaint involves any other matter, the secretary shall refer the complaint to the appropriate office for investigation in accordance with this Section.  
5. Any person who, in good faith, submits a complaint pursuant to this Section shall have immunity from any civil liability that otherwise might be incurred or imposed because of such complaint. Such immunity shall extend to participation in any judicial proceeding resulting from the complaint.  

C. Procedure for Investigation by the Office; Confidentiality of Complaints  
1. The office of the department which has received the complaint from the secretary shall review the complaint and determine whether there are reasonable grounds for an investigation. No complaint shall be investigated if:  
a. in the opinion of the office, it is trivial or not made in good faith;  
b. it is too out dated and delayed to justify present investigation; or  
c. the complaint is not within the investigating authority of the office.  
2. If the office determines that grounds for an investigation do not exist, it shall notify the complainant of its decision and the reasons within 15 work days after receipt of such complaint.  
3. If grounds for an investigation do exist, the office shall initiate an investigation of such complaint and make a report to the complainant on its findings within 30 work days after completion of the complaint investigation.  
4. The substance of the complaint shall be given to the nursing home no earlier than at the commencement of the investigation of the complaint.  
5. When the substance of the complaint is furnished the nursing home, it shall not identify the complainant or the patient unless he/she consents, in writing or in a documented telephone conversation with an employee, to the disclosure. If the disclosure is considered essential to the investigation or if the investigation results in a judicial proceeding, the complainant shall be given the opportunity to withdraw the complaint.  

D. Investigation Report  
1. The investigation report of the department shall state whether any nursing home licensing law, or any licensing requirement, rule, regulation, or correction order of the Department of Health and Hospitals, or any standard relating to the health,
safety, care, or treatment of residents in nursing homes has been violated. 
a. If such violation is found to exist, the appropriate departmental staff shall immediately provide notice of such violation to the secretary. 
b. The report shall also contain a deficiency statement to the nursing home. A copy of the report shall be sent by certified mail or hand-delivered to the complainant and to the nursing home.

2. The deficiency statement shall describe the violation; list the rule or law violated; and solicit corrective actions to be taken by the nursing home.

3. A nursing home which is ordered to correct deficiencies may file a written request that the department review the corrective action taken by the home and, if necessary, reinspect the home.
a. The department shall comply with the request in a timely manner. 
b. If no such request is received, the department shall review the steps taken by the home in order to comply with the corrective order and, if necessary, reinspect the home on the final date fixed for completion of the correction of the violation.

4. If the violation is found to continue to exist on the correction date, the office shall notify the appropriate department to take further action as indicated applicable by state regulations.

E. Hearing
1. A complainant or nursing home who is dissatisfied with the department's determination or investigation may request a hearing.
2. A request for a hearing shall be submitted, in writing, to the secretary within 30 days after the department's report has been mailed in accordance with the provisions of R.S. 40:2009.15A(1).
3. Notice of the time and place fixed for the hearing shall be sent to the complainant and the nursing home.
4. All appeal procedures shall be conducted in accordance with the Administrative Procedure Act.

F. Prohibition Against Retaliation. No discriminatory or retaliatory action shall be taken by any health care facility or government agency against any person or client by whom or for whom any communication was made to the department or unit, provided the communication is made in good faith for the purpose of aiding the office or unit to carry out its duties and responsibilities.

G. Notice of the Complaint Procedure. Notice of the complaint procedure, complete with the name, address, and telephone number of the Health Standards Section of the Office of the Secretary of the Department of Health and Hospitals, shall be posted conspicuously in the nursing home at places where residents gather.

H. In accordance with R.S. 14:403.2, 14:93.3, 14:93.4, and 14:93.5, all nursing homes shall adhere to the adult protective services laws.
I. Duty to Make Complaints; Penalty; Immunity

1. Any person who is engaged in the practice of medicine, social services, facility administration, psychological or psychiatric treatment; or any registered nurse, licensed practical nurse, or nurse’s aid, who has actual knowledge of the abuse or neglect of a resident of a health care facility shall, within 24 hours, submit a complaint to the secretary or inform the unit or local law enforcement agency of such abuse or neglect.

2. Any person who knowingly or willfully violates the provisions of this Section shall be fined not more than $500; or imprisoned for not more than two months; or both.

3. Any person who, in good faith, submits a complaint pursuant to this Section shall have immunity from any civil liability that otherwise might be incurred or imposed because of such complaint. Such immunity shall extend to participation in any judicial proceeding resulting from the complaint.

4. Any person, other than the person alleged to be responsible for the abuse or neglect, reporting pursuant to this Section in good faith, shall have immunity from any civil liability that otherwise might be incurred or imposed because of such report. Such immunity shall extend to participation in any judicial proceeding resulting from such report.


§9733. Statement of Rights and Responsibilities

A. In accordance with R.S. 40:2010.8 et seq., all nursing homes shall adopt and make public a statement of the rights and responsibilities of the residents residing therein and shall treat such residents in accordance with the provisions of the statement.

The statement shall assure each resident the following:

...10. the right to be free from mental and physical abuse and from physical and chemical restraints, except those restraints authorized by the attending physician for a specified and limited period of time or those necessitated by an emergency:

a. in case of an emergency, restraint may only be applied by a qualified licensed nurse, who shall set forth, in writing, the circumstances requiring the use of the restraint, and, in case of a chemical restraint, the attending physician shall be consulted immediately thereafter;

b. restraints shall not be used in lieu of staff supervision or merely for staff convenience or resident punishment, or for any reason other than resident protection or safety;

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...F. Residents requiring restraints shall be restrained with standard types of devices, applied in a manner consistent with manufacturer’s specifications, and that permits speedy removal in the event of an emergency. Each restrained resident shall be monitored every 30
minutes and released for 10 minutes every two hours. Restraints shall not be used for punishment nor convenience of staff.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:56 (January 1998).

MAINE

4.J. Reporting of Abuse, Neglect or Misappropriation of Resident Property

4.J.1. The facility must ensure that all staff are knowledgeable of the Adult Protective Services Act and that all alleged violations involving mistreatment, neglect, and abuse, including injuries of unknown source and/or misappropriation of resident property, are reported immediately, through established procedures, to the administrator of the facility and to other officials in accordance with State law.

4.J.2. The facility must have evidence that all alleged violations are thoroughly investigated and in a timely manner. Policies must address administrative procedures to be implemented to prevent further potential abuse while the investigation is in progress.

4.J.3. The results of all investigations conducted in-house must be reported to the administrator or his/her designated representative and to other officials in accordance with State law. If the alleged violation is verified, appropriate corrective action must be taken. All reports must be made available to the Department upon request.

8.C.6. Reporting of Abuse (or Suspicion of)

a. The facility must ensure that all staff are knowledgeable of the State Mandatory Reporting Law and that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and/or misappropriation of resident property, are reported immediately through established procedures, to the administrator of the facility and to other officials in accordance with State law.

b. The facility must have evidence that all alleged violations were thoroughly and immediately investigated. Policies must address administrative procedures to be implemented to prevent further potential abuse while the investigation is in progress.

C. The results of all investigations conducted in-house must be reported to the administrator or his designated representative and to other officials in accordance with State law as soon as completed. If the alleged violation is verified by the facility or the State Agency, appropriate corrective action must be taken. The reports shall be made available to the Department upon request.

Resident Rights—Chapter 10

...10.R. Physical or Chemical Restraints

The resident has the right to be free from any physical restraints imposed or psychoactive
drug administered for purposes of punishment for certain behaviors or to accommodate the needs of the staff, and is not required to treat the resident's specific condition.

10.S. Freedom From Abuse, Punishment or Involuntary Seclusion
The resident has the right to be free from neglect, verbal, sexual, physical or mental abuse and involuntary seclusion.

11.A. Physical Restraints
The resident has the right to be free from any physical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

“Physical Restraints” are defined as any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body.

“Discipline” is any action taken by the facility for the purpose of punishing or penalizing residents.

“Convenience” is any action taken by the facility to control resident behavior or maintain residents with a lesser amount of effort by the facility and not in the residents' best interest.

11.A.1. All restraints must be ordered by a physician. PRN orders for restraints are prohibited.

11.A.2. Documented evidence of less restrictive measures to promote greater functional independence must be present in the medical record if restraints are used. The care plan must address the medical reason for which the restraints are used. The care plan must also contain a succession of approaches to be utilized before restraints are applied. Consultation with appropriate health professionals regarding the use of less restrictive approaches must be obtained when appropriate. Locked restraints are prohibited in any case.

a. Geriatric and other chairs from which the resident cannot arise without assistance and which impede movement are considered a physical restraint.
b. Bedrails are considered restraints when they are a barrier to the resident for getting out of bed.

11.A.3. If a trial of less restrictive measures is unsuccessful, and the facility decides that a physical restraint would enable and promote greater functional independence, then the restraining device may be used only for specific time-limited periods.

11.A.4. The continued use of restraints must be evaluated as needed, but at least quarterly.

11.A.5. There must be documented evidence that the resident, family, or legal guardian is aware of and agrees with this treatment.

11.A.6. All resident care staff shall be trained in the proper application and use of restraints.

11.A.7. Restraints may not be used to permit staff to administer treatment to which the resident has not consented.

11.A.8. No resident may be in a restraint without nursing staff on duty at all times in that section of the facility;
11.A.9. Restraints are released for at least fifteen (15) minutes every two (2) hours and exercise provided. A written record is kept of the times of restraint and release.

11.A.10. Every resident in restraint is offered toilet privileges at least every two (2) hours or when request is made.

11.A.11. When the resident is in bed, the restraint must be properly applied to allow the resident to turn in bed. It is not necessary to release a restraint during the resident’s normal sleeping hours, but the restraint must be checked at least every two (2) hours. A written record must be maintained of restraint checks.

11.A.12. Leather cuff and any crotch restraints shall not be used. Four-point restraints are prohibited.

11.A.13. Residents shall not be confined in a locked room; dutch doors are permissible, provided the top section is opened.

11.B. Chemical Restraints
The resident has the right to be free from any chemical restraints imposed for the purpose of discipline or convenience and not required to treat the resident's medical symptoms. These drugs are categorized as antipsychotics, antidepressants, anxioltics and hypnotics.

“Chemical Restraint” is a psychopharmacologic drug that is used for discipline or convenience and is not required to treat medical symptoms.
“Discipline” is any action taken by the facility for the purpose of punishing or penalizing residents.
“Convenience” is any action taken by the facility to control resident behavior or maintain residents with a lesser amount of effort by the facility and not in the residents' best interest.

11.B.1. There must be evidence of a physical examination to rule out physical cause.

11.B.2. Residents receiving antipsychotic medications must receive gradual dose reductions and behavioral monitoring in an effort to discontinue these drugs, unless clinically contraindicated.

11.B.3. There must be documented evidence of less restrictive measures, including interventions to modify the resident’s behavior or the environment, including staff approaches to care, treat or manage the resident’s behavioral symptoms.

11.B.4. There must be evidence that the resident, family or legal guardian is made aware of potential side effects and agrees with this treatment.

11.B.5. Psychoactive drugs may not be used:
   a. In quantities that interfere with the resident’s level of alertness and ability to participate in rehabilitation programs; or
   b. On an as needed basis exceeding five (5) times in a seven (7) day period;

11.B.6. The use of chemical restraints will be part of the care plan, which will address the medical reason for which the medication is used, with a succession of approaches and interventions to be utilized prior to the administration of chemical restraints.
11.B.7. Close monitoring at regular intervals, as determined by the physician and multidisciplinary team, of all residents receiving psychoactive drugs will be maintained.

19.G. Incident and Accident Records

19.G.1. A report on a separate form shall be made on any occurrence affecting the safety, health or wellbeing of a resident, staff or visitor which may result in an injury. Medication reactions and errors involving a resident shall also be recorded on the report.

19.G.2. Any resident who has sustained an injury or accident shall be examined by a physician, unless, after assessment by a Registered Professional Nurse, is determined not to require an examination by a physician. In either case, documentation of the incident or accident shall be recorded.

19.G.3. The extent of injury and treatment shall be recorded on the resident’s record, with notification made by the facility and/or the physician, to the nearest relative, guardian or conservator of the resident.

19.G.4. The administrator or the director of nurses shall initial all incident and accident reports within twenty-four (24) hours of occurrence.

19.G.5. All incident and accident reports shall be kept on the premises of each facility and shall be reviewed at each meeting of the Quality Assurance Committee. The minutes of these meetings shall be available for review by Department personnel.

MARYLAND

Downloaded January 2011

10.07.02.22 Reports and Action Required in Unusual Circumstances.

A. Serious Emotional Disturbances. A facility may not accept or keep patients who destroy property or are dangerous to themselves or others, or who have acute symptoms of mental illness.

B. Action to Be Taken if a Patient Becomes Actively Disturbed. The following action shall be taken:

(1) If a patient becomes actively disturbed, the personal physician shall be notified immediately.
(2) A restraint may be used only if all of the following conditions are met:
   (a) Failure to use a restraint or restraints is likely to endanger the health or safety of the patient or others;
   (b) There is a written physician’s order for the use of the restraint or restraints, which shall comply with the following requirements:
   (i) The physician’s written order for the restraint or restraints shall be for aspecified maximum period of time, not to exceed 24 hours.
(ii) The necessity for the use of the restraint or restraints shall be documented, and
(iii) The frequency of patient observations by licensed personnel on not less than an hourly basis during the period of time that the restraint or restraints or the effects of the restraint or restraints are present shall be indicated;

(c) Appropriate documentation by licensed personnel shall be recorded in the clinical record;
(d) The facility may not re-impose a restraint or restraints except upon the written order of a physician who has personally observed the patient since the previous restraint or restraints order was imposed.

(3) A restraint or restraints may not be ordered PRN.
(4) If a physician is not immediately available, a registered nurse may authorize the use of a physical restraint or restraints for a period not to exceed 4 hours in any 30-day period. Licensed personnel shall observe the patient hourly. The patient shall be seen by a physician if the restraint or restraints are to be applied for more than the initial 4-hour period.

C. Locked Doors Prohibited. Patients may not be kept behind locked doors, that is, doors which patients cannot open. If the patient becomes too difficult to manage, the patient shall be transferred to a suitable facility selected by the attending physician. If the physician so orders, patients who have a tendency to wander may be confined to their rooms by screen doors or folding gates.
[Agency Note: Supervision should be adequate to prevent patients from intruding into the rooms of other patients.]

D. Unusual Occurrences. Any occurrence such as the occurrence of suspected mental disturbance, communicable disease, or symptomatic condition of importance to public health, poisoning, or other serious occurrence which threatens the welfare, safety, or health of any patient shall be reported immediately to the local health department. The administrator of the facility shall be responsible for seeing that appropriate procedures and reporting are carried out. An occurrence of a communicable or suspected communicable disease shall be reported and acted upon in accordance with medical asepsis as described in COMAR 10.06.01 Communicable Diseases and COMAR 10.15.03 Food Service Facilities.
[Agency Note: Utilization Review. A utilization review plan should be developed with the advice of the professional personnel responsible for the establishment and enforcement of patient care policies. It is suggested that there be established a multi-discipline audit team to participate in an ongoing system of internal patient care audit.]

10.07.09.14 Physical and Chemical Restraints.
A. Physical restraints may be used only:

(1) As an integral part of an individual medical treatment plan;
(2) If absolutely necessary to protect the resident or others from injury;
(3) If prescribed by a physician or administered by another health care professional practicing within the scope of their license; and
(4) If less restrictive alternatives were considered and appropriately ruled out by the physician.
B. Use of Physical Restraints.

(1) When a facility uses physical restraints, personnel:
(a) Trained in the use of restraints shall check a resident in restraint at least every 2 hours, and maintain a record of the checks and usage; and
(b) Shall provide opportunities for motion and exercise during each 2-hour period in which physical restraint is used, and shall monitor the use of the restraint use and maintain a record of it.

(2) The attending physician shall ensure that treatment plans include provisions for the progressive elimination of physical restraints.

C. Use of Psychopharmacologic Drugs. When a physician prescribes psychopharmacologic drugs for a resident, the resident’s clinical records shall contain all of the following documentation:
(1) A physician’s indication that the dosage, duration, indication, and monitoring are clinically appropriate and the reasons why they are clinically appropriate;
(2) Indication that the resident is being monitored for adverse complications of the drug therapy;
(3) Confirmation that previous attempts at dosage reduction have been unsuccessful, if applicable;
(4) Evidence of the resident’s subjective or objective improvement, or maintenance or function, while taking the medication;
(5) Evidence that the resident’s decline or deterioration, if applicable, has been evaluated by the interdisciplinary team to determine whether a particular drug, a particular dosage, or duration of therapy may be the cause;
(6) Evidence of why the resident’s age, weight, or other factors would require a unique drug dose, drug duration, indication, or monitoring; or
(7) Other evidence that substantiates the use of the restraint.

10.07.09.15 Abuse of Residents.

A. A nursing facility shall develop and implement policies and procedures prohibiting abuse and neglect of residents.

B. A nursing facility may not knowingly employ an individual who has been convicted of abusing or neglecting a resident or who has had a finding entered into the State Nurse Aide Registry concerning abuse or neglect of a resident or misappropriation of a resident's property.

C. Reports of Abuse.

(1) A person who believes that a resident has been abused shall promptly report the alleged abuse to the:
(a) Appropriate law enforcement agency;
(b) Licensing and Certification Administration within the Department; or
(c) The Office on Aging.

(2) An employee of a nursing facility who believes that a resident has been abused:
(a) Shall report the alleged abuse as set forth in §C(1) of this regulation within 3 days after learning of the alleged abuse;
(b) May be subject to a penalty imposed by the Secretary of up to $1,000 for failing to report
an alleged abuse within 3 days after learning of the alleged abuse.

(3) An individual on whom a penalty has been imposed may request a hearing on the
penalty by submitting a written request for a hearing to the Department on or before the
30th calendar day after the individual received notice of the imposition of the penalty.

(4) Upon receiving a request for a hearing under this section, the Secretary shall conduct a
hearing in accordance with COMAR 10.01.03.

D. Investigations. A nursing facility shall:
(1) Thoroughly investigate all allegations of abuse; and
(2) Take appropriate action to prevent further incidents of abuse while the investigation is
in progress, and after that.

E. Immunity from Civil Liability. An individual who, acting in good faith, makes a report
under this regulation has immunity from liability described in Health-General Article, §19-347(g), Annotated Code of Maryland.

MASSACHUSETTS

150.002: Administration

...(G) The administrator shall be responsible for ensuring that all required records, reports
and other materials are complete, accurate, current and available within the facility.

(1) All incidents seriously affecting the health or safety of patients or residents shall be
recorded and reported accurately to the Department within a week. Such reports shall
include:
(a) Date, time and circumstances.
(b) Name of the physician or physician-physician assistant team or physician-nurse
practitioner team called.
(c) Physician’s or physician-physician assistant team’s or physician-nurse practitioner
team’s report, including physical findings and treatment.
(d) Prognosis.
(e) Action taken.
(f) Name of the nurse or responsible person on duty at the time and names of witnesses, if
any.

...(3) All fires and all deaths resulting from incidents in a facility shall be reported
immediately by telephone to the Department. On weekends or holidays, calls should be
directed to the State House Capitol Police for relay to personnel on call. The verbal reports
shall be confirmed in writing within 48 hours with specific information on injuries to
patients, residents or staff, disruption of services and extent of damages. Injury to patients
or residents as the result of fire shall be considered an incident under 105 CMR 150.002(G)(1) and shall be reported as indicated therein.

150.015: Patient Comfort, Safety, Accommodations and Equipment

(A) All facilities shall provide for the comfort, safety and mental and physical well-being of all residents. (3) All facilities shall be prohibited from applying any Aversive Interventions to a patient or resident.

(C) Safety and Personal Protection.

...(2) Restraints shall be used only on a physician's or physician-physician assistant team's or physician-nurse practitioner team’s order or physician assistant’s order or nurse practitioner's order, and the type of restraint shall be specified by the physician or physician-physician assistant team or physician-nurse practitioner team. Restraints shall not be applied for more than two hours at a time (or the time ordered by the physician). At the end of this time, restraints shall be released and the patient ambulated, toileted (if necessary) etc. When the restraints are removed, the patient shall be made comfortable and his position changed. Supervision shall be provided during the time restraints are removed. Restraints shall not be used or applied in such a manner as to cause injury to the patient. Locked restraints shall not be used at any time. A patient in restraint shall be checked at least every hour. Physical restraint or chemical restraint shall not be used as a punishment or for the convenience of staff.

...(7) All accidents, epidemic disease, fires and other mishaps shall be reported as stipulated in 105 CMR 150.002(G).

105 CMR 155.000: PATIENT AND RESIDENT ABUSE PREVENTION, REPORTING, INVESTIGATION, PENALTIES AND REGISTRY

155.001: Purpose

105 CMR 155.000 sets forth standards for the prevention, reporting and investigation of patient and resident abuse, neglect, and mistreatment, and the misappropriation of patient and resident property by individuals working in or employed by a facility, home health agency, homemaker agency or hospice program, and for sanctions and penalties which may be imposed on the individuals found to have committed these acts. 105 CMR 155.000 establishes a registry to be maintained by the Department which will contain:

(1) the names of individuals who are certified as nurse aides, and
(2) sanctions, findings and adjudicated findings of abuse, neglect, and mistreatment of patients or residents and misappropriation of patient or resident property imposed upon or made against nurse aides, home health aides and homemakers for the abuse, neglect, mistreatment of patients or residents or misappropriation of patient or resident property.

155.002: Scope

105 CMR 155.000 applies to long term care facilities subject to licensing under M.G.L. c. 111, § 71, hospice programs licensed under M.G.L. c. 111, §§ 57D or 51, and home health agencies and homemaker agencies. 105 CMR 155.004 through 155.011 are applicable to all individuals working in or employed by a facility, home health agency, homemaker agency or
hospice program; 105 CMR 155.013 through 155.015 are applicable only to nurse aides, home health aides and homemakers.

155.003: Definitions

As used in 105 CMR 155.000 the following definitions apply, in addition to those appearing in M.G.L. c. 111, § 72F, unless the context or subject matter clearly requires otherwise:

Abuse: the willful infliction of injury, unreasonable confinement, intimidation, including verbal or mental abuse, or punishment with resulting physical harm, pain, or mental anguish, or assault and battery; provided, however, that verbal or mental abuse shall require a knowing and willful act directed at a specific patient or resident. In determining whether or not abuse has occurred, the following standards shall apply:

(1) A patient or resident has been abused if:
(a) An individual has made or caused physical contact with the patient or resident in question, either through direct bodily contact or through the use of some object or substance; and
(b) The physical contact in question resulted in death, physical injury, pain or psychological harm to the patient or resident in question; and
(c) The physical contact in question cannot be justified under any of the exceptions set forth in 105 CMR 155.003: Abuse(3).

(2) A patient or resident has been abused if an individual has knowingly and willfully used oral, written, or gestured language with the intent to injure, confine, intimidate, or punish the patient or resident in question.

(3) Notwithstanding the provisions of 105 CMR 155.003: Abuse(1)(a) through (c) and (2), if an individual has used physical contact with a patient or resident which harms that patient or resident, such contact shall not constitute abuse if:
(a) The physical contact with the patient or resident occurs in the course of carrying out a prescribed form of care, treatment or therapy, and both the type of physical contact involved and the amount of force used are necessary in order to carry out that prescribed form of care, treatment or therapy, provided that the patient or resident has not refused such care, treatment or therapy; or
(b) The physical contact with the patient or resident occurs in the course of providing comfort or assistance to the patient or resident, and both the type of physical contact involved and the amount of force used are necessary in order to provide comfort or assistance to the patient or resident; or
(c) The physical contact with the patient or resident occurs in the course of attempting to restrain the behavior of the patient or resident in question, and both the type of physical contact involved and the amount of force used are necessary in order to prevent that patient or resident from injuring himself, herself, or any other person; or
(d) The patient or resident, in accordance with his or her expressed or implied consent, is being furnished or relies upon treatment by spiritual means through prayer alone in accordance with a religious method of healing in lieu of medical treatment.

(4) Physical contact with a patient or resident which harms that patient or resident, and which occurs for the purpose of retaliating against that patient or resident, shall constitute abuse.
Accused: an employee of a facility, including an individual working under contract, or a volunteer working in a facility, an employee of, including an individual working under contract, or a volunteer working for a home health agency, homemaker agency or hospice program who is the subject of an allegation of abuse, neglect or mistreatment of a patient or resident, or an allegation of misappropriation of patient or resident property.

Adjudicated finding: the determination of a hearing officer at the conclusion of a hearing as to whether or not a nurse aide, home health aide, or homemaker abused, neglected, or mistreated a patient or resident or misappropriated patient or resident property.

Commissioner: the Commissioner of the Department of Public Health or his/her designee.

Department: the Massachusetts Department of Public Health.

Finding: the Department's determination, at the conclusion of its investigation, that an allegation of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property against an accused is valid or not.

Harm: includes, but is not limited to, death, physical injury, pain or psychological injury. Psychological injury includes, but is not limited to, conduct which coerces or intimidates a patient or resident, or which subjects that patient or resident to scorn, ridicule, humiliation, or produces a noticeable level of mental or emotional distress.

Home health aide: an individual hired or employed by a home health agency or a hospice program who provides health services to individuals in their residences.

Home health agency: an entity, however organized, whether conducted for profit or not for profit, which is advertised, announced, established or maintained for the purpose of providing health and/or homemaker services to individuals in their residences.

Homemaker: an individual hired or employed by a home health agency, homemaker agency, or a hospice program, who works under agency or program supervision, and is trained by an agency or program to provide a multiplicity of homemaking services, such as meal preparation, cleaning and laundry as well as other essential nutritional and environmental services, in a patient’s residence, as needed by the patient.

Homemaker agency: any entity that hires or employs homemakers to provide a multiplicity of homemaking services, which are based upon a patient’s identified health, infirmity or disability related needs, in a patient’s residence.

Hospice program: an entity required to be licensed under M.G.L. c. 111, § 57D or a hospice service of a hospital licensed under M.G.L. c. 111, § 51.

Hospice worker: a paid individual hired by or working for a hospice program to provide hospice services to a patient.

Isolation technique: any method of physically segregating a patient or resident from other persons or restricting a patient or resident’s opportunities to interact or communicate with other persons. Emergency or short-term monitored separation from others will not be considered an isolation technique if used for a limited period of time as a therapeutic intervention to reduce agitation until the behavior requiring the intervention is resolved.
Mandatory reporting individual: any person who is paid for caring for a patient or resident, whether on a permanent or temporary basis, and/or who is:
(1) a physician;
(2) a medical intern or resident;
(3) a physician assistant;
(4) a registered nurse;
(5) a licensed practical nurse;
(6) a nurse aide;
(7) an orderly;
(8) a home health aide;
(9) a homemaker;
(10) a hospice worker;
(11) an administrator of a facility, home health agency, homemaker agency, or hospice program;
(12) a responsible person in a rest home;
(13) a medical examiner;
(14) a dentist;
(15) an optometrist;
(16) an optician;
(17) a chiropractor;
(18) a podiatrist;
(19) a coroner;
(20) a police officer;
(21) a speech pathologist;
(22) an audiologist;
(23) a social worker;
(24) a pharmacist;
(25) a physical therapist;
(26) an occupational therapist; or
(27) a health officer.

Misappropriation of patient or resident property: the deliberate misplacement, exploitation or wrongful temporary or permanent use of a patient’s or resident’s belongings or money without such patient’s or resident’s consent.

Mistreatment: the use of medications, or treatments, or isolation, or physical or chemical restraints that harm or are likely to harm the patient or resident. In determining whether or not mistreatment has occurred, the following standards shall apply:
(1) A patient or resident has been mistreated if:
   (a) An individual used some type of medication, treatment, isolation technique or restraint on the patient or resident; and
   (b) The particular use of the medication, treatment, isolation technique or restraint was either intentional or careless in nature, contrary to the patient or resident’s expressed decision to refuse such treatment, or contrary to the patient’s or resident’s written care plan; and
   (c) The particular use of the medication, treatment, isolation technique or restraint resulted, or was likely to result, in harm to the patient or resident involved, including but not limited to, physical injury, pain, or death, unreasonable restriction of the ability to move around,
unreasonable restriction of the ability to communicate with others, or psychological harm; and
(d) The particular use of the medication, treatment, isolation technique or restraint cannot be justified under any of the exceptions set forth in 105 CMR 155.003: Mistreatment(2).

(2) Notwithstanding the provisions of 105 CMR 155.003: Mistreatment(1), the following shall not constitute mistreatment:
(a) Use of an isolation technique for the purpose of preventing a documented contagious disease from spreading to other persons, as long as this technique is the least restrictive available method of preventing the spread of that disease, and reasonable care is exercised with the use of that technique; or
(b) Use of a particular medication, isolation technique or restraint in the course of carrying out a prescribed form of treatment or therapy, if such use has been authorized by a physician's order or, when applicable, by a court of competent jurisdiction in accordance with applicable law; or
(c) Use of a particular medication, isolation technique, or restraint for the purpose of preventing a patient or resident from engaging in behavior which may injure him or her or injure another person, as long as the particular use in question is the least restrictive available alternative which will be effective in preventing such harm and reasonable care is exercised in connection with that use.

Neglect: failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness. In determining whether or not neglect has occurred, the following standards shall apply:
(1) A patient or resident has been neglected if:
(a) An individual has failed to provide appropriate care, treatment or service to the patient or resident; and
(b) The individual's failure to provide the treatment, care or service to the patient or resident is either intentional or the result of carelessness; and
(c) As a result of the failure to provide the treatment, care or service, the individual has failed to maintain the health or safety of the patient or resident, as evidenced by harm to the patient or resident, or a deterioration in the patient or resident's physical, mental or emotional condition.

(2) Notwithstanding the provisions of 105 CMR 155.003: Neglect(1),
(a) A patient or resident shall not be considered to be neglected for the reason that such patient or resident, in accordance with his or her expressed or implied consent, is being furnished or relies upon treatment by spiritual means through prayer alone in accordance with a religious method of healing in lieu of medical treatment.
(b) Neglect of a patient or resident shall not be considered to have been caused by an accused if such accused can demonstrate that such neglect was caused by factors beyond his or her control.

Nonmandatory reporting individual: any person who is not a mandatory reporting individual as defined in 105 CMR 155.003 and who makes a report of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property to the Department pursuant to M.G.L. c. 111, § 72G and 105 CMR 155.000.
Nurse aide: any individual who is not a licensed health professional, but is employed or hired by a facility, and who provides nursing or nursing-related services to residents.

Patient: an individual who receives health, homemaker or hospice services at his or her residence from an individual employed by a home health agency, homemaker agency, or a hospice program.

Registered or licensed professional: any person engaged in any occupation or profession which is subject to licensure, registration or certification including individuals licensed, registered or certified under M.G.L. c. 112, §§ 2 through 36, 43 through 53, 66 through 81C, 87F through 87KK, 87EEE through 87OOO, 87WWW through 87ZZZ, 89 through 97, 108 through 147, or 163 through 165.

Registry: a system established and maintained by the Department that contains:
(1) the names of all individuals who have been certified as nurse aides; and
(2) sanctions, findings or adjudicated findings of patient or resident abuse, neglect, or mistreatment, or misappropriation of patient or resident property made against nurse aides, home health aides or homemakers.

Resident: an individual who resides in a long term care facility licensed under M.G.L. c. 111, § 71.

Restraint: any physical, chemical or mechanical method of restricting a patient’s or resident’s ability to move all or part of his or her body or communicate with other persons.

Verbal abuse: any use of oral, written or gestured language that willfully includes disparaging, derogatory or frightening terms to patients or residents, or within their hearing distance, regardless of their ability to comprehend, or disability.

155.004: Procedure for Reporting Suspected Cases
(A) Any mandatory reporting individual, as defined in 105 CMR 155.003, shall immediately make an oral report of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property to his or her supervisor or employer whenever he or she has reasonable cause to believe that any patient or resident has been abused, neglected or mistreated or had property misappropriated. Upon receiving such report, said supervisor or employer shall immediately notify the Department by oral communication, electronically transmitted report or facsimile. Upon receiving a report regarding misappropriation of patient or resident property, with the exception of a controlled substance, said supervisor or employer shall within 48 hours complete an internal investigation into the matter to determine whether the item(s) in question may have been misappropriated as defined in 105 CMR 155.003. If within 48 hours there is reasonable cause to suspect misappropriation said supervisor or employer shall immediately notify the Department by oral communication, electronically transmitted report or facsimile.
(B) Any nonmandatory reporting individual, including, but not limited to, volunteers, may make an oral report of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property to his or her supervisor or employer whenever he or she has reasonable cause to believe that any patient or resident has been abused, neglected, or mistreated or had property misappropriated. Upon receiving such
report, said supervisor or employer shall immediately notify the Department by oral
communication, electronically transmitted report or facsimile.
(C) Any person who makes an oral report of suspected patient or resident abuse, neglect,
mistreatment or misappropriation of patient or resident property to the Department
pursuant to 105 CMR 155.004(A) or (B) shall also send a written report containing all of the
information specified in 105 CMR 155.005 to the Department within 48 hours after making
the oral report.
(D) Notwithstanding the provisions of 105 CMR 155.004(A) and (B), any mandatory or non-
mandatory reporting individual may make a direct report to the Department of a case of
suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient
or resident property. In the case of an oral report, such report shall be followed up by a
written report within 48 hours after making the oral report.
(E) The term “written report” shall include, without limitation, an electronically transmitted
report and facsimile.
(F) All written reports of suspected patient or resident abuse, neglect, mistreatment or
misappropriation of patient or resident property made pursuant to 105 CMR 155.004 shall
be addressed to: Complaint Specialist, Division of Health Care Quality, Massachusetts
Department of Public Health, 10 West Street, Boston, MA 02111, or by Fax, number: 617-
753-8165. All oral reports shall be made to telephone number 1-800-462-5540.

155.005: Contents of Reports of Suspected Cases
All reports of suspected patient or resident abuse, neglect, mistreatment or
misappropriation of patient or resident property made pursuant to 105 CMR 155.004 shall
contain the following information, where applicable:
(A) The name and gender of the patient or resident who the reporter suspects has been
abused, neglected or mistreated or had property misappropriated;
(B) The age of the patient or resident, if known to the reporter.
(C) The home address of the patient;
(D) The name and address of the facility in which the resident resides;
(E) The name, address, and telephone number of the home health agency, homemaker
agency, or hospice program involved;
(F) The name, address and telephone number of the reporter and where such reporter may
be contacted;
(G) If known to the reporter, the name and position of the accused, and also, if known, any
other documented allegations of patient or resident abuse, neglect or mistreatment or
misappropriation of patient or resident property by the accused.
(H) Any information relative to the nature and extent of the alleged abuse, neglect,
mistreatment or misappropriation of the patient's or resident's property;
(I) If known to the reporter, any documented information relative to prior abuse, neglect, or
mistreatment of such patient or resident or misappropriation of such patient or resident's
property;
(J) The circumstances under which the reporter became aware of the alleged abuse, neglect,
mistreatment or misappropriation of property;
(K) If known to the reporter, whatever action, if any, was taken to treat or otherwise assist
the patient or resident;
(L) Any other information which the reporter believes might be helpful in establishing the
cause of the alleged abuse, neglect, mistreatment or misappropriation of property and the
person or persons responsible therefor; and
(M) Such other information as may be required by the Department.

155.006: Protection of Reporting Individuals and Other Parties

(A) The identity of any mandatory or nonmandatory reporting individual who makes a
report of suspected patient or resident abuse, neglect, mistreatment or misappropriation of
patient or resident property pursuant to these regulations; or, of any patient or resident
whose name appears in a report made pursuant to these regulations; or, of any persons
whose right to privacy would be abridged by disclosure of their identities shall be treated as
confidential information. Except as otherwise required by law, the identity of any of these
individuals shall not be disclosed to any person except duly authorized staff of the
Department, the Attorney General, or the appropriate registration board, without the prior
written consent of the affected individual.

(B) Any person who makes an oral or written report of suspected patient or resident abuse,
neglect, mistreatment or misappropriation of property to the Department pursuant to 105
CMR 155.000 shall not be liable in any civil or criminal action as a result of that report if
such report was made in good faith.

(C) No facility, home health agency, homemaker agency, hospice program or individual shall
discharge, or in any manner discriminate or retaliate against, or take any other adverse
action against any person because that person, in good faith:
(1) makes, or attempts to make, any report of suspected patient or resident abuse, neglect,
mistreatment or misappropriation of patient or resident property to the Department; or
(2) provides, or attempts to provide, the Department with any information, testimonial or
otherwise, during the course of any investigation into any case of suspected patient or
resident abuse, neglect, mistreatment or misappropriation of patient or resident property;
or
(3) testifies or is about to testify in any proceeding about the abuse, neglect, or
mistreatment of patients or residents or the misappropriation of patient or resident
property.

(D) A facility, home health agency, homemaker agency or hospice program which
discharges, discriminates or retaliates against such a person shall be liable to the person so
discharged, discriminated or retaliated against, for treble damages, costs and attorneys’
fees.

155.007: Penalty for Failure to Report by Mandatory Reporting Individual

If the Department finds, after investigation, that any mandatory reporting individual, as
defined in 105 CMR 155.003, had reasonable cause to believe that a patient or resident may
have been abused, neglected or mistreated or had property misappropriated, and that such
individual refused or failed to report such suspected case to the Department, the
Department shall notify the Attorney General and the appropriate registration board of that
finding. Such individual may be subject to disciplinary actions by such registration board
and to a fine of up to $1,000.
155.008: Department Investigation of Suspected Cases

(A) Upon receipt of an oral or written report of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property made pursuant to these regulations, the Department shall:
(1) immediately notify the Attorney General orally, or by electronic transmission or facsimile, of the receipt of said report;
(2) conduct an investigation into the allegations contained in the report within 24 hours after receipt of the oral report if there is reasonable cause to believe that a patient's or resident's health or safety is in immediate danger from further abuse, neglect or mistreatment;
(3) conduct an investigation into the allegations contained in the report within seven days after receipt of the written report in all other cases;
(4) at the conclusion of the investigation, issue a written report containing the findings and recommendations of its investigation.

(B) The Department's investigation into the allegations contained in any report it receives of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property made pursuant to 105 CMR 155.000 shall include, but not be limited to, the following:
(1) a visit to the facility, home health agency, homemaker agency, or hospice program in question, or the residence of the patient involved in the report;
(2) notifying the administrator of the facility, or the director of the home health agency, homemaker agency, or hospice program at the time of the on-site visit that the Department is investigating a case of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property pursuant to these regulations, unless such notification would jeopardize patient or resident health or safety or the Department's ability to conduct a complete and thorough investigation;
(3) an attempt to interview the patient or resident who was allegedly abused, neglected, mistreated or had property misappropriated;
(4) an evaluation and determination of the nature, extent and cause or causes of any injuries sustained by the patient or resident in question;
(5) an attempt to identify and interview the person or persons accused of the alleged abuse, neglect, mistreatment or misappropriation of the property of the patient or resident in question;
(6) an attempt to interview all witnesses to the event;
(7) an evaluation of the environment in the facility named in the report and a determination of the risk of physical or psychological injury to any other residents in the facility; and
(8) an evaluation of any and all other pertinent facts.

(C) If the Department has reasonable cause to believe that a patient or resident has died as a result of abuse, neglect or mistreatment, it shall immediately report such death to the Attorney General, the District Attorney for the county in which such death occurred, and the Medical Examiner for said county.

(D) Issuance of the Department’s Written Report
(1) At the conclusion of its investigation, the Department shall issue a written report of its findings and recommendations. The report shall contain no identifying information relating
to any patient or resident, reporting individual, or any other person whose right of privacy would be abridged by the disclosure.

(2) The Department shall send a copy of its report to the following:
(a) The Attorney General;
(b) The mandatory or nonmandatory reporter of the incident;
(c) The facility, home health agency, homemaker agency or hospice program involved; and
(d) The accused.

155.009: Availability of Reports; Disclosure of Information

(A) Disclosure of Information while an Investigation is Pending. Upon written request by any person, the Department shall provide the following information about a pending investigation into a report of suspected patient or resident abuse, neglect, mistreatment or misappropriation of property:
(1) the date on which Department staff visited the facility, home health agency, homemaker agency, hospice program or patient’s residence to conduct the investigation;
(2) the estimated date on which the Department expects to complete its investigation and issue its written report; and
(3) information about any actions taken by the Department or by the facility, home health agency, homemaker agency or hospice program to protect and ensure the health and safety of patients or residents.

(B) Confidentiality of Reports.
(1) any oral or written report of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property which is made to the Department pursuant to 105 CMR 155.000, or any contents thereof, shall be confidential.
(2) the written report issued by the Department at the conclusion of its investigation shall be confidential and shall be made available only to those persons and entities listed in 105 CMR 155.008(D)(2), and the following:
(a) the patient or resident in question, his/her legal representative, the appropriate professional board of registration or a social worker assigned to the patient’s or resident’s case, may, upon written request and approval of that request by the commissioner, receive a copy of the Department’s report.
(b) the report shall not be made available to any other persons unless the person obtains the written, informed consent of the patient or resident in question or the written approval of the commissioner or an order of a court of competent jurisdiction.
(3) Any and all notes, papers, documents or other investigative materials collected, prepared or compiled by Department staff during the course of its investigation into any case of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property shall be confidential and shall not be disclosed or otherwise made available to any person except duly authorized staff of the Department and the Attorney General.

155.010: Responsibilities of the Facility, Home Health Agency, Homemaker Agency, and Hospice Program

(A) Responsibilities in Regard to Each Suspected Case. In regard to each case of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident
property, each facility, home health agency, homemaker agency and hospice program shall:
(1) report all such suspected cases to the Department in accordance with the procedures set forth in 105 CMR 155.004 and 155.005;
(2) immediately begin to conduct its own internal investigation into the allegation, interview all witnesses, and obtain their written statements about the case;
(3) immediately initiate steps to prevent further potential harm to patients or residents while the investigation is in progress;
(4) make available to the Department all information which may be relevant to the Department's investigation into such suspected cases; and
(5) make all reasonable efforts to facilitate the Department’s attempts to interview any and all potential witnesses who may have information relevant to the Department’s investigation.

(B) Written Policies and Procedures. Each facility, home health agency, homemaker agency and hospice program shall adopt and implement written policies and procedures for reporting and responding to suspected cases of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property. At a minimum, these written policies and procedures shall include the procedures contained in 105 CMR 155.010(A).

(C) Responsibility to Review Harmful Incidents. Each facility, home health agency, homemaker agency, or hospice program shall immediately review any situation or incident in which a patient or resident suffers physical or psychological injury or harm for any reason.
(1) If said review reveals any reasonable basis for believing that patient or resident abuse, neglect or mistreatment caused, or in any way contributed to, that injury or harm, the facility, home health agency, homemaker agency or hospice program shall immediately report the matter to the Department as a case of suspected abuse, neglect or mistreatment in accordance with the procedures set forth in 105 CMR 155.004 and 155.005.
(2) In all other cases, in regard to facilities only, the facility shall report the matter to the Department as an “incident seriously affecting the health or safety of patients or residents” in accordance with the requirements of 105 CMR 150.002 (G). The Department shall review such “incident reports” and may in its discretion conduct an investigation to determine whether resident abuse, neglect or mistreatment had occurred.
(3) Whenever a patient or resident has suffered physical or psychological harm as a result of suspected abuse, neglect or mistreatment, a facility, home health agency, homemaker agency, or hospice program shall immediately take any and all protective and/or remedial actions that are reasonably necessary to prevent further harm to that patient or resident and all other patients and residents. Such protective and/or remedial action shall not be delayed solely because the Department has not completed its investigation.

(D) Responsibility to Provide Notice.
(1) Each facility shall post, in a conspicuous location on each floor, a notice informing the public of the patient and resident abuse statute, these regulations, and the procedures for reporting to the Department any case of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property. The form, content and size of the notice shall be prescribed by the Department.
(2) Each home health agency, homemaker agency, or hospice program shall post in the
respective agencies’ offices a notice informing the public and staff of the patient abuse statute, 105 CMR 155.000 and the procedures for reporting to the Department any case of suspected patient abuse, neglect, mistreatment or misappropriation of patient property. The form, content and size of the notice shall be prescribed by the Department. Such agencies shall also inform the patients they serve of the patient abuse statute, these regulations and of the procedures for reporting to the Department any case of suspected patient abuse, neglect, mistreatment or misappropriation of patient property.

(E) Responsibility to Contact Registry.
(1) All facilities, except rest homes, shall contact the registry prior to hiring a nurse aide in order to determine whether the prospective employee has met the federal requirements for competency contained in 42 USC s.1396r and has been certified as a nurse aide for employment in a facility.
(2) All facilities shall contact the registry prior to hiring any employee to ascertain if there is any sanction, finding or adjudicated finding of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property against the prospective employee.
(3) All home health agencies, homemaker agencies, and hospice programs shall contact the registry prior to hiring an individual who will provide direct care to patients or have access to patients or their property to ascertain if there is any sanction, finding or adjudicated finding of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property against the prospective employee.
(4) Except as provided in 105 CMR 155.014(A)(2), no facility, home health agency, homemaker agency or hospice program shall hire or employ an individual whose name appears in the registry with a finding or adjudicated finding of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property, or, if a sanction was imposed upon that individual, such individual may not be hired or employed until the terms of such sanction have been fulfilled. Furthermore, no facility, home health agency, homemaker agency or hospice program shall hire or employ an individual if such individual has been found guilty of, or pleaded guilty or nolo contendere to, or admitted to sufficient facts to support a guilty finding of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property in a court of law.

(F) Provision of Training. Each facility, home health agency, homemaker agency and hospice program shall provide orientation and annual inservice training programs for all staff on patient and resident abuse, neglect, mistreatment, and misappropriation of patient or resident property.
(1) All new employees shall receive orientation before they begin an assignment to care for a patient or resident. Such orientation shall include:
   (a) provision of information about the requirements of M.G.L. c. 111, §§ 72F through 72L, and 105 CMR 155.000;
   (b) instruction on the obligation to report suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property, and the reporting procedures as set forth in 105 CMR 155.000; and
   (c) close observation of new employees.
(2) Immediately after beginning employment and at least once a year thereafter, all personnel of facilities, and those personnel of home health agencies, homemaker agencies
and hospice programs who provide services to patients, shall receive inservice training which shall include, but not be limited to, the following:
(a) provision of information about the requirements of M.G.L. c. 111, §§ 72F through 72L and 105 CMR 155.000;
(b) instruction on the obligation to report suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property, and the reporting procedures as set forth in 105 CMR 155.000;
(c) instruction in techniques for the management of patients or residents with difficult behavior problems;
(d) identification of factors which contribute to or escalate patient or resident behavior which is threatening or assaultive;
(e) assessment of personal responses to patient or resident behavior which is aggressive, threatening or assaultive;
(f) identification and reinforcement of positive and adaptive employee and patient or resident coping behavior;
(g) training in the use of intervention techniques, including verbal responses and safe, non-injurious physical control techniques, as therapeutic tools for threatening or assaultive patients or residents; and
(h) interdisciplinary program and treatment planning for patients and residents, as appropriate.

(G) Adoption of Preventive Policies. Each facility, home health agency, homemaker agency and hospice program shall adopt and implement preventive administrative, management and personnel policies and practices, including, but not limited to, the following:
(1) careful interviewing of employee applicants;
(2) close examination of applicant references prior to hiring;
(3) in accordance with applicable federal and state laws, obtaining all available criminal offender record information from the criminal history systems board on an applicant under final consideration for a position that involves the provision of direct personal care or treatment to patients or residents.
(4) cooperation with other facilities, home health agencies, homemaker agencies, and hospice programs in providing information to prospective employers about an employee’s competence, including the ability to handle patients or residents with difficult behavioral problems;
(5) staff support programs;
(6) development of patient or resident care plans which include approaches to dealing with patients or residents who may exhibit hostile behavior; and
(7) provision of timely and relevant information to employees regarding patients or residents who are emotionally unstable or have difficult behavior problems, and approaches to be used in caring for them.

(H) Deficiency Statements and Plans of Correction.
(1) If, during its investigation, the Department finds violations of the provisions of 105 CMR 155.000, the Department shall prepare a deficiency statement citing every violation observed, a copy of which shall be sent to the facility, home health agency, homemaker agency, or hospice program in question.
(2) Such facility, home health agency, homemaker agency, or hospice program shall submit to the Department a written plan of correction for each violation cited within ten days of
receipt of the deficiency statement. Every plan of correction shall set forth with respect to each deficiency cited the specific corrective steps to be taken, a timetable for such steps, and the date by which compliance with these regulations will be achieved. The dates given for the correction of the deficiencies shall ensure that compliance is achieved within a reasonable time period. The Department shall review the plan of correction and notify the facility, home health agency, homemaker agency or hospice program of either its acceptance or rejection of the plan of correction. A plan which has been rejected must be amended and re-submitted within five days of receipt of the Department’s notice.

155.011: Penalty for Patient or Resident Abuse, Neglect, Mistreatment or Misappropriation of Patient or Resident Property by a Registered or Licensed Professional
If the Department finds after investigation that a registered or licensed professional, as defined in 105 CMR 155.003, is responsible for patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property, the Department shall notify the Attorney General and the appropriate registration board of that finding. Such registered or licensed professionals may be subject to disciplinary actions by their applicable registration or licensing board.

155.012: Penalty by the Attorney General for Patient or Resident Abuse, Neglect, Mistreatment, or Misappropriation of Patient or Resident Property
The Attorney General may recover a civil penalty of not more than $2,500 if a person abuses, neglects or mistreats a patient or resident or misappropriates patient or resident property. Any action brought by the Attorney General pursuant to 105 CMR 155.012 shall be exempt from the provisions of M.G.L. c. 231, § 60B. The provisions of 105 CMR 155.012 shall not exclude any actions brought by the Attorney General or a private party pursuant to M.G.L. c. 93A or to any action by the Department pursuant to 105 CMR 155.000.

155.013: Procedures for Notice and Hearings for Nurse Aides, Home Health Aides and Homemakers
The provisions of 105 CMR 155.013 pertain only to those accused individuals who are nurse aides, home health aides and homemakers.
(A) Notification. If, following its investigation, the Department makes a finding that a nurse aide, home health aide or homemaker has abused, neglected, or mistreated a patient or resident or misappropriated patient or resident property, it must notify in writing:
(1) such nurse aide, home health aide or homemaker; and
(2) the administrator of the facility in which the incident occurred, or the director of the home health agency, homemaker agency, or hospice program that employed such nurse aide, home health aide or homemaker at the time the incident occurred.

(B) Timing of the Notice. The Department must notify the accused nurse aide, home health aide or homemaker in writing within ten business days of the completion of its report of its investigation.

(C) Contents of the Notice. The notice must include the following:
(1) the nature of the allegation(s);
(2) the date and time of the occurrence;
(3) the fact that such accused has the right to a hearing;
(4) the Department’s intent to report the adjudicated finding to the registry should the Department prevail at the hearing;
(5) the fact that such accused has 30 days from the date of the notice to respond and request a hearing, and if he or she fails to do so, the Department will report its findings to the registry;
(6) the consequences of waiving the right to a hearing;
(7) the consequences of an adjudicated finding that the alleged patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property did occur; and
(8) the fact that such accused has the right to be represented by an attorney at the individual's own expense.

(D) From the date of the Department's notice to the accused nurse aide, home health aide or homemaker until the completion of the case, the registry will note that a case against such accused is pending.

(E) Failure to Respond or Waiver of a Hearing. If the accused nurse aide, home health aide or homemaker does not respond to the Department's notice within 30 days of the date of the notice, it shall be considered a waiver of his or her right to a hearing. In that case, or in the case that such accused waives the right to a hearing in writing, the Department shall report its finding to the registry as a final finding.

155.014: Hearing Process for Nurse Aides, Home Health Aides and Homemakers

(A) Upon receipt of a request for a hearing from an accused nurse aide, home health aide or homemaker, the Department must complete the hearing within 120 days from the day it receives the request for a hearing.

(B) The hearing shall be conducted pursuant to 801 CMR 1.02, The Standard Adjudicatory Rules of Practices and Procedures Informal/Fair Hearing Rules.

(C) The Department must hold the hearing at a reasonable place and time convenient for such accused individual.

(D) A hearing officer shall not make a finding that such accused individual has neglected a patient or resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(E) After the adjudication of a case, the hearing officer shall transmit a copy of the decision to the accused nurse aide, home health aide or homemaker and to the Department. The Department shall then send a copy of the hearing officer's decision to the following:
(1) the administrator of the facility in which the incident occurred, or the director of the home health agency, homemaker agency or hospice program that employed such accused individual;
(2) if known to the Department, the administrator of the facility that currently employs such accused individual, if different from the facility in which the incident occurred; or the director of the home health agency, homemaker agency or hospice program that currently employs such accused, if different from that individual's place of employment when the incident occurred;
(3) the Attorney General;
(4) the registry as defined in 105 CMR 155.003.
(F) If the decision rendered by the hearing officer is adverse to the accused nurse aide, home health aide or homemaker, the hearing officer shall also transmit to such individual a notice informing him or her of the right of appeal. Such appeal shall be made in accordance with the provisions of M.G.L. c. 30A.

(G) In a neglect case, where there has been a sanction imposed or a finding or adjudicated finding against a nurse aide, home health aide, or homemaker where such sanction or finding was placed on the registry after January 1, 1995, such individual may, after one year from the date the sanction or finding was placed on the registry, petition the Department for removal of the sanction or finding from the registry. In order to remove the sanction or finding from the registry, the Department must determine that the employment and personal history of the individual does not reflect a pattern of abusive behavior or neglect, and that the neglect involved in the original finding was a single occurrence.

155.015: Alternative Sanctions for Patient or Resident Abuse, Neglect, Mistreatment or Misappropriation of Patient or Resident Property by Nurse Aides, Home Health Aides, and Homemakers

(A) Upon making a finding that a nurse aide, home health aide or homemaker abused, neglected, or mistreated a patient or resident, or misappropriated patient or resident property, the Department may, where appropriate, impose the following sanctions in lieu of an adjudicated finding pursuant to a hearing:

(1) Suspension. The Department may suspend the right of such individual to work as a nurse aide, home health aide or homemaker for such period of time as the Department shall determine. The terms of the suspension shall be contained in the registry unless otherwise removed pursuant to 105 CMR 155.014(G).

(2) Probation. The Department may impose a period of probation on the accused nurse aide, home health aide or homemaker during which time such individual shall undergo additional training or counselling or such other measures as determined by the Department to be necessary to avoid further incidents by the accused. If, during the probationary period, such individual is working in a facility, or employed by a home health agency, homemaker agency or hospice program, such facility or agency shall make reports to the Department as to the progress of the individual in fulfilling the requirements for the probation period. The terms of the probation shall be contained in the registry unless otherwise removed pursuant to 105 CMR 155.014(G).

(3) Warning Letter. The Department may issue a warning letter to the accused nurse aide, home health aide or homemaker. The warning letter shall indicate that no other penalty will be imposed at the time, but should a subsequent allegation of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property be made against such individual, the initial incident will be raised at any hearing of the subsequent incident. No record of the issuance of a warning letter shall be contained in the registry unless there is a subsequent allegation of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property involving such individual.

(B) By agreeing to the sanctions described in 105 CMR 155.015(A), an accused nurse aide, home health aide or homemaker waives the right to a hearing. If the Department determines that such individual has violated the terms of the suspension or probation, the Department shall report such finding to the registry as if it had been adjudicated.
155.016: Establishment and Content of the Registry for Nurse Aides, Home Health Aides and Homemakers

(A) The Department shall establish and maintain a registry of all individuals who have met the federal requirements for competency contained in 42 USC §1396r and have been certified as nurse aides for employment in a facility.

(B) A facility, other than a rest home, must not hire or employ on a paid, unpaid, temporary or permanent basis, any individual working as a nurse aide for more than four months, unless that individual is listed in the registry as having demonstrated competency in accordance with 105 CMR 155.016

(C) The registry shall also contain the following:
(1) specific, documented findings or adjudicated findings of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property by nurse aides, home health aides and homemakers. The documentation must include:
(a) the name, address, telephone number and social security number of such individual;
(b) the nature of the allegation and the record number identifying the documents on which the Department's conclusion were based; and
(c) the date of the hearing if such individual chose to have one, and its outcome.
(2) a brief statement by the accused nurse aide, home health aide or homemaker disputing the findings, if such individual chooses to provide such statement;
(3) if the Department imposed any suspension or probationary period on the nurse aide, home health aide or homemaker, the dates for which such suspension or probation is in effect; and
(4) if known to the Department, any guilty findings made against such individual by a court of law, or any guilty pleas, nolo contendere pleas, or admission to facts sufficient to support a guilty finding made in a court of law by such individual accused of patient or resident abuse, neglect, mistreatment, or misappropriation of patient or resident property.

(D) Disclosure of information on the registry:
(1) the Department must disclose information regarding findings and adjudicated findings of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property, other sanctions imposed against any nurse aide, home health aide or homemaker, as well as any information regarding guilty findings, guilty pleas, nolo contendere pleas or admitted to sufficient facts to support a guilty finding made by such individual in a court of law.
(2) when disclosing such information regarding any nurse aide, home health aide or homemaker, the Department shall also disclose any statement made by such individual disputing the findings.

155.017: Severability
The provisions of 105 CMR 155.000 are severable. If any provision herein is declared unconstitutional or invalid by a court of competent jurisdiction, the validity of the remaining portions shall not be so affected.
R 325.20404 Illnesses; accidents; and incidents.
Rule 404.
...(2) Immediate investigation of the cause of an accident or incident involving a patient, employee, or visitor shall be initiated by the administrator or his or her designated representative, and an appropriate accident record or incident report shall be completed.

History: 1981 AACS; 1983 AACS.

R 325.21104 Accident records and incident reports.
Rule 1104. An accident record or incident report shall be prepared for each accident or incident involving a patient, personnel, or visitor and shall include all of the following information:
(a) Name of person involved in accident or incident.
(b) Date, hour, place, and cause of accident or incident.
(c) A description of the accident or incident by any observer who shall be identified and a statement of the effect of the accident or incident on the patient and any other individual involved.
(d) Name of physician notified and time of notification when appropriate.
(e) Physician's statement regarding extent of injuries, treatment ordered, and disposition of person involved.
(f) Corrective measures taken to avoid repetition of accident or incident.
(g) Record of notification of the person or agency responsible for placing and maintaining the patient in the home, the legal guardian, and, in a case where there is no legal guardian, the designated representative or next of kin.

History: 1981 AACS.

333.20180 Health facility or agency; person making or assisting in originating, investigating, or preparing report or complaint; immunity and protection from civil or criminal liability; disclosure of identity; notice; "hospital" defined.

Sec. 20180.
(1) A person employed by or under contract to a health facility or agency or any other person acting in good faith who makes a report or complaint including, but not limited to, a report or complaint of a violation of this article or a rule promulgated under this article; who assists in originating, investigating, or preparing a report or complaint; or who assists the department in carrying out its duties under this article is immune from civil or criminal liability that might otherwise be incurred and is protected under the whistleblowers' protection act, 1980 PA 469, MCL 15.361 to 15.369. A person described in this subsection who makes or assists in making a report or complaint, or who assists the department as described in this subsection, is presumed to have acted in good faith. The immunity from civil or criminal liability granted under this subsection extends only to acts done pursuant to this article.
(2) Unless a person described in subsection (1) otherwise agrees in writing, the department shall keep the person's identity confidential until disciplinary proceedings under this article.
are initiated against the subject of the report or complaint and the person making or assisting in originating, investigating, or preparing the report or complaint is required to testify in the disciplinary proceedings. If disclosure of the person's identity is considered by the department to be essential to the disciplinary proceedings and if the person is the complainant, the department shall give the person an opportunity to withdraw the complaint before disclosure.

333.20201 Policy describing rights and responsibilities of patients or residents; adoption; posting and distribution; contents; additional requirements; discharging, harassing, retaliating, or discriminating against patient exercising protected right; exercise of rights by patient's representative; informing patient or resident of policy; designation of person to exercise rights and responsibilities; additional patients' rights; definitions.

Sec. 20201.
...(l) A patient or resident is entitled to be free from mental and physical abuse and from physical and chemical restraints, except those restraints authorized in writing by the attending physician for a specified and limited time or as are necessitated by an emergency to protect the patient or resident from injury to self or others, in which case the restraint may only be applied by a qualified professional who shall set forth in writing the circumstances requiring the use of restraints and who shall promptly report the action to the attending physician. In case of a chemical restraint, a physician shall be consulted within 24 hours after the commencement of the chemical restraint.

333.21771 Abusing, mistreating, or neglecting patient; reports; investigation; retaliation prohibited.

Sec. 21771.
(1) A licensee, nursing home administrator, or employee of a nursing home shall not physically, mentally, or emotionally abuse, mistreat, or harmfully neglect a patient.
(2) A nursing home employee who becomes aware of an act prohibited by this section immediately shall report the matter to the nursing home administrator or nursing director. A nursing home administrator or nursing director who becomes aware of an act prohibited by this section immediately shall report the matter by telephone to the department of public health, which in turn shall notify the department of social services.
(3) Any person may report a violation of this section to the department.
(4) A physician or other licensed health care personnel of a hospital or other health care facility to which a patient is transferred who becomes aware of an act prohibited by this section shall report the act to the department.
(5) Upon receipt of a report made under this section, the department shall make an investigation. The department may require the person making the report to submit a written report or to supply additional information, or both.

Popular name: Act 368
4658.0110 INCIDENT AND ACCIDENT REPORTING.

All persons providing services in a nursing home must report any accident or injury to a resident, and the nursing home must immediately complete a detailed incident report of the accident or injury and the action taken after learning of the accident or injury.

STAT AUTH: MS s 144A.04; 144A.08; 256B.431
HIST: 20 SR 303
Current as of 01/19/05

4658.0220 FREEDOM FROM CORPORAL PUNISHMENT AND INVOLUNTARY SECLUSION.

A resident must be free from corporal punishment and involuntary seclusion.

STAT AUTH: MS s 144A.04; 144A.08
HIST: 21 SR 196
Current as of 01/19/05

4658.0300 USE OF RESTRAINTS.

Subpart 1. Definitions. For purposes of this part, the following terms have the meanings given.
A. "Physical restraints" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. Physical restraints include, but are not limited to, leg restraints, arm restraints, hand mitts, soft ties or vests, and wheelchair safety bars. Physical restraints also include practices which meet the definition of a restraint, such as tucking in a sheet so tightly that a resident confined to bed cannot move; bed rails; chairs that prevent rising; or placing a resident in a wheelchair so close to a wall that the wall prevents the resident from rising. Bed rails are considered a restraint if they restrict freedom of movement. If the bed rail is used solely to assist the resident in turning or to help the resident get out of bed, then the bed rail is not used as a restraint. Wrist bands or devices on clothing that trigger electronic alarms to warn staff that a resident is leaving a room or area do not, in and of themselves restrict freedom of movement and should not be considered restraints.
B. "Chemical restraints" means any psychopharmacologic drug that is used for discipline or convenience and is not required to treat medical symptoms.
C. "Discipline" means any action taken by the nursing home for the purpose of punishing or penalizing a resident.
D. "Convenience" means any action taken solely to control resident behavior or maintain a resident with a lesser amount of effort that is not in the resident's best interest.
E. "Emergency measures" means the immediate action necessary to alleviate an unexpected situation or sudden occurrence of a serious and urgent nature.
Subp. 2. Freedom from restraints. Residents must be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

Subp. 3. Emergency use of restraint.
A. If a resident exhibits behavior which becomes a threat to the health or safety of the resident or others, the nurse or person in charge of the nursing home, if other than a nurse, must take temporary, emergency measures to protect the resident and other persons in the nursing home, and the physician must be called immediately.
B. If a restraint is needed, a physician's order must be obtained which specifies the duration and circumstances under which the restraint is to be used.
C. The resident's legal representative or interested family member must be notified when temporary emergency measures are taken.

Subp. 4. Decision to apply restraint. The decision to apply a restraint must be based on the comprehensive resident assessment. The least restrictive restraint must be used and incorporated into the comprehensive plan of care. The comprehensive plan of care must allow for progressive removal or the progressive use of less restrictive means. A nursing home must obtain an informed consent for a resident placed in a physical or chemical restraint. A physician's order must be obtained for a physical or chemical restraint which specifies the duration and circumstances under which the restraint is to be used, including the monitoring interval. Nothing in this part requires a resident to be awakened during the resident's normal sleeping hours strictly for the purpose of releasing restraints.

Subp. 5. Physical restraints. At a minimum, for a resident placed in a physical restraint, a nursing home must also:
A. develop a system to ensure that the restrained resident is monitored at the interval specified in the written order from the physician;
B. assist the resident as often as necessary for the resident's safety, comfort, exercise, and elimination needs;
C. provide an opportunity for motion, exercise, and elimination for not less than ten minutes during each two-hour period in which a restraint is employed; and
D. release the resident from the restraint as quickly as possible.

STAT AUTH: MS s 144A.04; 144A.08; 256B.431
HIST: 20 SR 303; 21 SR 196
Current as of 01/19/05
determined that the resident is a threat to himself or to others. Physical and chemical restraints shall be used for medical conditions that warrant the use of a restraint. Restraint is not to be used for discipline or staff convenience. The facility must have policies and procedures addressing the use and monitoring of restraint. A physician order for restraint must be countersigned within 24 hours of the emergency application of the restraint.

MISSOURI

19 CSR 30-85.042 Administration and Resident Care Requirements for New and Existing Intermediate Care and Skilled Nursing Facilities

...(76) Facility staff shall check residents requiring restraints every thirty (30) minutes and exercise the residents every two (2) hours. II/III

(77) Facilities shall not use locked restraints.

...(81) Staff shall inform the administrator of accidents, injuries and unusual occurrences which adversely affect, or could adversely affect, the resident. The facility shall develop and implement responsive plans of action. III

19 CSR 30-88.010 Resident Rights

...(21) The exercise of resident rights shall be free from restraint, interference, coercion, discrimination or reprisal. II/III

(22) Each resident shall be free from abuse. Abuse is the infliction of physical, sexual, or emotional injury or harm and includes verbal abuse, corporal punishment, and involuntary seclusion. I

(23) The facility shall develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of any resident and misappropriation of resident property and funds, and develop and implement policies that require a report to be made to the department for any resident or to both the department and the Department of Mental Health for any vulnerable person whom the administrator or employee has reasonable cause to believe has been abused or neglected. II/III

(24) The facility shall ensure all staff are trained on the applicable laws and rules regarding reporting of suspected abuse and neglect of any resident. II

(25) If the administrator or other employee of a long-term care facility has reasonable cause to believe that a resident of the facility has been abused or neglected, the administrator or employee shall immediately report or cause a report to be made to the department. Any administrator or other employee of a long-term care facility having reasonable cause to suspect that a vulnerable person has been subjected to abuse or neglect or observes such a person being subjected to conditions or circumstances that would reasonably result in abuse or neglect shall immediately report or cause a report to be made to the department and to the Department of Mental Health. I/II
(26) The resident has the right to be free from any physical or chemical restraint except as follows:
(A) When used to treat a specified medical symptom as a part of a total program of care to assist the resident to attain or maintain the highest practicable level of physical, mental, or psychosocial well-being. The use of restraints must be authorized in writing by a physician for a specified period of time; or
(B) When necessary in an emergency to protect the resident from injury to himself or herself or to others, in which case restraints may be authorized by professional personnel so designated by the facility. The action taken shall be reported immediately to the resident’s physician and an order obtained which shall include the reason for the restraint, when the restraint may be removed, the type of restraint, and any other actions required. When restraints are indicated, only devices that are the least restrictive for the resident and consistent with the resident’s total treatment program shall be used.

MONTANA

50-5-1104. Rights of long-term care facility residents.
...(h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial exploitation. Facility staff shall report to the department and the long-term care ombudsman any suspected incidents of abuse under the Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, Title 52, chapter 3, part 8.

37.40.408 FACILITY POLICY REQUIREMENTS

(1) The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

(2) The policies must provide that the facility will:
(a) not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion;
(b) not employ individuals who have been found guilty of abusing, neglecting, or mistreating residents by a court of law, or have had a finding entered into the nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property;
(c) report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the nurse aide registry maintained by the Department of Public Health and Human Services;
(d) ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility, the long term care ombudsman, and the Department of Public Health and Human Services in accordance with 52-3-811, MCA;
(e) have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress;
(f) ensure that the results of all investigations must be reported to the administrator of the
facility and to the Department of Public Health and Human Services in accordance with 52-3-811, MCA, within five working days of the incident; and
(g) if the alleged violation is verified, take appropriate corrective action. (History: 53-6-113, MCA; IMP, 53-6-101, 53-6-113, MCA; NEW, 2004 MAR p. 1479, Eff. 7/2/04.)

37.106.2902 DEFINITIONS The following definitions, in addition to those contained in 50-5-1202, MCA, apply to this chapter:
(1) “Assistive device” means any device whose primary purpose is to maximize the independence and the maintenance of health of an individual who is limited by physical injury or illness, psychosocial dysfunction, mental illness, developmental or learning disability, the aging process, cognitive impairment or an adverse environmental condition. If the device is primarily used to restrict an individual’s movement, it is considered a safety device or restraint rather than an assistive device.
(4) “Postural support” means an appliance or device used to achieve proper body position and balance, to improve a resident’s mobility and independent functioning, or to position rather than restrict movement, including, but not limited to, preventing a resident from falling out of a bed or chair. A postural support does not include tying a resident’s hands or feet or otherwise depriving a resident of their use.
(5) “Restraint” means any method (chemical or physical) of restricting a person’s freedom of movement that prevents them from independent and purposeful functioning. This includes seclusion, controlling physical activity, or restricting normal access to the resident's body that is not a usual and customary part of a medical diagnostic or treatment procedure to which the resident or the authorized representative has consented.
(6) “Safety devices”, as defined in 50-5-1202, MCA, means side rails, tray tables, seat belts and other similar devices. The department interprets that definition to mean that a safety device is used to maximize the independence and the maintenance of health and safety of an individual by reducing the risk of falls and injuries associated with the resident’s medical symptom.

37.106.2901 RULE APPLICABILITY

(1) The provisions of the rules in this subchapter that govern the use of restraints do not apply to a category A personal care facility as defined in 50-5-227(2)(a), MCA, because such a facility is prohibited by law from accepting and serving any resident who is in need of medical, chemical or physical restraint. (History: Sec. 50-5-103, 50-5-226, 50-5-227 and 50-5-1205, MCA; IMP, Sec. 50-5-103, 50-5-226, 50-5-227, 50-5-1202 and 50-5-1203, MCA; NEW, 2002 MAR p. 3159, Eff. 11/15/02.)

37.106.2904 USE OF RESTRAINTS, SAFETY DEVICES, ASSISTIVE DEVICES, AND POSTURAL SUPPORTS

(1) The application or use of a restraint, safety device or postural support is prohibited except to treat a resident's medical symptoms and may not be imposed for purposes of coercion, retaliation, discipline or staff convenience.
(2) A restraint may be a safety device when requested by the resident or the resident’s authorized representative or physician to reduce the risk of falls and injuries associated with a resident’s medical symptoms and used in accordance with 50-5-1201, MCA.

(3) To the extent that a resident needs emergency care, restraints may be used for brief periods:
(a) to permit medical treatment to proceed unless the health care facility has been notified that the resident has previously made a valid refusal of the treatment in question; or
(b) if a resident’s unanticipated violent or aggressive behavior places the resident or others in imminent danger, in which case the resident does not have the right to refuse the use of restraints. In this situation:
(i) the use of restraints is a measure of last resort to protect the safety of the resident or others and may be used only if the facility determines and documents that less restrictive means have failed;
(ii) the size, gender, physical, medical and psychological condition of the resident must be considered prior to the use of a restraint;
(iii) a licensed nurse shall contact a resident’s physician for restraint orders within one hour of application of a restraint;
(iv) the licensed nurse shall document in the resident’s clinical record the circumstances requiring the restraints and the duration; and
(v) a restrained resident must be monitored as their condition warrants, and restraints must be removed as soon as the need for emergency care has ceased and the resident’s safety and the safety of others can be assured.

(4) In accordance with the Montana Long-Term Care Residents' Bill of Rights, the resident or authorized representative is allowed to exercise decision-making rights in all aspects of the resident’s health care or other medical regimens, with the exception of the circumstances described in (3)(b).

(5) Single or two quarter bed rails that extend the entire length of the bed are prohibited from use as a safety or assistive device; however, a bed rail that extends from the head to half the length of the bed and used primarily as a safety or assistive device is allowed.

(6) Physician-prescribed orthopedic devices used as postural supports are not considered safety devices or restraints and are not subject to the requirements for safety devices and restraints contained in these rules.

(7) Whenever a restraint, safety device, or postural support is used that restricts or prevents a resident from independent and purposeful functioning, the resident must be provided the opportunity for exercise and elimination needs at least every two hours, or more often as needed, except when a resident is sleeping.

(8) All methods of restraint, safety devices, assistive devices and postural supports must be properly fastened or applied in accordance with manufacturer’s instructions and in a manner that permits rapid removal by the staff in the event of fire or other emergency. (History: Sec. 50-5-103, 50-5-226, 50-5-227 and 50-5-1205, MCA; IMP, Sec. 50-5-103, 50-5-226, 50-5-227, 50-5-1201, 50-5-1202 and 50-5-1204, MCA; NEW, 2002 MAR p. 3159, Eff. 11/15/02.)
37.106.2905 DOCUMENTATION IN RESIDENT'S MEDICAL RECORDS

(1) Prior to the use of a restraint or safety device, the following items must be included in the resident's record:
(a) a consent form signed by the resident or authorized representative that includes documentation that:
(i) the resident or the resident's authorized representative was given a written explanation of the alternatives and any known risks associated with the use of the restraint or safety device;
(ii) cites any pre-existing condition that may place a patient at risk of injury; and
(b) written authorization from the resident's primary physician that specifies the medical symptom that the restraint or safety device is intended to address and the type of circumstances and duration under which the restraint or safety device is to be used.

(2) When a restraint or safety device is used, the following items must be documented in the resident's record:
(a) frequency of monitoring in accordance with documented facility policy;
(b) assessment and provision of treatment if necessary for skin care, circulation and range of motion; and
(c) any unusual occurrences or problems.

(3) During a quarterly re-evaluation, a facility must consider:
(a) using the least restrictive restraint or safety device to restore the resident to a maximum level of functioning;
(b) causes for the medical symptoms that led to the use of the restraint or safety device; and
(c) alternative safety measures if a restraint or safety device is removed. Before removing a restraint or safety device, the resident or the authorized representative and the attending physician must be consulted. (History: Sec. 50-5-103, 50-5-226, 50-5-227 and 50-5-1205, MCA; IMP, Sec. 50-5-103, 50-5-226, 50-5-227, 50-5-1201, 50-5-1203 and 50-5-1204, MCA; NEW, 2002 MAR p. 3159, Eff. 11/15/02.)

37.106.2908 STAFF TRAINING

(1) Restraints, safety devices or postural supports may only be applied by staff who have received training in their use, as specified below and appropriate to the services provided by the facility.

(2) Staff training shall include, at a minimum, information and demonstration in:
(a) the proper techniques for applying and monitoring restraints, safety devices or postural supports;
(b) skin care appropriate to prevent redness, breakdown and decubiti;
(c) active and passive assisted range of motion to prevent joint contractures;
(d) assessment of blood circulation to prevent obstruction of blood flow and promote adequate circulation to all extremities;
(e) turning and positioning to prevent skin breakdown and keep the lungs clear;
(f) potential risk for residents to become injured or asphyxiated because the resident is entangled in a bed rail or caught between the bed rail and mattress if the mattress or mattress pad is ill-fitted or is out of position;
(g) provision of sufficient bed clothing and covering to maintain a normal body
temperature;
(h) provision of additional attention to meet the physical, mental, emotional and social
needs of the resident; and
(i) techniques to identify behavioral symptoms that may trigger a resident's need for a
restraint or safety device and to determine possible alternatives to their use. These include:
   (i) observing the intensity, duration and frequency of the resident's behavior;
   (ii) identifying patterns over a period of time and factors that may trigger the
       behavior; and
   (iii) determining if the resident's behavior is:
       (A) new or if there is a prior history of the behavior;
       (B) the result of mental, emotional, or physical illness;
       (C) or a radical departure from the resident's normal personality.

(3) Training described in (2) must meet the following criteria:
(a) training must be provided by a licensed health care professional or a social worker with
experience in a health care facility; and
(b) a written description of the content of this training, a notation of the person, agency,
organization or institution providing the training, the names of staff receiving the training,
and the date of training must be maintained by the facility for two years.

(4) Refresher training for all direct care staff caring for restrained residents and applying
restraints, safety devices or postural supports must be provided at least annually or more
often as needed. The facility must:
(a) ensure that the refresher training encompasses the techniques described in (2) of this
rule; and
(b) for two years after each training session, maintain a record of the refresher training and
a description of the content of the training. (History: Sec. 50-5-103, 50-5-226, 50-5-227 and
50-5-1205, MCA; IMP, Sec. 50-5-103, 50-5-226, 50-5-227, 50-5-1204 and 50-5-1205, MCA;
NEW, 2002 MAR p. 3159, Eff. 11/15/02.)

50-5-1202. Definitions. As used in this part, the following definitions apply:
(6) "Safety devices" means side rails, tray tables, seatbelts, and other similar devices.
(b) The term does not include protective restraints as defined in 21 CFR 880.6760.

50-5-1201. Use of safety devices -- request and consent -- allowed individuals -- intent.

(1) The following individuals may request the use of and provide informed consent for the
use of certain safety devices aimed at ensuring the physical safety of the resident by
reducing the risk of falls and injuries associated with a resident's medical symptom even if
the resident cannot easily remove the device or the device restricts the resident's total
freedom of movement:
(a) a resident;
(b) a family member of a resident who is unable to make decisions because the resident has
a communication barrier or has been found by a physician to be medically incapable of
granting informed consent, as provided in 50-5-1203;
(c) a guardian, as defined in 72-1-103; or
(d) a person granted the power of attorney for health care decisions.
(2) A concern for a resident's physical safety or a resident's fear of falling may provide the basis for a medical symptom. A safety device may not be used for the convenience of staff or for disciplinary purposes.

(3) This part is intended to provide residents and authorized or designated representatives with the authority to request and consent to the use of safety devices but is not intended to interfere with the right of licensed health care providers acting within their scope of practice to recommend and order treatments and services, including physical restraints, for residents in their care.

History: En. Sec. 1, Ch. 347, L. 2001.

37.40.106 INTERMEDIATE NURSING CARE
(3) The following personal care services usually indicate the need for intermediate care. The incontinent patient needs to be dressed and bathed, may be a bed to chair patient, may need some restraints and constant watching for safety, needs help with toileting, needs help for ambulation or constant watching to prevent falls, needs help with eating, may be confused or senile and at times uncooperative, may have impairment, such as blindness or deafness and these impairments require some extra attention.

(History: Sec. 53-6-113, MCA; IMP, Sec. 53-6-113, MCA; NEW, Eff. 1/3/77; TRANS, from SRS, 2000 MAR p. 489.)

37.40.110 SERVICES FURNISHED
The following sections list those services commonly furnished by nursing personnel in skilled nursing homes and their usual skill classification. Any generally non-skilled service could, because of special medical complications in an individual case, require skilled performance, supervision or observation. However, the complications and special services involved should be documented by nursing notes and/or physician orders with progress notes. These records should include the observations made of physical findings, new developments in the course of the disease, the carrying out of details of treatment prescribed, and the results of the treatment.

...(9) The use of protective restraints generally does not require services of skilled personnel. This includes such devices as bed rails, soft binders, and wheelchair patient supports.

50-5-1104. Rights of long-term care facility residents.
(1) The state adopts by reference for all long-term care facilities the rights for long-term care facility residents applied by the federal government to facilities that provide skilled nursing care or intermediate nursing care and participate in a medicaid or medicare program (42 U.S.C. 1395i-3(a) and 1396r(a), as implemented by regulation).
(2) In addition to the rights adopted under subsection (1), the state adopts for all residents of long-term care facilities the following rights:
(h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial exploitation. Facility staff shall report to the department and the long-term care ombudsman any suspected incidents of abuse under the Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, Title 52, chapter 3, part 8.

52-3-801. Short title. This part may be cited as the "Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act".
52-3-802. Legislative findings and purpose. The legislature finds that a need exists to provide for cooperation among law enforcement officials and agencies, courts, and state and county agencies providing human services in preventing the abuse, sexual abuse, neglect, and exploitation of Montana’s elderly persons and persons with developmental disabilities through the identification, reporting, and prosecution of acts of abuse, sexual abuse, neglect, and exploitation.


(1) "Abuse" means:
(a) the infliction of physical or mental injury; or
(b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(3) "Exploitation" means:
(a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person’s money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person’s money, assets, or property;
(b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person’s money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person’s money, assets, or property;
(c) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person’s money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person’s money, assets, or property;

(7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a person with a developmental disability or who has voluntarily assumed responsibility for the person’s care, including an employee of a public or private residential institution, facility, home, or agency, to provide
food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the person with a developmental disability.

(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2) or (3), the person 60 years of age or older must be unable to provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.(11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

52-3-804. Duties of department.

(1) The department shall investigate reports of abuse, sexual abuse, neglect, or exploitation received pursuant to 52-3-811(1)(a).
(2) The department shall prepare an annual report of the information obtained pursuant to the reporting requirement of this part.
(3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part 2, for an older person or a person with a developmental disability alleged to have been abused, sexually abused, neglected, or exploited.
(4) If a person alleged to be abused, sexually abused, neglected, or exploited pursuant to this part or the person's caretaker refuses to allow a representative of the department entrance to the premises for the purpose of investigating a report made pursuant to 52-3-811(1)(a), the district court in the county where the person is found may order a law enforcement officer or a department social worker to enter the premises to conduct an investigation upon finding that there is probable cause to believe that the person is abused, sexually abused, neglected, or exploited.
(5) If a representative of the department has reasonable grounds to believe that an older person or a person with a developmental disability alleged to be abused, sexually abused, neglected, or exploited is suffering from abuse, sexual abuse, neglect, or exploitation that presents a substantial risk of death or serious physical injury, the department may:
   (a) provide voluntary protective services as provided in subsection (3); or
   (b) if the department representative has reasonable grounds to believe that the person is incapacitated, provide emergency protective services as follows:
       (i) arrange or facilitate an appropriate emergency protective service placement;
       (ii) transport or arrange for the transport of the person to the appropriate placement;
       (iii) not later than 2 judicial days following placement of the person, either:
           (A) provide voluntary protective services as provided under subsection (3); or
           (B) petition the district court to act as temporary guardian or appoint a temporary guardian as provided in 72-5-317.


52-3-805. Adult protective service teams.
(1) The county attorney or the department of public health and human services shall convene one or more temporary or permanent interdisciplinary adult protective service teams. These teams shall assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to older persons and persons with developmental disabilities who are victims of abuse, sexual abuse, neglect, or exploitation. The supervisor of adult protective services of the department of public health and human services or the department’s designee shall serve as the team's coordinator. Members must include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney or the county attorney’s designee, who is an attorney. Members may include other appropriate persons designated by the county attorney or the department.

History: En. Sec. 1, Ch. 662, L. 1985; amd. Sec. 12, Ch. 609, L. 1987; Sec., MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 4, Ch. 167, L. 1993; amd. Sec. 2, Ch. 421, L. 1993; amd. Sec. 2, Ch. 426, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 364, Ch. 546, L. 1995.

52-3-811. Reports.

(1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a person with a developmental disability known to them in their professional or official capacities has been subjected to abuse, sexual abuse, neglect, or exploitation, they shall:
   (a) if the person is not a resident of a long-term care facility, report the matter to:
      (i) the department or its local affiliate; or
      (ii) the county attorney of the county in which the person resides or in which the acts that are the subject of the report occurred;
   (b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, sexual abuse, neglect, or exploitation contained in the report to be substantially true, forward a copy of the report to the county attorney as provided in subsection (1)(a)(ii).

   (2) If the report required in subsection (1) involves an act or omission of the department that may be construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the person with a developmental disability resides or in which the acts that are the subject of the report occurred.

   (3) Professionals and other persons required to report are:
      (a) a physician, resident, intern, professional or practical nurse, physician assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;
      (b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;
      (c) an ambulance attendant;
      (d) a social worker or other employee of the state, a county, or a municipality assisting an older person or a person with a developmental disability in the application for or receipt of
public assistance payments or services;
(e) a person who maintains or is employed by a roominghouse, retirement home or
complex, nursing home, group home, adult foster care home, adult day-care center, or
assisted living facility or an agency or individual that provides home health services or
personal care in the home;
(f) an attorney, unless the attorney acquired knowledge of the facts required to be reported
from a client and the attorney-client privilege applies;
(g) a peace officer or other law enforcement official;
(h) a person providing services to an older person or a person with a developmental
disability pursuant to a contract with a state or federal agency; and
(i) an employee of the department while in the conduct of the employee’s duties. (4) Any
other persons or entities may, but are not required to, submit a report in accordance with
subsection (1).

History: En. Sec. 4, Ch. 623, L. 1983; amd. Sec. 13, Ch. 548, L. 1985; amd. Sec. 11, Ch. 609, L.
1987; amd. Sec. 5, Ch. 198, L. 1989; Sec., MCA 1989; redes. by Code Commissioner, 1991;
amd. Sec. 5, Ch. 167, L. 1993; amd. Sec. 3, Ch. 421, L. 1993; amd. Sec. 154, Ch. 418, L. 1995;
amd. Sec. 7, Ch. 465, L. 1995; amd. Sec. 365, Ch. 546, L. 1995; amd. Sec. 4, Ch. 196, L. 1999;
amd. Sec. 9, Ch. 54, L. 2003.

52-3-812. Content of report.
(1) The report required by 52-3-811 may be made in writing or orally, by telephone or in
person. A person who receives an oral report shall prepare it in writing as soon as possible.
(2) The report referred to under this section must contain:
(a) the names and addresses of the older person or the person with a developmental
disability and the person, if any, responsible for that person’s care;
(b) the name and address, if available, of the person who is alleged to have abused, sexually
abused, neglected, or exploited the older person or the person with a developmental
disability;
(c) to the extent known, the person’s age and the nature and extent of the abuse, sexual
abuse, neglect, or exploitation, including any evidence of previous injuries, abuse, sexual
abuse, neglect, or exploitation sustained by the older person or the person with a
developmental disability and any evidence of prior instances of abuse, sexual abuse, neglect,
or exploitation of other older persons or persons with developmental disabilities
committed by the person alleged to have committed abuse, sexual abuse, neglect, or
exploitation; and
(d) the name and address of the person making the report.

History: En. Sec. 5, Ch. 623, L. 1983; amd. Sec. 6, Ch. 198, L. 1989; Sec., MCA 1989; redes. by
Code Commissioner, 1991; amd. Sec. 6, Ch. 167, L. 1993; amd. Sec. 7, Ch. 465, L. 1995; amd.
Sec. 5, Ch. 196, L. 1999.

52-3-813. Confidentiality.
(1) The case records of the department, its local affiliate, the county attorney, and the court
concerning actions taken under this part and all reports made pursuant to 52-3-811 must
be kept confidential except as provided by this section. For the purposes of this section, the
term “case records” includes records of an investigation of a report of abuse, sexual abuse,
neglect, or exploitation.
(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who is caring for an older person or a person with a developmental disability who the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the person with a developmental disability if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, sexually abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse, neglect, or exploitation and if the identity of the older person or the person with a developmental disability who is the subject of the report is not disclosed to the researcher;

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(f) an authorized representative of a provider of services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability if:

(i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if information contained in the records or reports of the department is relevant to the case;

(ii) disclosure to the provider is determined by the department to be necessary to protect an interest of a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability; or

(iii) the person is carrying out background screening or employment- or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with an older person or a person with a developmental disability through employment or volunteer activities if the disclosure is limited to information that indicates a risk to an older person or a person with a developmental disability posed by the employee or volunteer, as determined by the department. A request for information under this subsection must be made in writing.

(g) an employee of the department if disclosure of the record or report is necessary for administration of a program designed to benefit a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability;

(h) an authorized representative of a guardianship program approved by the department if the department determines that disclosure to the program or to a person designated by the program is necessary for the proper provision of guardianship services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability;

(i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794e, 42 U.S.C. 6042, and 42 U.S.C. 10805;

(j) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and does not violate the privacy rights of the older person,
person with a developmental disability, or alleged perpetrator of abuse, sexual abuse, neglect, or exploitation, as determined by the department;
(k) a coroner or medical examiner who is determining the cause of death of an older person or a person with a developmental disability;
(l) a person about whom a report has been made and that person's attorney with respect to relevant records pertaining to that person only without disclosing the identity of the person who made the report or any other person whose safety might be endangered through disclosure;
(m) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability; and
(n) a department, agency, or organization, including a federal agency, military reservation, or tribal organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability and that meets the disclosure criteria contained in this section.

(3) The records and reports required to be kept confidential by subsection (1) must be disclosed, upon request, to the following persons or entities in this or any other state:
(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;
(b) a court that has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;
(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, sexually abused, neglected, or exploited an older person or a person with a developmental disability is the holder of a license, permit, or certificate issued by the department of labor and industry under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate.


52-3-815. Evidence of abuse, sexual abuse, neglect, or exploitation to be gathered and submitted.
(1) A person or agency receiving a report of suspected abuse, sexual abuse, neglect, or exploitation under 52-3-811 shall prepare a written description of the conditions regarded as evidence of abuse, sexual abuse, neglect, or exploitation and may, with the consent of an allegedly abused, sexually abused, neglected, or exploited older person or person with a developmental disability or without consent of the person if it appears that the person is an incapacitated person, take or cause to be taken photographs of an area of trauma visible on the body of the allegedly abused, sexually abused, neglected, or exploited person and regarded as evidence of abuse, sexual abuse, neglect, or exploitation.
(2) A physician required to report under 52-3-811 may, with the consent of an allegedly
abused, sexually abused, neglected, or exploited older person or person with a
developmental disability or without consent of the person if it appears that the person is an
incapacitated person, require x-rays or other appropriate medical tests or procedures that
would, in the professional opinion of the physician, assist in establishing evidence related to
the allegation of abuse, sexual abuse, neglect, or exploitation.
(3) Evidence authorized to be gathered under this section must be submitted with the
report required under 52-3-811 to the authorities designated in 52-3-811 as soon as
possible after submission of the report.
History: En. Sec. 3, Ch. 716, L. 1991; amd. Sec. 8, Ch. 167, L. 1993; amd. Sec. 7, Ch. 465, L.
1995; amd. Sec. 7, Ch. 196, L. 1999.

NEBRASKA

12-006.02 Administrator … The administrator is responsible for:
…7. Ensuring that facility staff identify and review incidents and accidents, resident
complaints and concerns, patterns and trends in overall facility operation such as
provisions of resident care and service and take action to alleviate problems and prevent
recurrence;
8. Ensuring that a report is made on any alleged abuse of a resident by a staff member,
voluteer, family member, visitor, or any other person to Adult Protective Services or local
law enforcement as directed in the Adult Protective Services Act, Neb. Rev. Stat. §§28-348 to
28-387. All alleged abuse must be investigated and residents protected from further abuse
throughout the investigation.

12-006.04A3 Criminal Background and Registry Checks:

…12-006.04A3d: The facility must not employ a person with adverse findings on the Nurse
Aide Registry regarding resident abuse, neglect, or misappropriation of resident property.

12-006.04B1 Initial Orientation: The facility must ensure each employee of the facility
receives initial orientation within two weeks that includes as a minimum, but is not limited
to:
…3. Information on abuse, neglect, and misappropriation of money or property of a resident
and reporting requirements according to the Adult Protective Services Act, and facility
procedures;

12-006.05 Resident Rights:
The facility must inform residents of their rights in writing. The operations of the facility
must afford residents the opportunity to exercise their rights, which must include, but are
not limited to, the following. Residents must have the right to:
…8. Be free from chemical and physical restraints imposed for the purposes of discipline or
convenience, and not required to treat the resident’s medical symptoms;
9. Be free from abuse, neglect and misappropriation of their money and personal property.
12-006.06 Complaints and Grievances: The facility must establish and implement procedures for addressing complaints and grievances from residents, resident groups, employees and others.

12-006.06A Submission of Complaints and Grievances: The facility must establish and implement a procedure on submission of individual or collective complaints and grievances. The facility must prominently display in plain view of residents, employees, and others the procedure for submitting complaints and grievances.

12-006.06B Resolution of Complaints and Grievances: The facility must establish and implement a procedure for investigating and assessing the validity of, and addressing complaints and grievances.

12-006.06C The facility must ensure that the telephone numbers and addresses of the Department’s Investigations Division and the state long term care ombudsman are readily available to residents, employees and others for further course of redress.

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NEVADA

NAC 449.74489 Physical or chemical restraint of patients. (NRS 449.037)

1. A facility for skilled nursing shall not use physical or chemical restraints on a patient to discipline the patient or for the convenience of members of the staff.

2. Physical or chemical restraints may be used only if required to treat a patient’s medical symptoms.

3. As used in this section:
   (a) “Chemical restraints” means a psychopharmacologic drug that is not required to treat the medical symptoms of a patient, but is used to discipline a patient or for the convenience of members of the staff of a facility for skilled nursing.
   (b) “Physical restraints” means any manual method or physical or mechanical device, material or equipment attached or adjacent to a patient’s body that cannot be removed easily by the patient and restricts the freedom of movement of the patient or normal access to the patient’s body.

(Added to NAC by Bd. of Health by R051-99, eff. 9-27-99)

NAC 449.74491 Prohibition of certain practices regarding patients; investigation of certain violations and injuries to patients; unfit employees. (NRS 449.037)

1. A facility for skilled nursing shall adopt and carry out written policies and procedures that prohibit:
   (a) The mistreatment and neglect of the patients in the facility;
   (b) The verbal, sexual, physical and mental abuse of the patients in the facility;
(c) Corporal punishment and involuntary seclusion; and
(d) The misappropriation of the property of the patients in the facility.

2. A facility for skilled nursing shall adopt procedures which ensure that all alleged violations of the policies adopted pursuant to subsection 1 and injuries to patients of unknown origin are reported immediately to the administrator of the facility, to the Bureau and to other officials in accordance with state law, and are thoroughly investigated. The procedures must ensure that further violations are prevented while the investigation is being conducted.

3. The results of any investigation must be reported:
   (a) To the administrator of the facility or his designated representative and to the Bureau within 5 working days after the alleged violation is reported.
   (b) In the manner prescribed in NRS 200.5093 and 432B.220 and chapter 433 of NRS. The administrator of the facility shall take appropriate action to correct any violation.

4. A facility for skilled nursing:
   (a) Shall not employ a person if:
      (1) He has been convicted of abusing, neglecting or mistreating a patient; or
      (2) A finding that he has abused, neglected, mistreated or misappropriated the property of a patient has been entered in the state nursing assistants registry maintained by the State Board of Nursing.
   (b) Shall report to the State Board of Nursing, the Bureau or another appropriate occupational licensing board any judicial action taken against an employee or former employee of the facility which would indicate that the employee is unfit to be employed as a member of the staff of a facility for skilled nursing.

   (Added to NAC by Bd. of Health by R051-99, eff. 9-27-99)
information is available, to report an unusual incident and provide the following information:

a. The nursing home name;
b. A description of the incident, including identification of injuries, if applicable;
c. The name of the licensee(s) or personnel involved in, witnessing or responding to the unusual incident;
d. The name of resident(s) involved in or witnessing the unusual incident;
e. The date and time of the unusual incident;
f. The action taken in direct response to the unusual incident, including any follow-up;
g. If medical intervention was required, by whom and the date and time;
h. Whether the resident’s guardian or agent, if any, or personal representative was notified;
i. The signature of the person reporting the unusual incident; and
j. The date and time the resident’s licensed practitioner was notified;

(2) For incidents where abuse, neglect, mistreatment or misappropriation of property are suspected, the licensee shall meet the requirement of (1) above by faxing the information required by (1)(a)-(j) above to the office of the long-term care ombudsman at (603) 271-5574;

(3) Immediately notify the local police department, the department, guardian, agent or personal representative, if any, when a resident, who has been assessed or is known as being a danger to self or others, has an unexplained absence after the licensee has searched the building and the grounds of the nursing home; and

(4) Submit additional information if required by the department.

He-P 803.15 Required Services

... (n) Pursuant to RSA 151:21, IX, residents shall be free from chemical and physical restraints except when they are authorized in writing by a licensed practitioner for a specific and limited time necessary to protect the resident or others from injury, or as permitted by the CMS conditions of participation, or as allowed by (o) below and He-P 803.21(d).

(o) Pursuant to RSA 151:21, IX, in an emergency, physical restraints may be authorized by the personnel designated in (p)(3) below in order to protect the resident or others from injury, and such action shall be promptly reported to the resident’s physician and documented in the resident’s clinical record.

(p) The nursing home shall have written policies and procedures for implementing physical, chemical and mechanical restraints, including:

(1) What type of emergency restraints may be used;
(2) When restraints may be used;
(3) What professional personnel may authorize the use of restraints;
(4) The documentation of their use in the resident record including the physician order as applicable;
(5) How the facility plans for reduction of restraint use for any resident requiring restraints;
(6) Initial personnel training and subsequent education and training required to demonstrate competence related to the use of physical, chemical and mechanical restraints;
(7) The least restrictive to the most restrictive method to be utilized to control a resident’s behavior; and
That the training shall be conducted by individuals who are qualified by education, training, and experience.

He-P 803.18 Personnel.

...(c) For all new hires, the licensee shall:
...(3) Verify that the applicant is not on the List of Excluded Individuals and Entities, maintained by the U.S. Department of Health and Human Services Office of Inspector General per 42 USC 1320-a7 or on the BEAS Registry maintained by the department’s bureau of elderly and adult services per RSA 161-F:49.

...(h) All employees shall:
...(2) Not be permitted to maintain their employment if they have been convicted of a felony, sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation of any person in this or any other state by a court of law or had a complaint investigation for abuse, neglect, or exploitation adjudicated and founded by the department unless a waiver has been granted by the department.
...(4) Receive an orientation within the first 3 days of work or prior to the assumption of duties that includes:
...e. Mandatory reporting requirements for abuse or neglect such as those found in RSA 161-F and RSA 169-C:29.

(l) The employee file shall include the following:
...(8) A statement, which shall be signed at the time the initial offer of employment is made and then annually thereafter, stating that he or she:
a. Does not have a felony conviction in this or any other state;
b. Has not been convicted of a sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation or pose a threat to the health, safety or well-being of a resident; and
c. Has not had a finding by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect or exploitation of any person;

He-P 803.21 Restraints.

(a) For CMS certified nursing homes, the use of restraints shall be permitted as allowed by 42 CFR 483.13(a).

(b) For all other facilities, the requirements in (c) through (g) shall apply.

(c) When physical restraints are used, the following requirements shall be met:
(1) Physical restraints shall be used only after less restrictive measures have been found to be ineffective to protect the resident or others from harm;
(2) Except as allowed in (d) below, physical restraints shall be ordered for a specified and limited time by a licensed practitioner; and
(3) The order for the physical restraints in (2) above may be verbal and shall:
  a. Be obtained by a licensed nurse before the physical restraint is administered; and
  b. Be followed with the licensed practitioner’s signature within 14 days.

(d) In an emergency situation, physical restraints may be authorized by a professional staff member designated by the facility in accordance with established policy and procedure under He-P 803.15(p)(3) as follows:
(1) The designated staff member shall promptly report the restraint use and the resident’s behavior to the resident’s licensed practitioner; and
(2) The designated staff member shall document the use of restraints in the resident’s clinical record, in accordance with (g) below.

(e) When chemical restraints are used, the following requirements shall be met:
(1) Chemical restraints shall be used only after less restrictive measures have been found to be ineffective to protect the resident or others from harm;
(2) Chemical restraints shall be ordered for a specified and limited time by a licensed practitioner;
(3) The order for the chemical restraints can be verbal and shall:
   a. Be obtained by a licensed nurse before the chemical restraint is administered; and
   b. Be followed with the licensed practitioner’s signature within 14 days;
(4) Medication used as a chemical restraint may only be administered by a licensed nurse or licensed practitioner;
(5) Standing orders for medications utilized as chemical restraints shall be prohibited; and
(6) It shall be the responsibility of the licensed nurse or licensed practitioner administering the chemical restraint to document the administration of the medication as specified in Hep 803.16(y) and (ac).

(f) When mechanical restraints are used, the following requirements shall be met:
(1) Mechanical restraints shall be used only when less restrictive measures have been found to be ineffective in protecting the resident or others from harm;
(2) Mechanical restraints shall be ordered for a specific and limited time by a licensed practitioner and the order shall include:
   a. The type of restraint to be used;
   b. The reason for the restraint; and
   c. The time intervals at which facility personnel shall check the resident’s well-being and the placement and position of the restraint;
(3) Standing orders for the use of mechanical restraints shall be prohibited;
(4) Mechanical restraints shall not be applied in a manner that impedes circulation; and
(5) Locked, secured or alarmed doors or elevators, or units within a nursing home, anklets, bracelets and similar devices that cause a door to automatically lock when approached, thereby preventing a resident from freely exiting the nursing home or unit within shall not be considered restraints provided they meet the requirements of the applicable building and fire safety codes and are documented in the care plan.

(g) The use of all restraints shall be documented in the resident’s clinical record according to facility policy, including:
(1) The behavior and actions of the resident that necessitated the use of a restraint;
(2) The authorization given to restrain the resident;
(3) The type of restraint used;
(4) The length of time the resident was restrained;
(5) The effects of the restraint on the resident;
(6) The report to the resident’s licensed practitioner and all actions taken; and
(7) Any orders from the resident’s licensed practitioner. Source. #9856-A, eff 1-26-11
NEW JERSEY

SUBCHAPTER 4. MANDATORY RESIDENT RIGHTS

8:39-4.1 Resident rights

(a) Each resident shall be entitled to the following rights:
5. To be free from physical and mental abuse and/or neglect;
6. To be free from chemical and physical restraints, unless they are authorized by a
physician or advanced practice nurse for a limited period of time to protect the resident or
others from injury. Under no circumstances shall the resident be confined in a locked room
or restrained for punishment, for the convenience of the nursing home staff, or with the use
of excessive drug dosages.

8:39-5.1 Mandatory policies and procedures for access to care

... (d) If a facility has reason to believe, based on a resident's behavior, that the resident
poses a danger to himself or herself or others, and that the facility is not capable of
providing proper care to the resident, then an evaluation should be performed and
documented in accordance with Guidelines for Inappropriate Behavior and Resident to
Resident Abuse in Appendix B, incorporated herein by reference.

8:39-9.4 Mandatory notification

...(e) The facility shall notify the Department immediately by telephone (609-633-8981, or
1-800-7929770 after office hours), followed within 72 hours by written confirmation, of
any of the following:
3. All alleged or suspected crimes which endanger the life or safety of residents or
employees, which are also reportable to the police department, and which result in an
immediate on-site investigation by the police.
   i. In addition, the State Office of the Ombudsman for the Institutionalized Elderly (1-
   877-5826995) shall be immediately notified of any suspected or reported resident
   abuse, neglect, or exploitation of residents aged 60 or older, pursuant to P.L. 1983
   c.43, N.J.S.A. 52:27G-7.1, and the Department shall be immediately notified for
   residents under the age of 60; and
4. All fires, disasters, deaths, and imminent dangers to a resident's life or health resulting
from accidents or incidents in the facility.

8:39-13.4 Mandatory staff education and training for communication

...(c) At least one education training program each year shall be held for all employees on
each of the following topics:
2. Abuse, neglect, or misappropriation of resident property;
   i. Abuse prevention strategies including, but not limited to, identifying, correcting, and
   intervening in situations where abuse, neglect, or misappropriation of resident property is
   likely to occur;
   ii. Identifying events, such as suspicious bruising of residents or patterns and trends that
   may constitute abuse, neglect, or misappropriation of resident property;
   iii. Protecting residents from harm during an investigation of abuse, neglect, or
   misappropriation of resident property;
iv. Identification of staff responsible for investigating and reporting results to the proper authorities;

v. Reporting substantiated incidents to the appropriate local/State/Federal agencies and taking all necessary corrective actions depending on the results of the investigation; and

vi. Reporting to the State nurse aide registry or licensing authorities any knowledge of any actions of any court of law which would indicate that an employee is unfit for service.

8:39-27.1 Mandatory policies, procedures and practices for quality of care

...(c) The interdisciplinary committee or equivalent shall develop, review at least annually, revise as needed, and ensure implementation of written policies and procedures for the use of restraints and assure that the facility continuously attempts to eliminate the need for restraints. Guidance for such policies and procedures is provided in Appendix D of this chapter. Policies shall include the collection of the following data:
1. All emergency restraint applications;
2. Indicators for the frequency of the use of restraints in the facility;

3. Evaluation of all cases in which there is:
   i. A failure to obtain or receive a physician's or advanced practice nurse's order;
   ii. A negative clinical outcome; and

4. Indicators of the frequency of the use of psychopharmacological agents.

(d) All nursing and professional staff of the facility shall receive orientation and annual training in the use of restraints, including at least:
1. Emergency and non-emergency procedures;
2. Practice in the application of restraints and alternative methods of intervention; and
3. Interventions by licensed and non-licensed nursing personnel.

APPENDIX B

GUIDELINE FOR THE MANAGEMENT OF INAPPROPRIATE BEHAVIOR AND RESIDENT TO RESIDENT ABUSE

I. The initial resident assessment should include a psychosocial behavior component with interventions, if appropriate, in the care plan. Reassessment should be done at least quarterly, or at any time when a resident’s pattern of behavior changes. Resident response to interventions should be recorded in the medical record.

II. Inappropriate behavior and/or actions should trigger an immediate reassessment with adjusted interventions; notification of the physician and/or the designated resident representative. Resident response should be recorded in the medical record. The facility’s actions/interventions in response to behavior changes should also be part of the plan of care and should be appropriately recorded. Prompt reassessment of behavioral changes will in most cases avert the continued progression of inappropriate behavior.

III. Inappropriate behavior and/or actions involving other residents should be identified in the records of all involved residents including assessments, interventions and responses. Notifications of physician and/or designated resident representatives should also be recorded in medical records of all involved residents.
IV. Incidents of inappropriate behavior or actions of abuse between residents should result in the following actions, as applicable:
A. Immediate assessments of involved residents.
B. Notification of attending physicians or advanced practice nurses.
C. Interventions and responses of residents.
D. Notification of residents’ designated representatives.
E. Protection of involved residents’ civil and constitutional rights.
F. Determination by administrator of facility’s ability to assure safety and security of all patients.
G. Implementation of emergency or short-term precautions to assure safety while working toward resolution.
H. Notification of police if necessary.

V. In the event that it is determined that a resident must be removed from the facility, the transfer should be initiated in accordance with the provisions of this chapter.

VI. Transfer from the facility should be based on the appropriate evaluation and transfer order of the attending physician, advanced practice nurse, facility medical director and/or consultant psychiatrist.

VII. In the event of an immediate emergency situation only:
1. Have patient removed to emergency room of local hospital for medical and/or psychiatric evaluation and consultation by a physician or advanced practice nurse. Return of patient to the long-term care facility should be based on the physician's or advanced practice nurse’s written notation of the appropriateness of returning the resident to the long-term care setting. The administrator is responsible for the decision to accept or deny the return of the resident according to N.J.A.C. 8:39;
2. A police complaint should be filed against the abuser and have the individual removed. The complaint can be filed by the facility or the abused party; and
3. Notify all agencies (that is, Medicaid if applicable, Ombudsman for the Institutionalized Elderly, if applicable (over 60) and the Department of Health and Senior Services.)

VIII. In the event all guidelines have been followed and resolution has not taken place, assistance should be requested from the Department.

IX. Facility policies and procedures to address inappropriate resident behavior, including resident to resident abuse, should include all of the above outlined actions.

X. To determine resident’s emotional adjustment to the nursing facility, including his/her general attitude, adaptation to surroundings, and change in relationship patterns, the following areas should be evaluated:
1. Sense of Initiative/Involvement
   Intent: To assess degree to which the resident is involved in the life of the nursing home and takes initiative in activities.
   Process: Selected responses should be confirmed by the resident's behavior (either verbal or nonverbal) over the past seven days. The primary source of information is the resident. Secondarily, staff members who have regular contact with the resident should be consulted (for example, nursing assistants, activities personnel, social work staff, or therapists if the person receives active rehabilitation). Also, consider how resident’s cultural standards affect the level of initiative or involvement.
Definition: At ease interacting with others--Consider how resident behaves during time you are together, as well as reports of how resident behaves with other residents, staff, and visitors. Does resident try to shield himself/herself from being with others? Does he/she spend most time alone? How does he/she behave when visited? At ease doing planned or structured activities--Consider how resident responds to such activities. Does he/she feel comfortable with the structure or restricted by it? At ease with self-initiated activities--These include leisure activities (for example, reading, watching TV, talking with friends), and work activities (for example, folding personal laundry, organizing belongings). Does resident spend most of his/her time alone, or does resident always look for someone to find something for him/her to do? Establishes his/her own goals--Consider statements resident makes like, "I hope I am able to walk again," or "I would like to get up early and visit the beauty parlor." Goals can be as traditional as wanting to learn how to walk again following a hip replacement, or wanting to live to say goodbye to a loved one. Some things may not be stated. Involvement in life of the facility--Consider whether resident partakes of facility events, socializes with peers, discusses activities. Resident accepts invitations into most group activities--Is resident willing to try group activities even if later, deciding the activity is not suitable and leaving? Does resident regularly refuse to attend group programs?

2. Unsettled Relationships

Intent: To indicate the quality and nature of the resident's interpersonal contacts (that is, how resident interacts with staff members, family, and other residents).

Process: During routine nursing care activities, observe how the resident interacts with staff members and with other residents. Do you see signs of conflict? Talk with direct-care staff (for example, nursing assistants, dietary aides who assist in the dining room, social work staff, or activities aides) and ask for their observations of behavior that indicate either conflicted or harmonious interpersonal relationships. Consider the possibility that the staff members describing these relationships may be biased.

Definition: Covert/open conflict with and/or repeated criticism of staff--Resident chronically complains about some staff members to other staff members; resident verbally criticizes staff members in therapeutic group situations, causing disruption within the group; or resident constantly disagrees with routines of daily living. [Note: Checking this item does not require any assumption about why the problem exists or how it could be remedied.]

Unhappiness with roommate--Includes frequent requests for roommate changes, grumbling about roommate spending too long in the bathroom, or complaints about roommate rummaging in another's belongings.

Unhappiness with residents other than roommate--Includes chronic complaints about the behaviors of others, poor quality of interaction with other residents, lack of peers for socialization. This refers to conflict or disagreement outside of the range of normal criticisms or requests (that is, beyond a reasonable level).

Openly expresses conflict/anger with family or close friends--Includes expressions of feelings of abandonment, ungratefulness, lack of understanding, or hostility regarding relationships with family/friends.

Absence of personal contact with family/friends--Absence of visitors or telephone calls from significant others in the last seven days.
Recent loss of close family member/friend--Includes relocation of family member/friend to a more distant location, even temporarily (for example, for the winter months); incapacitation or death of a significant other; a significant relationship that recently ceased.

3. Past Roles
Intent: To indicate recognition or acceptance of feelings regarding role or status now that the person is in the nursing home.
Definition: Strong identification with past roles and life status--This may be indicated, for example, when resident enjoys telling stories about own past; or takes pride in past accomplishments or family life; or prefers to be connected with prior lifestyle (for example, celebrating family events, carrying on life-long traditions).
Expresses sadness/anger/empty feelings over lost roles/status--Resident expresses feelings such as "I'm not the man I used to be" or "I wish I had been a better mother to my children" or "It's no use; I'm not capable of doing the things I always liked to do." Resident cries when reminiscing about past accomplishments. Be careful not to take the reaction out of context.
Process: Discuss past life with resident. Use environmental cues to prompt discussions (for example, family photos, grandchildren's letters or artwork). This information may emerge from discussions around other MDS topics (for example, Customary Routine, Activity Pursuits, ADLs). Direct-care staff may also have useful insights relevant to these items.

XI. To determine resident's mood and behavior patterns, the following elements should be considered:

1. Sad or Anxious Mood
Intent: To identify the presence of behaviors that may be interpreted as physical or verbal expressions of sadness or anxiety.
Definition: A distressed mood characterized by explicit verbal or gestural expressions of feeling depressed or anxious (or a synonym such as feeling sad, miserable, blue, hopeless, empty, or tearful). This may be a disorder of mood which is usually, but not always, accompanied by a painful mood of such magnitude that it calls for relief because it is severely, or unnecessarily, distressing or threatening to physical health and life, or interferes with functional performance and adaptation. These symptoms may be preceded by anger or withdrawal.
Process: Determine if resident expressed signs of a sad or anxious mood over the past 30 days. Draw on your own interactions with the resident. Pay particular attention to statements of direct-care staff, social workers, and licensed personnel who may have evaluated the resident in this area. Does the resident cry or look dejected (unhappy) when no one is talking with him/her? When you talk with the resident, does he/she sound hopeless, fearful, sad, anxious? Does the resident report feelings of worthlessness, guilt? Does the resident appear withdrawn, apathetic, without emotion?
If you are unsure, seek confirming information from others who regularly come in contact with the resident (for example, activities professionals, social workers, or family members).

2. Mood Persistence
Intent: To identify a persistent sad/anxious mood that has existed on each day over the
last seven days and was not easily altered by attempts to "cheer up" the resident.

Process: Normally, these moods apply to one or more of the indicators mentioned above of sad/anxious mood.

3. Problem Behavior

Intent: To identify the presence of problem behaviors in the last seven days that cause disruption to facility residents or staff members, including those that are potentially harmful to the resident or disruptive in the environment, even though staff and residents appear to have adjusted to them (for example, "Mrs. R's calling out isn't much different than others on the unit; there are many noisy residents.")

Definition: Wandering--Movement with no identified rational purpose; resident appears oblivious to needs or safety. This behavior must be differentiated from purposeful movement—for example, a hungry person moving about the unit in search of food; pacing.

Report on the most disruptive resident behavior across all three shifts. Code "1" if the described behavior occurred less than daily and "2" if the behavior occurred daily or more frequently.

4. Resident Resists Care

Intent: Identify problem behaviors related to delivering care/treatment to the resident. These behaviors are not necessarily positive or negative; they provide observational data. They may prompt further investigation of causes in the care-planning process (for example, fear of pain, fear of falling, poor comprehension, anger, poor relationships, eagerness to participate in care decisions, past experience with medication errors and unacceptable care, desire to modify care being provided).

Process: Consult medical record and primary staff caregiver. How does the resident respond to staff members' attempts to deliver care to him/her? Signs of resistance may be verbal and/or physical (for example, verbally refusing care, pushing caregiver away, scratching).

5. Behavior Management Program

Intent: Determine if a behavior-management program is in place wherein staff members identified causal factors and developed a plan of action based on that understanding. There must be evidence of structure and continuity of care in the program (for example, written documentation). This category does NOT include behavioral management by physical restraints or psychoactive drugs, if these are the only interventions used.

Process: Consult medical record (including current care plan); consult primary caregiver.

Examples

Mrs. S has been observed on numerous occasions to hit, shove, and curse the woman seated next to her at each meal. After observing the pattern of Mrs. S's behavior for several days, staff noticed that her tablemate was in the habit of moving toward Mrs. S to take food from her tray. As a result of their observations, the primary nurse made a change in seating arrangements. (Note: Although staff might have increased the amount of food provided at meals, the real issue was the taking of food; Mrs. S would not want to share with others, no matter how much food she was given.) Mrs. S does not tend to ask staff for help when she is annoyed; she takes direct and aggressive action on her own. Now
that staff understand this behavior, they are aware of the need to be vigilant. Code "1" for Yes.

Provisions were made for safety monitored wandering for Mr. V (including use of "secure bands" that activate an alarm if he wanders away from a designated area). Mr. V does not really disturb others (he does not go into others' rooms). Without this "band," however, staff lost track of him and he was in danger of harming himself if he got off the unit (a busy street is very near his unit). Code "1" for Yes.

6. Change in Mood
Intent: Determine whether the resident's mood changed in the past 90 days, that is, onset of recent mood problem or changes in a longstanding problem. Changes may have been expressed verbally or demonstrated physically; they include increased/decreased number of signs/symptoms, or increase/decrease in the frequency, intensity, or persistence of sad or anxious mood.

Examples
Mrs. D has a long history of depression. Two months ago she had an adverse reaction to a psychoactive drug. She expressed fears that she was going out of her mind and was observed to be quite agitated. Her attention span diminished and she stopped attending group activities because she was disruptive. After the medication was discontinued, these feelings and behaviors improved. She is better than she was, but still has feelings of sadness. Code "1" for "Improved." Mrs. D is now better than her worst status in the 90-day period, but she has not fully recovered. [Note: If the mood problem was no longer present due to the continued efficacy of the treatment program, the correct code would also be "1" (Improved).]

Mrs. Y has bipolar disease. Historically, she has responded well to lithium and her mood state has been stable for almost a year. About 2 months ago, she became extremely sad and withdrawn, expressed the wish that she were dead, and stopped eating. She was transferred to a psychiatric hospital. For the last 30 days (following readmission), Mrs. Y has improved and her appetite is restored. Code "1" for Improved.

7. Change in Problem Behavior
Intent: Determine if problem behaviors or resistance to care increased/decreased in number, frequency, or intensity in the past 90 days--that is, onset of recent behavior problems or changes in a more longstanding problem. Changes can occur in many different areas, including (but not limited to) wandering, verbal or physical abuse, socially inappropriate behavior, or resistance to care.

Changes can be exhibited as increases/decreases in the number of signs/symptoms and/or change in the frequency or intensity of the behavior(s).

Process: Review nursing notes, medical records, and consult with primary staff caregiver.

APPENDIX D

GUIDELINES FOR THE USE OF RESTRAINTS

A. Written policies and procedures for use of restraints should address at least the following:

1. Protocol for the use of alternatives to restraints, such as staff or environmental
interventions, structured activities, or behavior management. Alternatives should be utilized whenever possible to avoid the use of restraints;
2. Protocol for the use and documentation of a progressive range of restraining procedures from the least restrictive to the most restrictive;
3. A delineation of indications for use, which should be limited to:
   i. Prevention of imminent harm to the resident or other persons when other means of control are not effective or appropriate; or
   ii. Prevention of serious disruption of treatment or significant damage to the physical environment;

1. Contraindications for use, which should include, at least, clinical contraindications, convenience of staff, or discipline of the resident;
2. Identification of restraints which may be used in the facility, which should be limited to methods and mechanical devices that are specifically manufactured for the purpose of physical restraint. Locked restraints, double restraints on the same body part, four-point restraints, and confinement in a locked or barricaded room should not be permitted;
3. Protocol for informing the resident and obtaining consent when clinically feasible, and documenting the consent in the resident’s record;
4. Protocol for notifying the family or guardian, obtaining consent if the resident is unable to give consent, and documenting the consent in the resident’s record; and
5. Protocol for removal of restraints when goals have been accomplished.

B. Procedures for the application of restraints in an emergency should include at least the following:

1. Licensed nursing staff only should initiate the use of emergency restraints;
2. The application of restraints should begin with the least restrictive alternative that is clinically feasible;
3. Emergency restraints should be used only when the safety of the resident or others is endangered, or there is imminent risk that the resident will cause substantial damage to the physical environment;
4. The facility should notify the attending physician or advanced practice nurse or another designated physician and request an order within two hours;
5. The facility should obtain a physician’s or advanced practice nurse’s order within eight hours;
6. Licensed nursing personnel should evaluate and document the physical and mental condition of the resident in emergency restraints at least every two hours;
7. There should be an assessment of the resident by a registered professional nurse within 24 hours; and
8. Continuation of emergency restraints should occur only upon physician or advanced practice nurse orders, which should be renewed every 24 hours to a maximum of seven days.

C. The facility should continuously attempt to remediate the resident’s condition to eliminate or lessen the need for restraints. If the use of restraints is needed beyond one week, at least the following should be done:
1. The need for the continued use of restraints should be implemented only as part of the physician’s medical care plan; and
2. Every resident in restraints should be assessed by a registered professional nurse at least every 48 hours for the continued use of restraints; and
3. After remediation attempts, there should be an interdisciplinary review of the record of any resident whose assessment indicates the need for continued use of restraints. This review should occur within thirty days of the initiation of the use of restraints.

D. Continuation of the use of restraints beyond 30 days should occur only upon written approval of the committee or its equivalent, and should include at least the following actions:

1. The registered professional nurse should assess the need for continued restraints at least weekly; and
2. An interdisciplinary review should be conducted at least every 30 days to approve the continued use of restraints.

E. The facility should have written policies and procedures to ensure that interventions while a resident is restrained, except as indicated in F below, are performed by nursing personnel in accordance with nursing scope of practice as set forth by the New Jersey Board of Nursing. The policies and procedures should include at least the following:

1. Periodic visual observation, which should be performed with the following frequency:
   i. Continuously, if clinically indicated by the resident’s condition; or
   ii. At least every 15 minutes while the resident’s condition is unstable; and thereafter at least every one to two hours, based upon an assessment of the resident’s condition.

2. Release of restraints at least once every two hours in order to:
   i. Assess circulation;
   ii. Perform skin care;
   iii. Provide an opportunity for exercise or perform range of motion procedures for a minimum of five minutes per restrained limb and repositioning; and
   iv. Assess the need for toileting and assist with toileting or incontinence care.

3. Ensuring adequate fluid intake;

4. Ensuring adequate nutrition through meals at regular intervals, snacks, and assistance with feeding if needed;

   1. Assistance with bathing as required at least daily; and
   2. Ambulation at least once every two hours, if clinically feasible.

F. The facility should have written policies and procedures for interventions by nursing personnel for residents in restraints for overnight sleeping. These policies and procedures should include at least the following and should be implemented in accordance with nursing scope of practice, as set forth by the New Jersey Board of Nursing;

1. Visual observation based on resident’s condition, occurring at least every one to two hours;
2. Administration of fluids as required;
3. Toileting as required;
4. Release of restraints at least once every two hours for repositioning and skin care, if clinically indicated; and
5. Prohibition of any method of restraint which places the resident at clinical risk for circulatory obstruction.

NEW MEXICO

7.9.2.22 RIGHTS OF RESIDENTS: Every resident shall have the right to:

L. ABUSE AND RESTRAINTS:
Be free from mental and physical abuse, and be free from chemical and physical restraints except as authorized in writing by a physician for a specified and limited period of time and documented in the resident's medical record. Physical restraints may be used in an emergency when necessary to protect the resident from injury to himself or herself or others or to property. However, authorization for continuing use of the physical restraints shall be secured from a physician within 12 hours. Any use of physical restraints shall be noted in the resident's medical records. "Physical restraint" includes, but is not limited to, any article, device, or garment which interferes with the free movement of the resident and which the resident is unable to remove easily.

7.9.2.27 EMPLOYEES

E. ABUSE OF RESIDENTS:
(1) Orientation for all employees: Except in an emergency, before performing any duties, each new employee, including temporary help, shall receive appropriate orientation to the facility and its policies, including, but not limited to, policies relating to fire prevention, accident prevention, and emergency procedures. All employees shall be oriented to resident's rights and to their position and duties by the time they have worked thirty (30) days.
(2) Training: Except for nurses, all employees who provide direct care to residents shall be trained through a program approved by the Department.
(3) Assignments: Employees shall be assigned only to resident care duties consistent with their training.
(4) Reporting: All employees will be instructed in the reporting requirements of the Adult Protective Services Act of abuse, neglect or exploitation of any resident.

7.9.2.45 PHYSICAL AND CHEMICAL RESTRAINTS:

A. DEFINITIONS: As used in this subsection, the following definitions apply:
(1) Physical restraint: means any article, device, or garment which is used primarily to modify, resident behavior by interfering with the free movement of the resident, and which the resident is unable to remove easily, or confinement in a locked room. Mechanical supports shall not be considered physical restraints.
(2) Mechanical support: means any article, device, or garment which is used only to achieve the proper position or balance of the resident, which may include but is not limited to a geriatric chair, posey belt, or jacket, waist belt, pillows, or wedges. Necessity for mechanical support use must be documented in the resident's record and such use must be outlined in the resident's care plan.

(3) Chemical restraint: means a medication used primarily to modify behavior by interfering with the resident's freedom of movement or mental alertness.

B. ORDERS REQUIRED: Physical or chemical restraints shall be applied or administered only on the written order of a physician which shall indicate the resident's name, the type of restraint(s), the reason for restraint, the type of restraint authorized, and the period during which the restraint(s) is (are) to be applied.

C. EMERGENCIES: A physical restraint may be applied temporarily without an order if necessary to protect the resident or another person from injury or to prevent physical harm to the resident or another person resulting from the destruction of property, provided that the physician is notified immediately and authorization for continued use is obtained from the physician within twelve (12) hours.

D. RESTRICTION: If the mobility of a resident is required to be restrained and can be appropriately restrained either by a physical or chemical restraint or by a locked unit, the provisions of this section shall apply.

E. TYPE OF RESTRAINTS: Physical restraints shall be of a type which can be removed promptly in an emergency, and shall be the least restrictive type appropriate to the resident.

F. PERIODIC CARE: Nursing personnel shall check a physically restrained resident as necessary, but at least every 30 minutes to see that the resident's personal needs are met and to change the resident's position if necessary. The restrained resident shall have restraints released and shall have opportunity for toileting, hydration, and exercise at least every two hours. Cheeks and releases will be documented.

G. RECORDS: Any use of restraints shall be noted, dated, and documented in the resident's clinical record on each tour of duty during which the restraints are in use. [5-2-89; 7.9.2.45 NMAC - Rn, 7 NMAC 9.2.45, 8-31-00]

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NEW YORK

Downloaded January 2011

...(c) Staff qualifications and personnel management.

(1) With regard to personnel management, the facility shall:
...(iii) assure that each part-time, full-time or private duty employee, consultant, volunteer, or other person serving in any other capacity in the nursing home shall:
(a) receive an orientation which shall include but not be limited to the following:
…(6) resident abuse and neglect reporting requirements as set forth in section 2803-d of the Public Health Law.

Section 415.3 - Residents' rights

(c) Protection of Legal Rights.

(1) Each resident shall have the right to:
...(vii) be free from verbal, sexual, mental or physical abuse, corporal punishment and involuntary seclusion, and free from chemical and physical restraints except those restraints authorized in accordance with section 415.4 of this Part.

Section 415.4 - Resident behavior and facility practices

Effective Date: 04/01/92
Title: Section 415.4 - Resident behavior and facility practices

415.4 Resident behavior and facility practices. The facility shall provide each resident with considerate and respectful care designed to promote the resident's independence and dignity in the least restrictive environment commensurate with the resident's preference and physical and mental status.

(a) Physical and Chemical Restraints. The facility and all medical, nursing, and other professional staff shall assure that:

(1) the resident is free, consistent with subdivision (l) of section 415.12 of this Part, from any psychotropic drug administered for purposes of discipline or convenience, and not required to treat the resident's medical conditions or symptoms; and

(2) physical restraints, any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body, are:
  (i) used only to protect the health and safety of the resident and to assist the resident to attain and maintain optimum levels of physical and emotional functioning;
  (ii) an integral part of the interdisciplinary care plan that is individualized as to the type of restraint, release schedules, type of exercise, necessary skin care and ambulation to be provided, and is intended to lead to less restrictive treatment to manage the problem for which the restraint is applied;
  (iii) used only in unusual circumstances and only after all reasonable less restrictive alternatives have been considered and rejected for reasons related to the resident's well-being which shall be documented showing evidence of consultation with appropriate professionals such as social workers and physical therapists. Less restrictive measures that would not clearly jeopardize the resident's safety shall not be rejected before a trial to demonstrate whether a more restrictive restraint would promote greater functional independence;
  (iv) not used for staff convenience, for purposes of discipline or as substitutes for direct care, activities and other services;
  (v) an enabler of the highest practicable physical, mental or psychosocial well-being; and
  (vi) implemented only after the resident or designated representative, to the extent
permitted by state law, agrees to this treatment alternative, except in an emergency situation in accordance with paragraph (6) of this subdivision. If the resident or designated representative withdraws agreement to the treatment after implementation, the usage shall be stopped.

(3) When physical restraints are used:
(i) they are used in accordance with paragraph (2) of this subdivision and are time limited. They are used for specified periods of time, properly applied allowing for some body movement and not impairing circulation;

(ii) they are monitored closely as specified in paragraph (5) of this subdivision; and
(iii) all plans for restraints are reviewed at a frequency determined by the resident's condition or more frequently if requested by the resident or designated representative. The clinical record shall include documentation of periodic reevaluation of the need for the restraint and efforts made to substitute other measures.

(4) Policies and procedures regarding the ordering and use of physical restraints and the recording, reporting, monitoring and review and modification thereof are:
(i) incorporated into the in-service education programs of the facility, with changes made in such programs when policies and procedures are modified; and
(ii) made known to all medical, nursing and other appropriate resident care personnel in advance of implementation.

(5) When physical restraints are used the resident is:
(i) released as frequently as necessary to meet resident care needs, but at least every two hours except when asleep in bed, then released as indicated by the type of restraint and by the residents' condition;
(ii) provided with changes of position, ambulation or exercise at the time of release; and
(iii) observed at least as frequently as at the time of dressing and undressing for any evidence of adverse effects, including but not limited to circulatory problems or skin abrasions.

(6) In an emergency situation a physical restraint may only be used if it is:
(i) approved by the medical director, attending physician or nursing director, or in his or her absence, by a registered professional nurse;
(ii) used for that specific emergency and for a limited period of time with physician consultation regarding the physical measure or safety device obtained within 24 hours;
(iii) applied under the direction of a licensed nurse who documents in the clinical record the circumstances necessitating the physical restraint and the resident's response; and (iv) monitored frequently by a licensed nurse until the resident is seen by a physician,

(7) There are written policies specifying and defining each type of physical restraint that is acceptable and available in the facility and the purposes for which each shall be used. Locked restraints shall not be considered acceptable.

(b) Staff treatment of residents. The nursing home shall develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of residents and misappropriation of resident property.
(1) The facility shall:
(i) not use, or permit verbal, mental, sexual or physical abuse, including corporal
punishment, or involuntary seclusion of residents; and
(ii) not employ individuals who have:
(a) been found guilty of abusing, neglecting or mistreating individuals by a court of law; or
(b) had a finding entered into the New York State Nurse Aide Registry concerning abuse,
neglect or mistreatment of residents or misappropriation of their property.
(iii) report any knowledge it has of actions by a court of law against an employee which
would indicate unfitness for service as a nurse aide or other facility staff to the New York
State Nurse Aide Registry or to appropriate licensing authorities.

(2) The facility shall ensure that alleged violations involving mistreatment, neglect or abuse,
including injuries of unknown source, are reported immediately to the administrator of the
facility and, when required by law or regulation, to the Department of Health in accordance
with Section 2803-d of the Public Health Law and Part 81 of this Title through established
procedures.

(3) The facility shall document that all alleged violations are thoroughly investigated and
shall prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations shall be reported to the administrator or his or her
designated representative or to other officials in accordance with State law and if the
alleged violation is verified, effective corrective action shall be taken.

NORTH CAROLINA

10A NCAC 13D .2210 REPORTING AND INVESTIGATING ABUSE, NEGLECT OR
MISAPPROPRIATION
(a) A facility shall take measures to prevent patient abuse, patient neglect, or
misappropriation of patient property, including orientation and instruction of facility staff
on patients' rights, and the screening of and requesting of references for all prospective
employees.
(b) The administrator shall ensure that the Health Care Personnel Registry Section of the
Division of Health Service Regulation is notified within 24 hours of the health care facility
becoming aware of all allegations against health care personnel as defined in G.S. 131E-
256(a)(1), which includes abuse, neglect, misappropriation of resident property,
misappropriation of the property of the facility, diversion of drugs belonging to a health
care facility or a resident, fraud against a health care facility or a resident, and injuries of
unknown source in accordance with 42 CFR subsection 483.13 which is incorporated by
reference.
(c) The facility shall investigate allegations of patient abuse, patient neglect, or
misappropriation of patient property in accordance with 42 CFR subsection 483.13 which is
incorporated by reference, including subsequent amendments, and shall document all
relevant information pertaining to such investigation and shall take the necessary steps to
prevent further incidents of abuse, neglect or misappropriation of patient property while
the investigation is in progress. The Code of Federal Regulations, Title 42, Public Health, Part 430 to the end, revised as of October 1, 2005, Description Item 572-B, may be purchased from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000, by direct telephone call to the GPO at (866) 512-1800 or online at http://bookstore.gpo.gov/ or accessed electronically at http://ecfr.gpoaccess.gov/.

(d) The administrator shall ensure that the report of investigation is printed or typed and postmarked to the Health Care Personnel Registry Section of the Division of Health Service Regulation within five working days of the allegation. The report shall include the date and time of the alleged incident of abuse, neglect or misappropriation of property; the patient’s full name and room number; details of the allegation and any injury; names of the accused and any witnesses; names of the facility staff who investigated the allegation; results of the investigation; and any corrective action that may have been taken by the facility.

History Note: Authority G.S. 131E-104; 131E-131; 131E-255; 131E-256; Eff. January 1, 1996; Amended Eff. August 1, 2008; October 1, 1998.

10A NCAC 27E .0104 SECLUSION, PHYSICAL RESTRAINT AND ISOLATION TIME-OUT AND PROTECTIVE DEVICES USED FOR BEHAVIORAL CONTROL

(a) This Rule governs the use of restrictive interventions which shall include:
   (1) seclusion;
   (2) physical restraint;
   (3) isolation time-out
   (4) any combination thereof; and
   (5) protective devices used for behavioral control.

(b) The use of restrictive interventions shall be limited to:
   (1) emergency situations, in order to terminate a behavior or action in which a client is in imminent danger of abuse or injury to self or other persons or when property damage is occurring that poses imminent risk of danger of injury or harm to self or others; or
   (2) as a planned measure of therapeutic treatment as specified in Paragraph (f) of this Rule.

(c) Restrictive interventions shall not be employed as a means of coercion, punishment or retaliation by staff or for the convenience of staff or due to inadequacy of staffing. Restrictive interventions shall not be used in a manner that causes harm or abuse.

(d) In accordance with Rule .0101 of Subchapter 27D, the governing body shall have policy that delineates the permissible use of restrictive interventions within a facility.

(e) Within a facility where restrictive interventions may be used, the policy and procedures shall be in accordance with the following provisions:
   (1) the requirement that positive and less restrictive alternatives are considered and attempted whenever possible prior to the use of more restrictive interventions;
   (2) consideration is given to the client’s physical and psychological well-being before, during and after utilization of a restrictive intervention, including:
      (A) review of the client’s health history or the client’s comprehensive health assessment conducted upon admission to a facility. The health history or comprehensive health assessment shall include the identification of pre-existing medical conditions or any disabilities and limitations that would place the client at greater risk during the use of
restrictive interventions;
(B) continuous assessment and monitoring of the physical and psychological well-being of the client and the safe use of restraint throughout the duration of the restrictive intervention by staff who are physically present and trained in the use of emergency safety interventions;

(C) continuous monitoring by an individual trained in the use of cardiopulmonary resuscitation of the client's physical and psychological well-being during the use of manual restraint; and
(D) continued monitoring by an individual trained in the use of cardiopulmonary resuscitation of the client's physical and psychological well-being for a minimum of 30 minutes subsequent to the termination of a restrictive intervention;

(3) the process for identifying, training, assessing competence of facility employees who may authorize and implement restrictive interventions;
(4) the duties and responsibilities of responsible professionals regarding the use of restrictive interventions;
(5) the person responsible for documentation when restrictive interventions are used;
(6) the person responsible for the notification of others when restrictive interventions are used; and

(7) the person responsible for checking the client’s physical and psychological well-being and assessing the possible consequences of the use of a restrictive intervention and, in such cases there shall be procedures regarding:
(A) documentation if a client has a physical disability or has had surgery that would make affected nerves and bones sensitive to injury; and
(B) the identification and documentation of alternative emergency procedures, if needed;

(8) any room used for seclusion or isolation time-out shall meet the following criteria:
(A) the room shall be designed and constructed to ensure the health, safety and well-being of the client;
(B) the floor space shall not be less than 50 square feet, with a ceiling height of not less than eight feet;
(C) the floor and wall coverings, as well as any contents of the room, shall have a one-hour fire rating and shall not produce toxic fumes if burned;
(D) the walls shall be kept completely free of objects;
(E) a lighting fixture, equipped with a minimum of a 75 watt bulb, shall be mounted in the ceiling and be screened to prevent tampering by the client;
(F) one door of the room shall be equipped with a window mounted in a manner which allows inspection of the entire room;
(G) glass in any windows shall be impact resistant and shatterproof;
(H) the room temperature and ventilation shall be comparable and compatible with the rest of the facility; and
(I) in a lockable room the lock shall be interlocked with the fire alarm system so that the door automatically unlocks when the fire alarm is activated if the room is to be used for seclusion.

(9) Whenever a restrictive intervention is utilized, documentation shall be made in the client record to include, at a minimum:
(A) notation of the client's physical and psychological well-being;
(B) notation of the frequency, intensity and duration of the behavior which led to the intervention, and any precipitating circumstance contributing to the onset of the behavior;
(C) the rationale for the use of the intervention, the positive or less restrictive interventions considered and used and the inadequacy of less restrictive intervention techniques that were used;
(D) a description of the intervention and the date, time and duration of its use;
(E) a description of accompanying positive methods of intervention;
(F) a description of the debriefing and planning with the client and the legally responsible person, if applicable, for the emergency use of seclusion, physical restraint or isolation time-out to eliminate or reduce the probability of the future use of restrictive interventions;
(G) a description of the debriefing and planning with the client and the legally responsible person, if applicable, for the planned use of seclusion, physical restraint or isolation time-out, if determined to be clinically necessary; and
(H) signature and title of the facility employee who initiated, and of the employee who further authorized, the use of the intervention.

10) The emergency use of restrictive interventions shall be limited, as follows:
(A) a facility employee approved to administer emergency interventions may employ such procedures for up to 15 minutes without further authorization;
(B) the continued use of such interventions shall be authorized only by the responsible professional or another qualified professional who is approved to use and to authorize the use of the restrictive intervention based on experience and training;
(C) the responsible professional shall meet with and conduct an assessment that includes the physical and psychological well-being of the client and write a continuation authorization as soon as possible after the time of initial employment of the intervention. If the responsible professional or a qualified professional is not immediately available to conduct an assessment of the client, but concurs that the intervention is justified after discussion with the facility employee, continuation of the intervention may be verbally authorized until an on-site assessment of the client can be made;
(D) a verbal authorization shall not exceed three hours after the time of initial employment of the intervention; and
(E) each written order for seclusion, physical restraint or isolation time-out is limited to four hours for adult clients; two hours for children and adolescent clients ages nine to 17; or one hour for clients under the age of nine. The original order shall only be renewed in accordance with these limits or up to a total of 24 hours.

11) The following precautions and actions shall be employed whenever a client is in:
(A) seclusion or physical restraint, including a protective device when used for the purpose or with the intent of controlling unacceptable behavior: periodic observation of the client shall occur at least every 15 minutes, or more often as necessary, to assure the safety of the client, attention shall be paid to the provision of regular meals, bathing and the use of the toilet; and such observation and attention shall be documented in the client record;
(B) isolation time-out: there shall be a facility employee in attendance with no other immediate responsibility than to monitor the client who is placed in isolation time-out; there shall be continuous observation and verbal interaction with the client when appropriate; and such observation shall be documented in the client record; and
(C) physical restraint and may be subject to injury: a facility employee shall remain present with the client continuously.
(12) The use of a restrictive intervention shall be discontinued immediately at any indication of risk to the client’s health or safety or immediately after the client gains behavioral control. If the client is unable to gain behavioral control within the time frame specified in the authorization of the intervention, a new authorization must be obtained.

(13) The written approval of the designee of the governing body shall be required when the original order for a restrictive intervention is renewed for up to a total of 24 hours in accordance with the limits specified in Item (E) of Subparagraph (e)(10) of this Rule.

(14) Standing orders or PRN orders shall not be used to authorize the use of seclusion, physical restraint or isolation timeout.

(15) The use of a restrictive intervention shall be considered a restriction of the client’s rights as specified in G.S. 122C-62(b) or (d). The documentation requirements in this Rule shall satisfy the requirements specified in G.S. 122C-62(e) for rights restrictions.

(16) When any restrictive intervention is utilized for a client, notification of others shall occur as follows:
(A) those to be notified as soon as possible but within 24 hours of the next working day, to include:
   (i) the treatment or habilitation team, or its designee, after each use of the intervention; and
   (ii) a designee of the governing body; and
(B) the legally responsible person of a minor client or an incompetent adult client shall be notified immediately unless she/he has requested not to be notified.

(17) The facility shall conduct reviews and reports on any and all use of restrictive interventions, including:
(A) a regular review by a designee of the governing body, and review by the Client Rights Committee, in compliance with confidentiality rules as specified in 10A NCAC 28A;
(B) an investigation of any unusual or possibly unwarranted patterns of utilization; and
(C) documentation of the following shall be maintained on a log:
   (i) name of the client;
   (ii) name of the responsible professional;
   (iii) date of each intervention;
   (iv) time of each intervention;
   (v) type of intervention;
   (vi) duration of each intervention;
   (vii) reason for use of the intervention;
   (viii) positive and less restrictive alternatives that were used or that were considered but not used and why those alternatives were not used;
   (ix) debriefing and planning conducted with the client, legally responsible person, if applicable, and staff, as specified in Parts (e)(9)(F) and (G) of this Rule, to eliminate or reduce the probability of the future use of restrictive interventions; and
   (x) negative effects of the restrictive intervention, if any, on the physical and psychological well-being of the client.

(18) The facility shall collect and analyze data on the use of seclusion and physical restraint. The data collected and analyzed shall reflect for each incident:
(A) the type of procedure used and the length of time employed;
(B) alternatives considered or employed; and
(C) the effectiveness of the procedure or alternative employed. The facility shall analyze the data on at least a quarterly basis to monitor effectiveness, determine trends and take corrective action where necessary. The facility shall make the data available to the Secretary upon request.

(19) Nothing in this Rule shall be interpreted to prohibit the use of voluntary restrictive interventions at the client’s request; however, the procedures in this Rule shall apply with the exception of Subparagraph (f)(3) of this Rule.

The restrictive intervention shall be considered a planned intervention and shall be included in the client’s treatment/habilitation plan whenever it is used:

(1) more than four times, or for more than 40 hours, in a calendar month;
(2) in a single episode in which the original order is renewed for up to a total of 24 hours in accordance with the limit specified in Item (E) of Subparagraph (e)(10) of this Rule; or
(3) as a measure of therapeutic treatment designed to reduce dangerous, aggressive, self-injurious or undesirable behaviors to a level which will allow the use of less restrictive treatment or habilitation procedures.

(g) When a restrictive intervention is used as a planned intervention, facility policy shall specify:

(1) the requirement that a consent or approval shall be considered valid for no more than six months and that the decision to continue the specific intervention shall be based on clear and recent behavioral evidence that the intervention is having a positive impact and continues to be needed;

(2) prior to the initiation or continued use of any planned intervention, the following written notifications, consents and approvals shall be obtained and documented in the client record:
   (A) approval of the plan by the responsible professional and the treatment and habilitation team, if applicable, shall be based on an assessment of the client and a review of the documentation required by Subparagraph (e)(9) and (e)(14) of this Rule if applicable;
   (B) consent of the client or legally responsible person, after participation in treatment planning and after the specific intervention and the reason for it have been explained in accordance with 10A NCAC 27D .0201;
   (C) notification of an advocate/client rights representative that the specific intervention has been planned for the client and the rationale for utilization of the intervention; and
   (D) physician approval, after an initial medical examination, when the plan includes a specific intervention with reasonably foreseeable physical consequences. In such cases, periodic planned monitoring by a physician shall be incorporated into the plan.

(3) within 30 days of initiation of the use of a planned intervention, the Intervention Advisory Committee established in accordance with Rule .0106 of this Section, by majority vote, may recommend approval or disapproval of the plan or may abstain from making a recommendation;

(4) within any time during the use of a planned intervention, if requested, the Intervention Advisory Committee shall be given the opportunity to review the treatment/habilitation plan;
(5) if any of the persons or committees specified in Subparagraphs (h)(2) or (h)(3) of this Rule do not approve the initial use or continued use of a planned intervention, the intervention shall not be initiated or continued. Appeals regarding the resolution of any disagreement over the use of the planned intervention shall be handled in accordance with governing body policy; and

(6) documentation in the client record regarding the use of a planned intervention shall indicate:
(A) description and frequency of debriefing with the client, legally responsible person, if applicable, and staff if determined to be clinically necessary. Debriefing shall be conducted as to the level of cognitive functioning of the client;
(B) bi-monthly evaluation of the planned by the responsible professional who approved the planned intervention; and
(C) review, at least monthly, by the treatment/habilitation team that approved the planned intervention.

History Note: Authority G.S. 122C-51; 122C-53; 122C-60; 122C-62; 131E-67; 143B-147; Eff. February 1, 1991; Amended Eff. January 4, 1993; January 1, 1992; Temporary Amendment Eff. January 1, 2001; Temporary Amendment Expired October 13, 2001; Amended Eff. April 1, 2003.

NORTH DAKOTA

33-07-03.2-03. Application for and issuance of license. The department will review all reported allegations of resident abuse, neglect, and misappropriation of resident property by an individual used in a nursing facility to provide resident services. If there is reason to believe, either through oral or written evidence, that an individual used by a nursing facility to provide services to residents could have abused or neglected or misappropriated a resident’s property, the department will investigate the allegation or refer the allegation to the appropriate licensure authority for followup. If the department makes a preliminary determination that an individual used by a nursing facility to provide services to residents abused or neglected or misappropriated resident property, the individual will be notified and provided the same appeal and review rights provided to nurse aides on the registry identified in sections 33-07-06-10 and 33-07-06-11. The department will maintain a registry of individuals used by the nursing facility to provide services to residents that the department has investigated and validated findings of resident abuse, neglect, or misappropriation of resident property.  


33-07-03.2-07. Governing body. 

3. The governing body must ensure sufficient trained and competent staff is employed to meet the residents’ needs. The governing body shall approve and ensure implementation of
written personnel policies and procedures including:
...d. Prohibitions on resident abuse, neglect, and misappropriation of resident property, and procedures for investigation, reporting, and followup action.

...5. The governing body shall ensure the development and implementation of written resident care policies, procedures, and practices including:
...e. Prohibition of resident abuse, neglect, or misappropriation of resident property.
f. Provisions to ensure residents are free from physical restraints imposed or psychoactive drugs administered for the purpose of discipline or convenience that are not required to treat the resident's medical symptoms.
k. The right to be free from mental and physical abuse and the right to be free from physical or chemical restraint except in documented emergencies or when necessary to protect the resident from injury to self or to others. In such cases, the restraint must be authorized and documented by a physician for a limited period of time and, if the restraint is a chemical one, it must be administered by a licensed nurse or physician. Except as provided in this subdivision, drugs or physical restraints may not be used or threatened to be used for the purposes of punishment, for the convenience of staff, for behavior conditioning, as a substitute for rehabilitation or treatment, or for any other purpose not part of an approved treatment plan.

OHIO

3701-17-07 Qualifications and health of personnel.
...(K) Except as provided in Chapter 3701-13 of the Administrative Code, no nursing home shall employ a person who applies on or after January 27, 1997, for a position that involves the provision of direct care to an older adult, if the person:
(1) Has been convicted of or pleaded guilty to an offense listed in division (C)(1) of section 3721.121 of the Revised Code; or
(2) Fails to complete the form(s) or provide fingerprint impressions as required by division (B)(3) of section 3721.121 of the Revised Code.

3701-17-15 Restraints.

(A) Except as provided in paragraph (F) of this rule for emergency situations, the nursing home shall not physically or chemically restrain a resident or subject a resident to prolonged isolation except on written order of a physician which shall include the date, means of restraint to be used, medical reason for restraint, and duration of restraint. Such written orders shall be made a part of the resident's record.

(1) The nursing home shall not use a physical or chemical restraint or isolation for punishment, incentive, or convenience.

(2) A nursing home's use of the following items for the purposes stated in this paragraph shall not be construed as physically or chemically restraining a resident or subjecting a resident to prolonged isolation:
(a) Devices that assist a resident in the improvement of the resident’s mental and physical functional status and that do not restrict freedom of movement or normal access to one’s body; and

(b) Medications that are standard treatment or a documented exception to standard treatment for the resident’s medical or psychiatric condition which assist a resident in attaining or maintaining the resident’s highest practicable physical, mental, and psycho-social well-being.

(c) Placement of residents who are cognitively impaired in a specialized care unit that restricts their freedom of movement throughout the home if:
   (i) The home has made the determination to place each resident in such unit in accordance with paragraph (B) of this rule;
   (ii) Care and services are provided in accordance with each resident’s individual needs and preferences, not for staff convenience;
   (iii) The need for continuation of placement of a resident in the locked unit is reviewed during each periodic assessment required by paragraph (F) of rule 3701-17-10 of the Administrative Code and during the continuing care planning required by rule 3701-17-14 of the Administrative Code;
   (iv) The locked unit meets the requirements of the state building and fire codes; and
   (v) Resident who are not cognitively impaired are able to enter and exit the unit without assistance.

(B) Except as provided in this paragraph, and paragraph (F) of this rule for emergency situations, prior to authorizing the use of a physical or chemical restraint on any resident, the nursing home shall ensure that the attending physician:

(1) Makes a personal examination of the resident and an individualized determination of the need to use the restraint on that resident; and

(2) In conjunction with an interdisciplinary team of health professionals and other caregivers, conducts an individualized comprehensive assessment of the resident. This assessment shall:
   (a) Identify specific medical symptoms that warrant the use of the restraint;
   (b) Determine the underlying cause of the medical symptom and whether that underlying cause can be mitigated;
   (c) Investigate and determine if possible alternative interventions have been attempted and found unsuccessful. Determine the least restrictive device that is most appropriate to meet the needs of the resident, taking into consideration any contraindications;
   (d) Discuss with the resident or authorized representative, and any other individual designated or authorized by the resident, the risks and benefits of the restraint; and
   (e) Obtain written consent from the resident or the resident’s authorized representative. A nursing home may restrain or isolate a resident transferred from another health care facility based on the resident’s transfer orders if such orders include restraint use or isolation authorization and the home complies with the provisions of this paragraph within twenty-four hours of the resident’s admission or readmission to the home.

(C) If a physical restraint is ordered, the nursing home shall select the restraint appropriate for the physical build and characteristics of the resident and shall follow the manufacturer’s instructions in applying the restraint. The nursing home shall ensure that correct
application of the restraint is supervised by a nurse and that the restrained resident is monitored every thirty minutes. The visual monitoring of the restrained resident may be delegated as permitted under state law. Jackets, sheets, cuffs, belts, or mitts made with unprotected elements of materials such as heavy canvas, leather, or metal shall not be used as restraints.

(D) When physical or chemical restraints are used, the nursing home shall ensure that the restrained resident receives a nutritionally adequate diet and shall develop and implement a comprehensive individualized plan of care for the restraint use which includes measures to minimize risks and the decline of the resident.

(E) The attending physician or a staff physician may authorize continued use of physical or chemical restraints for a period not to exceed thirty days and, at the end of this period and any subsequent period, may extend the authorization for an additional period of not more than thirty days. The use of physical or chemical restraints shall not be continued without a personal examination of the resident and the written authorization of the attending physician stating the reasons for continuing the restraint.

(F) Physical or chemical restraints or isolation may be used in an emergency situation without authorization of, or personal examination by, the attending physician only to protect the resident from injury to self or others. Use of the physical or chemical restraint or isolation shall not be continued for more than twelve hours after the onset of the emergency without personal examination and authorization by the attending physician.

(G) When isolation or confinement is used, the nursing home shall ensure that:
(1) The resident is continually monitored and periodically reassessed for continued use and need of this method of intervention;
(2) The door is secured in such a way as to be readily opened in case of an emergency;
(3) The resident is isolated or confined for the least amount of time to achieve desired outcome.

(H) Members of the nursing home's quality assurance committee, required by rule 3701-17-06 of the Administrative Code, shall review monthly the use of restraints and isolation and any incidents that resulted from their use, as well as incidents which resulted in the use of restraints or isolation. The review shall identify any trends, increases, and problems, the need for additional training, consultations or corrective action which shall be discussed and reflected in the minutes of the next quality assurance committee meeting.

R.C. 119.032 review dates: 05/19/2006 and 05/01/2011 CERTIFIED ELECTRONICALLY Certification 05/19/2006 Date Promulgated Under:
119.03 Statutory Authority: 3721.04 Rule Amplifies: 3721.01 to 3721.09 Prior Effective Dates: 5/2/1966, 10/20/2001

3701-17-15.1 Prone restraints.

(A) For purposes of this rule:
(1) "Prone restraint" means all items or measures used to limit or control the movement or normal functioning of any portion, or all, of an individual’s body while the individual is in a face-down position for an extended period of time. Prone restraint includes physical or
mechanical restraints; and

(2) "Transitional hold" means a brief physical positioning of an individual facedown for the purpose of quickly and effectively gaining physical control of that individual in order to prevent harm to self and others, or prior to transport to enable the individual to be transported safely. A transitional hold may include the use of handcuffs or other restraints incident to arrest or temporary detention by law enforcement consistent with departmental policy.

(B) The use of a prone restraint is prohibited in nursing homes.

(C) The use of a transitional hold may be permitted only when all of the following conditions are met:

(1) A transitional hold may be applied only by staff with current training on the safe use of this procedure, including how to recognize and respond to signs of distress in the individual;

(2) A transitional hold may be applied only in a manner that does not compromise breathing, including the compromise that occurs with the use of:
   (a) Pressure or weight bearing on the back;
   (b) Soft devices such as pillows under an individual’s face or upper body; or
   (c) The placing of an individual’s or staff’s arms under the individual’s head, face, or upper body;

(3) A transitional hold may be applied only for the reasonable amount of time necessary to safely bring the person or situation under control and to ensure the safety of the individuals involved; and

(4) A transitional hold may be applied only with consistent and frequent monitoring during and after the intervention with every intent to assure that the person is safe and suffers no harm.

Effective: 06/20/2010

R.C. 119.032 review dates: 11/01/2014 CERTIFIED ELECTRONICALLY Certification

06/10/2010

OKLAHOMA

Downloaded January 2011

310:675-7-5.1. Reports to state and federal agencies

(b) Reporting abuse, neglect or misappropriation. The facility shall report to the Department allegations and incidents of resident abuse, neglect or misappropriation of residents’ property [63 O.S.§1-1939(1)(1)(e)]. This requirement does not supersede reporting requirements in Title 43Aofthe Oklahoma Statutes (relating to the Protective Services for the Elderly and for Incapacitated Adults Act).
Reporting nurse aides. The facility shall report to the Department allegations and incidents of abuse, neglect, or misappropriation of resident property by a nurse aide by submitting a completed Nurse Aide Abuse, Neglect, Misappropriation of Resident Property Form (ODHForm 718), which requires the following:

1. facility name, address, and telephone;
2. facility type;
3. date;
4. reporting party name or administrator name;
5. employee name and address;
6. employee certification number;
7. employee social security number;
8. employee telephone number;
9. termination action and date;
10. other contact person name and address; and
11. facts of abuse, neglect, or misappropriation of resident property.

Content of reports to the department. Reports to the Department made pursuant to this section shall contain the following:

1. The preliminary report shall, at the minimum, include:
   A. who, what, when, and where; and
   B. measures taken to protect the resident(s) during the investigation.

2. The follow-up report shall, at the minimum, include:
   A. preliminary information;
   B. the extent of the injury or damage if any; and
   C. preliminary findings of the investigation.

3. The final report shall, at the minimum, include preliminary and follow-up information and:
   A. a summary of investigative actions;
   B. investigative findings and conclusions based on findings; and
   C. corrective measures to prevent future occurrences.
   D. if items are omitted, why the items are omitted and when they will be provided.

[Source: Added at 9 OkReg3163, eff 7-1-92 (emergency); Added at 10OkReg 1639, eff 6-1-93; Amended at 20 Ok Reg 2399, eff 7-11-03; Amended at 24 Ok Reg 2030, eff 6-25-071; Amended at 25 Ok Reg 2482, eff 7-11-08]

310:675-7.12.1. Incident reports
(a) Incident defined. An incident is any accident or unusual occurrence where there is apparent injury, where injury may have occurred, including but not limited to, head injuries, medication, treatment errors or events subject to the reporting requirements in 310:675-7.5.1 (relating to reportable incidents).
(b) Incident records. Each facility shall maintain an incident report record and shall have incident report forms available.
(c) Incident report format. Incident reports shall be on a printed incident report form. The form used shall be Long Term Care's Incident Report Form, ODH Form 283. The Incident Report Form requires: the facility name, address and identification number; the date, location and type of incident; parties notified in response to the incident; description of the
incident; the relevant resident history; summary of the investigation; and name of person completing the report.

d) Incident report preparation. At the time of the incident, the administrator, or the person designated by the facility with authority to exercise normal management responsibilities in the administrator’s absence, shall be notified of the incident and prepare the report. The report shall include the names of the persons witnessing the incident and their signatures where applicable.

e) Incident reporting: scope. The incident report shall cover all unusual occurrences within the facility, or on the premises, affecting residents, and incidents within the facility or on the premises affecting visitors or employees.

f) Incident records on file. A copy of each incident report shall be on file in the facility.

g) Incident in clinical record. The resident’s clinical record shall describe the incident and indicate the findings on evaluation of the resident for injury.

(h) Incidents: reviewers. All incident reports shall be reviewed by the director of nursing and the administrator and shall include corrective action taken where health and safety are affected. [Source: Added at 9 OkReg3163, eff 7-1-92 (emergency); Added at 10 OkReg 1639, eff6-1-93; Amended at 24 Ok Reg 2030, eff 6-25-071; Amended at 25 Ok Reg 2482, eff7-11-08; Amended at 26 Ok Reg 2059, eff 6-25-09]

310:675-9.6.1. Restraints

(a) The resident has the right to be free from any physical or chemical restraints imposed for discipline or convenience. Restraints may be used in emergency situations, or for the purpose of treating a resident’s medical condition. All physical restraints shall allow for quick release. Locked restraints shall not be used.

(b) In an emergency situation, physical restraints may be used only to ensure the physical safety of the resident, staff, or other residents. When restraints are used in an emergency, the facility shall comply with the following process:

(1) A licensed nurse may use physical restraints, without a physician’s order, if necessary to prevent injury to the resident, or to other residents, when alternative measures are not effective. The licensed nurse shall document in the clinical record the application of the physical restraint and the alternative measures that were not effective. A licensed nurse shall contact the physician for physical restraint orders within six hours after application.

(2) The facility staff shall continually monitor the resident during the restraint period. An interdisciplinary team shall evaluate alternative placement if the resident requires physical restraints for longer than forty-eight consecutive hours.

(3) Circumstances requiring the physical restraints shall be re-evaluated every thirty minutes and documented in the clinical record.

(4) A resident who is physically restrained shall have the restraints released for at least ten minutes every two hours. Such residents shall also be repositioned, exercised and toileted as needed.

(c) In an emergency situation, chemical restraints may be used only to ensure the physical safety of the resident, staff, or other residents. When chemical restraints are used, the facility shall comply with the following process:

(1) The written order for the use of a chemical restraint shall be signed by a physician who specifies the duration and circumstances under which the chemical restraint is to be used.
(2) The physician's orders may be oral when an emergency necessitates parenteral administration of the chemical restraint but is valid only until a written order can be obtained within forty-eight hours.

(3) An emergency order for chemical restraints shall not be in effect for more than twelve hours and may be administered only if the resident is continually monitored for the first thirty minutes after administration and every fifteen minutes until such time as the resident appears stable to ensure that any adverse side effects are noticed and appropriate action taken as soon as possible. The clinical record shall accurately reflect monitoring.

(4) A licensed nurse shall document in the resident's clinical record any alternative measures that were not effective and precipitated the use of the chemical restraint.

(5) An interdisciplinary evaluation shall be made to consider alternative placement if the resident requires chemical restraints for longer than twelve continuous hours.

(d) When restraints are required for the resident's medical symptoms, the nursing staff shall ensure that physical and chemical restraints are administered only in accordance with the resident's care plan and under the following circumstances.

(1) When restraints are used to prevent falling, or for the purpose of positioning the resident, the resident and resident's representative shall be informed of the risk and benefits, and written consent shall be obtained.

(2) Restraints may be applied only on a physician's written order and shall identify the type and reason for the restraint. The physician shall also specify the period of time, and the circumstances under which the restraint may be applied.

(3) Alternative measures to the use of restraints shall be evaluated prior to their use. Circumstances requiring the restraints, and alternative measures, shall be re-evaluated and documented in the clinical record every thirty days.

(4) A restrained resident shall have the restraints released every two hours for at least ten minutes; and the resident shall be repositioned, exercised, or provided range of motion and toileted as necessary. [Source: Added at 9 Ok Reg 3163, eff7-1-92 (emergency); Added at 100k Reg 1639, eff6-1-93]

12. Every resident shall be free from mental and physical abuse and neglect, as such terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes, corporal punishment, involuntary seclusion, and from any physical and chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms, except those restraints authorized in writing by a physician for a specified period of time or as are necessitated by an emergency where the restraint may only be applied by a physician, qualified licensed nurse or other personnel under the supervision of the physician who shall set forth in writing the circumstances requiring the use of restraint. Use of a chemical or physical restraint shall require the consultation of a physician within twenty-four (24) hours of such emergency;
(5) REDUCED PAYMENT FOR ABUSE.

(a) If abuse of a resident, according to the provisions of ORS 441.630 to 441.685, is substantiated by the Department, the Department may reduce the payment for the resident(s) for the month the abuse occurred, and until such time as the Department determines the conditions leading to the abuse have been corrected.

(A) The facility will receive payment for services provided for the resident as determined by the Department. This determination will be based on the absence of appropriate services that resulted in the substantiated abuse of a resident.

(B) The reduced payment may not be considered a reduction in benefits for the resident.

(b) The Department will notify the facility by certified mail at least 15 days prior to taking action to reduce payment.

(A) The notice will include the basis of the Department decision, the effective date of the reduced payment, the amount of the reduced payment, and will advise the facility of their right to request review by the Assistant Director if such request is made in writing within 30 days of the receipt of the notice.

(B) If a request for review is made, the Assistant Director will include the basis of the Department decision, the effective date of the reduced review and all material relating to the allegation of resident abuse and to the reduction in payment. The Assistant Director will include the basis of the Department decision, the effective date of the reduced determination, based upon review of the material, whether or not to sustain the decision to reduce payments to the facility and will notify the facility of the decision within 20 days of receiving the request for review.

(C) If the Assistant Director determines not to sustain the decision to reduce payments, the reduction will be lifted immediately. Otherwise, the reduction in payment will remain in effect until the Department determines the conditions leading to the abuse have been corrected.

(D) If the decision to reduce payment is sustained, the payment reduction will not be recovered in the year end settlement.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 410.070 & 414.065 Stats. Implemented: ORS 410.070 & 414.065 Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; Renumbered from 461-017-0070 by Ch. 184, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 20-1990, f. & cert. ef. 10-4-90; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 22008, f. 2-29-08, cert. ef. 3-1-08

411-085-0200 Licensee, Employees, Consultants

(3) PROHIBITION OF EMPLOYMENT. The facility must not employ or retain in employment any of the following:

(a) Any person found responsible for abusing, neglecting or mistreating a person receiving long-term care services in a final administrative action that is not under appeal or in a court of law;

(b) Any nursing assistant against whom a finding of resident abuse has been entered into the registry maintained under ORS 678.150; or

(c) Any person who is known or reasonably should be known to the facility to be abusive or to have been abusive.
Residents' Rights: Generally
The facility must protect, encourage and assist the resident in exercising the rights identified in OAR 411-085-0300 – 411-085-0350. Each resident and the resident’s legal representative, as appropriate, have the right to:

(7) Be free from verbal, sexual, mental and physical abuse, corporal punishment and involuntary seclusion. Chemical and physical restraints may only be used to ensure the physical safety of the residents and may not be used for discipline or convenience. Except as provided in OAR 411-086-0140, restraints may only be used on order of a physician.

#3 Of Title: 411, Division: 086, Number: 0140

...(19) Be free of retaliation. After the resident, or the resident’s legal representative, has exercised rights provided by law or rule, neither the facility nor any person subject to the supervision, direction, or control of the facility may retaliate by:
(a) Increasing charges or decreasing services, rights or privileges;
(b) Threatening to increase charges or decrease services, rights or privileges;
(c) Taking or threatening any action to coerce or compel the resident to leave the facility; or
(d) Abusing, harassing, or threatening to abuse or harass a resident.

Abuse

(1) ABUSE IS PROHIBITED. The facility employees, agents and licensee must not permit, aid, or engage in abuse of residents under their care.

(2) REPORTERS AND MANDATORY REPORTERS. All persons are encouraged to report abuse and suspected abuse. The following persons are required to immediately report abuse and suspected abuse to The Department or law enforcement agency;
(a) Physicians, including any resident physician or intern;
(b) Licensed practical nurse or registered nurse;
(c) Employee of the Oregon Department of Human Services, Area Agency on Aging, county health department or community mental health program;
(d) Nursing facility employee or any individual who contracts to provide services in a nursing facility;
(e) Peace officer;
(f) Clergy;
(g) Licensed social worker;
(h) Physical, speech or occupational therapist; and
(i) Family member of a resident or guardian or legal counsel for a resident.

(3) FACILITY REPORTING OF ABUSE OR SUSPECTED ABUSE.
(a) The nursing facility administration must immediately notify The Department, local designee of The Department, or local law enforcement agency of any incident of abuse or suspected abuse. Physical injury of an unknown cause must be reported to The Department as suspected abuse, unless an immediate facility investigation reasonably concludes the physical injury is not the result of abuse.
(b) The local law enforcement agency must be called first when the suspected abuse is believed to be a crime (for example; rape; murder, assault, burglary, kidnapping, theft of controlled substances).
(c) The local law enforcement agency must be called if the offices of the Department or designee are closed and there are no arrangements for after hours investigation.

(4) ABUSE COMPLAINT. The oral or written abuse complaint must include the following information when available:
(a) Names, addresses and phone numbers of alleged perpetrator(s), resident(s) and witness(es);
(b) The nature and extent of the abuse or suspected abuse (including any evidence of previous abuse);
(c) Any explanation given for the abuse or suspected abuse; and
(d) Any other information that the person making the report believes might be helpful in establishing the circumstances surrounding the abuse and the identity of the perpetrator.

(5) PRIVILEGE. In the case of abuse of a resident, the physician-patient privilege, the husband-wife privilege, and the privileges extended under ORS 40.225 to 40.295 will not be a ground for excluding evidence regarding the abuse, or the cause thereof, in any judicial proceeding resulting from an abuse complaint made pursuant to this section.

(6) IMMUNITY AND PROHIBITION OF RETALIATION.
(a) The facility licensee, employees and agents must not retaliate in any way against anyone who participates in the making of an abuse complaint, including but not limited to restricting otherwise lawful access to the facility or to any resident, or, if an employee, to dismissal or harassment;
(b) The facility licensee, employee and agents must not retaliate against any resident who is alleged to be a victim of abuse.
(c) Anyone who, in good faith, reports abuse or suspected abuse will have immunity from any liability that might otherwise be incurred or imposed with respect to the making or content of an abuse complaint. Any such person will have the same immunity with respect to participating in judicial or administrative proceedings relating to the complaint.

(7) INVESTIGATION BY FACILITY. In addition to immediately reporting abuse or suspected abuse to the Department or law enforcement agency, the facility must promptly investigate all reports of abuse and suspected abuse and must take measures necessary to protect residents from abuse and prevent recurrence of abuse.


411-086-0130 Nursing Services: Notification
(2) Notification of Division. The nursing care staff shall notify the Division of any situation in which the health or safety of the resident(s) was/is endangered such as:
(a) Suspected abuse;
(b) Fire;
(c) Lost resident;
(d) Accidental or unusual death.

411-086-0140 Nursing Services: Problem Resolution and Preventive Care
...and restraints. The licensee shall ensure that, except when required in an emergency, physical and chemical restraints are only applied in accordance with the resident’s care plan. Restraints may be used only to ensure the physical safety of the resident or other residents:

(a) Freedom of Choice. When restraints are considered in the interdisciplinary care planning conference to reduce the risk of injury related to falls, the resident or his/her legal guardian or person acting under the resident’s power of attorney for health care must be informed of the potential risks of falling and the risks associated with restraints;
(b) Physician Orders Required. Except as provided in subsection (3)(c) of this rule, physical and chemical restraints may be applied only when a physician orders restraints. An order for restraints must clearly identify the reason for the restraints and the duration and circumstances under which they are to be applied;
(c) Emergencies. In an emergency situation, a registered nurse may use physical restraints without physician orders if necessary to prevent injury to the resident or to other residents and when alternative measures do not work. If restraints are used in an emergency situation, the registered nurse shall document in the resident’s clinical record the use of restraints and what alternative measures did not work. A licensed nurse shall contact the physician for restraint orders within 12 hours of application;
(d) Re-evaluation. Whenever restraints are used, circumstances requiring the restraints and the need must be continually re-evaluated and documented in the clinical record;
(e) Staff Convenience/Discipline. Restraints shall not be used for discipline or staff convenience;
(f) Periodic Release. Residents who are physically restrained must have the restraints released at least every two hours for a minimum of ten minutes and be repositioned, exercised or provided range of motion during this period;
(g) Toileting. Toileting and incontinence care shall be provided when necessary;
(h) Quick Release. All physical restraints must allow for quick release. Locked restraints may not be used;
(i) Fixed Objects. Residents shall not be physically restrained to a fixed object.

(4) Documentation. All preventive measures taken by the facility staff shall be clearly documented. Such documentation shall include assessment of resident(s) at risk, preventive measures taken, results and evaluation of measures taken, and revision of measures as appropriate.


PENNSYLVANIA

§ 201.20. Staff development.

...An employee shall receive appropriate orientation to the facility, its policies and to the position and duties. The orientation shall include training on the prevention of resident abuse and the reporting of the abuse.
§ 211.8. Use of restraints.
(a) Restraints may not be used in lieu of staff effort. Locked restraints may not be used.
(b) Restraints may not be used or applied in a manner which causes injury to the resident.
(c) Physical restraints shall be removed at least 10 minutes out of every 2 hours during the normal waking hours to allow the resident an opportunity to move and exercise. Except during the usual sleeping hours, the resident’s position shall be changed at least every 2 hours. During sleeping hours, the position shall be changed as indicated by the resident’s needs.
(d) A signed, dated, written physician order shall be required for a restraint. This includes the use of chest, waist, wrist, ankle, drug or other form of restraint. The order shall include the type of restraint to be used.
(e) The physician shall document the reason for the initial restraint order and shall review the continued need for the use of the restraint order by evaluating the resident. If the order is to be continued, the order shall be renewed by the physician in accordance with the resident’s total program of care.
(f) Every 30 days, or sooner if necessary, the interdisciplinary team shall review and reevaluate the use of all restraints ordered by physicians.

Authority
The provisions of this § 211.8 amended under section 803 of the Health Care Facilities Act (35 P. S. § 448.803); and section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

Source

RHODE ISLAND

Section 14.0 Personnel
Criminal Records Check

14.1 Pursuant to section 23-17-34 of the General Laws, any person seeking employment in a nursing facility, hired after July 21, 1992, and having routine contact with a resident without the presence of other employees, shall be subject to a criminal background check, to be initiated prior to, or within one week of employment.

14.2 Said employee through the employer shall apply to the bureau of criminal identification of the state or local police department for a statewide criminal records check. Fingerprinting shall not be required as part of this check.
14.3 In those situations in which no disqualifying information has been found, the bureau of criminal identification (BCI) of the state or local police shall inform the applicant and the employer in writing.

14.4 Any disqualifying information, as defined below, according to the provisions of section 23-17-34 of the General Laws, will be conveyed to the applicant in writing, by the bureau of criminal identification. The employer shall also be notified that disqualifying information has been discovered, but shall not be informed by the BCI of the nature of the disqualifying information.

14.4.1 Disqualifying information, as defined in Chapter 23-17-37 of the Rhode Island General Laws, as amended, means information produced by a criminal records review pertaining to conviction, for the following crimes will result in a letter to the employee and employer disqualifying the applicant from said employment: murder, voluntary manslaughter, involuntary manslaughter, first degree sexual assault, second degree sexual assault, third degree sexual assault, assault on persons sixty (60) years of age or older, child abuse, assault with intent to commit specified felonies (murder, robbery, rape, burglary, or the abominable and detestable crime against nature), felony assault, patient abuse, neglect or mistreatment of patients, burglary, first degree arson, robbery, felony drug offenses, larceny or felony banking law violations.

14.5 The employer shall maintain on file, subject to inspection by the Department of Health, evidence that criminal records checks have been initiated on all employees seeking employment after July 21, 1992 as well as the results of said check. Failure to maintain this evidence shall be grounds to revoke the license or registration of the employer.

14.6 If an applicant has undergone a statewide criminal records check within eighteen (18) months of an application for employment, then an employer may request from the bureau a letter indicating if any disqualifying information was discovered. The bureau will respond without disclosing the nature of the disqualifying information. This letter may be maintained on file to satisfy the requirements of Chapter 23-17-34.

14.7 An employee against whom disqualifying information has been found may request that a copy of the criminal background report be sent to the employer who shall make a judgment regarding the continued employment of the employee.

Section 16.0 Reporting of Resident Abuse or Neglect, Accidents & Death

16.1 Any physician, nurse or other employee of a nursing facility who has reasonable cause to believe that a resident has been abused, exploited, mistreated, or neglected shall make within 24 hours or by the end of the next business day of the receipt of said information, a report to the licensing agency (Office of Facilities Regulation). Any person required to make a report pursuant to this section shall be deemed to have complied with these requirements if a report is made to a high managerial agent. Once notified, the administrator or the director of nursing services shall be required to meet the above reporting requirements.

a) All reports, as required herein, shall be provided to the licensing agency (Office of Facilities Regulation) in writing via facsimile on the form supplied in Appendix “E” herein. A copy of each report shall be retained by the facility for review during subsequent inspections by the licensing agency.
b) The facility shall maintain evidence that all allegations of abuse, neglect, and/or mistreatment have been thoroughly investigated and that further potential abuse has been prevented while the investigation is in progress. Appropriate corrective action shall be taken, as necessary. The results of said investigation shall be reported to the licensing agency within five (5) business days.

16.2 Accidents resulting in:
1. hospitalization; or
2. death in the nursing facility; or
3. death in the hospital following the accident; of any resident shall be reported in writing to the licensing agency before the end of the next working day or in a follow-up report in the event of item #3 (above). A copy of each report shall be retained by the facility for review during subsequent surveys.

16.3 The death of any resident of a nursing facility occurring within 24 hours of admission or prior to the performance of a physical examination in accordance with section 23.3 (c) herein, shall be reported to the Office of the State Medical Examiners.

16.4 In addition, all resident deaths occurring within a nursing facility which are sudden or unexpected, suspicious or unnatural, the result of trauma, remote or otherwise or when unattended by a physician shall be reported to the facility medical director and to the Office of the State Medical Examiners in accordance with Title 23, Chapter 4 of the General Laws of Rhode Island, as amended.

16.5 Reporting requirements, pursuant to Chapter 23-17.8 of the General Laws must be posted.

Section 19.0 Rights of Residents

...19.10 Residents shall not be subject to mental and physical abuse and shall be free from chemical and (except in emergencies) physical restraints.

a) Restraining devices are generally prohibited. A controlling device to be used for the protection of the resident may be utilized only as prescribed in writing and signed by a physician. The length of time, the purpose and the kind of restraint shall be specified in the physician’s order.

b) If after a trial of less restrictive measures, the facility decides that a physical restraint would enable and promote greater functional independence, then the use of the restraining device must first be explained to the resident, family member, or legal representative, and if the resident, family member or legal representative agrees to this treatment alternative, then the restraining device may be used for the specific periods for which the restraint has been determined to serve the purpose defined above. This does not allow the use of restraints for convenience sake.

c) The restraining device must be authorized by the physician for use for specific periods for which the restraint has been determined to serve the purpose defined in paragraph b) above. This does not allow the use of restraints for convenience sake.
501. General (II)
...B. Specifically, there shall be written policies and procedures to:
...4. Control the use and application of physical restraints and all facility practices that meet
the definition of a restraint, such as bed rails used to keep a resident from getting out of bed.

601. General (II)
...B. Staff members of the facility shall not have a prior conviction or pled no contest (nolo
contendere) for child or adult abuse, neglect, or mistreatment, or any other felony. The
facility shall coordinate with appropriate abuse-related registries prior to the employment
of staff. (I)

701. Incidents
A. A record of each incident involving residents or staff members or volunteers, occurring in
the facility or on the facility grounds, shall be reviewed, investigated if necessary, evaluated
in accordance with facility policies and procedures, and retained.

B. Serious incidents and/or medical conditions as defined in Section 701.C and any sudden
or unexpected illness or medication administration error resulting in death or inpatient
hospitalization shall be reported immediately via telephone to the attending physician and
the resident's next-of-kin or responsible party. (I)

C. A serious incident is one which results in death or a significant loss of function or damage
to a body structure, not related to the natural course of a resident's illness or underlying
condition or normal course of treatment, and resulting from an incident occurring within
the facility or on the facility grounds. A serious incident shall be considered as, but not
limited to:
1. Falls or trauma resulting in fractures of major limbs or joints;
2. Resident suicides;
3. Medication errors;
4. Resident death or injury in restraints;
5. Criminal events or assaults against residents;
6. Medical equipment errors; or
7. Resident neglect or exploitation, suspected or confirmed resident abuse.

D. The Department’s Division of Health Licensing shall be notified in writing not later than
ten (10) days of the occurrence of a serious incident.

E. Reports submitted to the Department shall contain at a minimum: facility name, resident
age and sex, date of incident, location, witness names, extent and type of injury and how
treated, e.g., hospitalization, identified cause of incident, internal investigation results if
cause unknown, identity of other agencies notified of incident and the date of the report.

F. Incidents where residents have left the premises without notice to staff members of
intent to leave and have not returned to the facility within twenty-four (24) hours shall be
reported to the administrator or his or her designee, local law enforcement, and the
resident’s responsible party, when appropriate. The Division of Health Licensing shall be notified in writing not later than ten (10) days of the occurrence.

G. Medication errors and adverse medication reactions shall be reported immediately after discovery to the prescriber and other staff in accordance with facility policies and procedures.

H. Changes in the resident’s condition, to the extent that serious health concerns, e.g., heart attack, are evident, shall be reported to the attending physician and the next-of-kin or responsible party in a timely manner, consistent with the severity or urgency of the change in accordance with facility policies and procedures. (I)

I. Abuse and suspected abuse, neglect, or exploitation of residents shall also be reported to the South Carolina Long-Term Care Ombudsman Program in accordance with S.C. Code of Law Section 43-35-25 (1976, as amended).

1012. Restraints (II)
A. There shall be written instructions on how specific restraints shall be applied.
B. There shall be a written order signed by the physician approving use of restraints at the time they are applied to a resident or, in case of emergency, within twenty-four (24) hours after they have been applied.
C. During emergency restraint, residents shall be monitored, their condition recorded at least every fifteen (15) minutes, and they shall be provided with an opportunity for motion and exercise at least every thirty (30) minutes. Prescribed medications and treatments shall be administered as ordered, and residents shall be offered nourishment and fluids and given restroom privileges. (I)
D. Only those devices specifically designed as restraints may be used. Makeshift restraints shall not be used under any circumstance. (I)

1101. General (II)
...F. Other than the limitations of resident movement in special instances, e.g., Alzheimer’s unit, residents shall be assured freedom of movement. Residents shall not be locked in or out of their rooms.
opportunity for motion and exercise for not less than 10 minutes at intervals as necessary based on the patient’s or resident’s condition, but at least every two hours.

Restraints must not be used to limit mobility, for convenience of staff, for punishment, or as a substitute for supervision. Restraints must not hinder evacuation of the patient or resident during fire or cause injury to the resident.


44:04:17:09. Quality of life. A facility must provide care and an environment that contributes to the resident's quality of life, including:

...(3) Freedom from physical or chemical restraints imposed for purposes of discipline or convenience;
(4) Freedom from verbal, sexual, physical, and mental abuse and from involuntary seclusion, neglect, or exploitation imposed by anyone, and theft of personal property...


TENNESSEE

1200-8-6-.06 BASIC SERVICES.
(4) Nursing Services.
...(w) Physical restraints shall be checked every thirty (30) minutes and released every two (2) hours so the resident may be exercised and offered toilet access.
(x) Restraints may be applied or administered to residents only on the signed order of a physician. The signed physician's order must be for a specified and limited period of time and must document the necessity of the restraint. There shall be no standing orders for restraints.
(y) When a resident’s safety or safety of others is in jeopardy, the nurse in charge shall use his/her judgment to use physical restraints if a physician’s order cannot be immediately obtained. A written order must be obtained as soon as possible.
(z) Locked restraints are prohibited.

1200-08-06-.11 RECORDS AND REPORTS.
...(2) Unusual events shall be reported by the facility to the Department of Health in a format designed by the Department within seven (7) business days of the date of the identification of the abuse of a patient or an unexpected occurrence or accident that results in death, life threatening or serious injury to a patient.
(a) The following represent circumstances that could result in an unusual event that is an unexpected occurrence or accident resulting in death, life threatening or serious injury to a patient, not related to a natural course of the patient's illness or underlying condition. The circumstances that could result in an unusual event include, but are not limited to:
1. medication errors;
2. aspiration in a non-intubated patient related to conscious/moderate sedation;
3. intravascular catheter related events including necrosis or infection requiring repair or intravascular catheter related pneumothorax;
4. volume overload leading to pulmonary edema;
5. blood transfusion reactions, use of wrong type of blood and/or delivery of blood to the wrong patient;
6. perioperative/periprocedural related complication(s) that occur within 48 hours of the operation or the procedure, including a procedure which results in any new central neurological deficit or any new peripheral neurological deficit with motor weakness;
7. burns of a second or third degree;
8. falls resulting in radiologically proven fractures, subdural or epidural hematoma, cerebral contusion, traumatic subarachnoid hemorrhage, and/or internal trauma, but does not include fractures resulting from pathological conditions;
9. procedure related incidents, regardless of setting and within thirty (30) days of the procedure and includes readmissions, which include:
   (i) procedure related injury requiring repair or removal of an organ;
   (ii) hemorrhage;
   (iii) displacement, migration or breakage of an implant, device, graft or drain;
   (iv) post operative wound infection following clean or clean/contaminated case;
   (v) any unexpected operation or reoperation related to the primary procedure;
   (vi) hysterectomy in a pregnant woman;
   (vii) ruptured uterus;
   (viii) circumcision;
   (ix) incorrect procedure or incorrect treatment that is invasive;
   (x) wrong patient/wrong site surgical procedure;
   (xi) unintentionally retained foreign body;
   (xii) loss of limb or organ, or impairment of limb if the impairment is present at discharge or for at least two (2) weeks after occurrence;
   (xiii) criminal acts;
   (xiv) suicide or attempted suicide;
   (xv) elopement from the facility;
   (xvi) infant abduction, or infant discharged to the wrong family;
   (xvii) adult abduction;
   (xviii) rape;
   (xix) patient altercation;
   (xx) patient abuse, patient neglect, or misappropriation of resident/patient funds;
   (xxi) restraint related incidents; or
   (xxii) poisoning occurring within the facility.

1200-08-06-.12 RESIDENT RIGHTS.
(1) The nursing home shall establish and implement written policies and procedures setting forth the rights of residents for the protection and preservation of dignity, individuality and, to the extent medically feasible, independence. Residents and their families or other representatives shall be fully informed and documentation shall be maintained in the resident’s file of the following rights:
... (g) To be free from mental and physical abuse. Should this right be violated, the facility must notify the department within five (5) working days. The Tennessee Department of
Human Services, Adult Protective Services shall be notified immediately as required in T.C.A. §71-6-103;
(h) To be free from chemical and physical restraints...

TEXAS

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Sec. 242.0373. RESTRAINT AND SECLUSION. A person providing services to a resident of an institution shall comply with Chapter 322 and the rules adopted under that chapter.

SUBCHAPTER E. REPORTS OF ABUSE AND NEGLECT

Sec. 242.121. DEFINITION. In this subchapter, "designated agency" means an agency designated by a court to be responsible for the protection of a resident who is the subject of a report of abuse or neglect.

Sec. 242.122. REPORTING OF ABUSE AND NEGLECT.
(a) A person, including an owner or employee of an institution, who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse or neglect caused by another person shall report the abuse or neglect in accordance with this subchapter.
(b) Each institution shall require each employee of the institution, as a condition of employment with the institution, to sign a statement that the employee realizes that the employee may be criminally liable for failure to report those abuses.
(c) A person shall make an oral report immediately on learning of the abuse or neglect and shall make a written report to the same agency not later than the fifth day after the oral report is made.

Sec. 242.123. CONTENTS OF REPORT.
(a) A report of abuse or neglect is nonaccusatory and reflects the reporting person’s belief that a resident has been or will be abused or neglected or has died of abuse or neglect.
(b) The report must contain:
(1) the name and address of the resident;
(2) the name and address of the person responsible for the care of the resident, if available; and
(3) other relevant information.
(c) Except for an anonymous report under Section 242.124, a report of abuse or neglect under Section 242.122 or of other conduct or conditions under Section 242.1225 should also include the address or phone number of the person making the report so that an investigator can contact the person for any necessary additional information. The phone number and address as well as the name of the person making the report must be deleted from any copy of any type of report that is released to the public, to the institution, or to an owner or agent of the institution.
Sec. 242.124. ANONYMOUS REPORTS OF ABUSE OR NEGLECT.
(a) An anonymous report of abuse or neglect, although not encouraged, shall be received and acted on in the same manner as an acknowledged report.
(b) An anonymous report about a specific individual that accuses the individual of abuse or neglect need not be investigated.

Sec. 242.125. PROCESSING OF REPORTS.
(a) A report of abuse or neglect shall be made to the department or a local or state law enforcement agency. A report made by an owner or employee of an institution relating to abuse or neglect or another complaint described by Section 242.126(c)(1) shall be made to the department and to the law enforcement agency described by Section 242.135(a).
(b) Except as provided by Section 242.135, a local or state law enforcement agency that receives a report of abuse or neglect shall refer the report to the department or the designated agency.

Sec. 242.126. INVESTIGATION AND REPORT OF DEPARTMENT OR DESIGNATED AGENCY.
(a) The department or the designated agency shall make a thorough investigation after receiving an oral or written report of abuse or neglect under Section 242.122 or another complaint alleging abuse or neglect.
(b) The primary purpose of the investigation is the protection of the resident.
(c) The agency shall begin the investigation:
(1) within 24 hours of receipt of the report or other allegation, if the report of abuse or neglect or other complaint alleges that:
   (A) a resident’s health or safety is in imminent danger;
   (B) a resident has recently died because of conduct alleged in the report of abuse or neglect or other complaint;
   (C) a resident has been hospitalized or been treated in an emergency room because of conduct alleged in the report of abuse or neglect or other complaint;
   (D) a resident has been a victim of any act or attempted act described by Section 21.02, 21.11, 22.011, or 22.021, Penal Code; or
   (E) a resident has suffered bodily injury, as that term is defined by Section 1.07, Penal Code, because of conduct alleged in the report of abuse or neglect or other complaint; or
(2) before the end of the next working day after the date of receipt of the report of abuse or neglect or other complaint, if the report or complaint alleges the existence of circumstances that could result in abuse or neglect and that could place a resident’s health or safety in imminent danger.
(d) The department shall adopt rules governing the conduct of investigations, including procedures to ensure that the complainant and the resident, the resident’s next of kin, and
any person designated to receive information concerning the resident receive periodic information regarding the investigation.

(e) In investigating the report of abuse or neglect or other complaint, the investigator for the investigating agency shall:
(1) make an unannounced visit to the institution to determine the nature and cause of the alleged abuse or neglect of the resident;
(2) interview each available witness, including the resident that suffered the alleged abuse or neglect if the resident is able to communicate or another resident or other witness identified by any source as having personal knowledge relevant to the report of abuse or neglect or other complaint;
(3) personally inspect any physical circumstance that is relevant and material to the report of abuse or neglect or other complaint and that may be objectively observed;
(4) make a photographic record of any injury to a resident, subject to Subsection (n); and
(5) write an investigation report that includes:
   (A) the investigator’s personal observations;
   (B) a review of relevant documents and records;
   (C) a summary of each witness statement, including the statement of the resident that suffered the alleged abuse or neglect and any other resident interviewed in the investigation; and
   (D) a statement of the factual basis for the findings for each incident or problem alleged in the report or other allegation.

(f) An investigator for an investigating agency shall conduct an interview under Subsection (e)(2) in private unless the witness expressly requests that the interview not be private.

(g) Not later than the 30th day after the date the investigation is complete, the investigator shall prepare the written report required by Subsection (e). The department shall make the investigation report available to the public on request after the date the department’s letter of determination is complete. The department shall delete from any copy made available to the public:
(1) the name of:
   (A) any resident, unless the department receives written authorization from a resident or the resident’s legal representative requesting the resident’s name be left in the report;
   (B) the person making the report of abuse or neglect or other complaint; and
   (C) an individual interviewed in the investigation; and
(2) photographs of any injury to the resident.

(h) In the investigation, the department or the designated agency shall determine:
(1) the nature, extent, and cause of the abuse or neglect;
(2) the identity of the person responsible for the abuse or neglect;
(3) the names and conditions of the other residents;
(4) an evaluation of the persons responsible for the care of the residents;
(5) the adequacy of the institution environment; and
(6) any other information required by the department.

(i) If the department attempts to carry out an on-site investigation and it is shown that admission to the institution, or any place where the resident is located, cannot be obtained,
a probate or county court shall order the person responsible for the care of the resident or
the person in charge of a place where the resident is located to allow entrance for the
interview and investigation.

(j) Before the completion of the investigation the department shall file a petition for
temporary care and protection of the resident if the department determines that immediate
removal is necessary to protect the resident from further abuse or neglect.

(k) The department or the designated agency shall make a complete final written report of
the investigation and submit the report and its recommendations to the district attorney
and, if a law enforcement agency has not investigated the report of abuse or neglect or other
complaint, to the appropriate law enforcement agency.

(l) Within 24 hours of receipt of a report of abuse or neglect or other complaint described
by Subsection (c)(1), the department or designated agency shall report the report or
complaint to the law enforcement agency described by Section 242.135(a). The department
or designated agency shall cooperate with that law enforcement agency in the investigation
of the report or complaint as described by Section 242.135.

(m) The inability or unwillingness of a local law enforcement agency to conduct a joint
investigation under Section 242.135 does not constitute grounds to prevent or prohibit the
department from performing its duties under this chapter. The department shall document
any instance in which a law enforcement agency is unable or unwilling to conduct a joint
investigation under Section

(n) If the department determines that, before a photographic record of an injury to a
resident may be made under Subsection (e), consent is required under state or federal law,
the investigator:
(1) shall seek to obtain any required consent; and
(2) may not make the photographic record unless the consent is obtained. Acts 1989, 71st
Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 815, Sec. 4, eff.
Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 8.090, eff. Sept. 1, 1995; Acts 1997, 75th
Leg., ch. 1159, Sec. 1.23, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1210, Sec. 2, eff. Sept. 1,
2003.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 593, Sec. 3.43, eff. September 1, 2007.

Sec. 242.127. CONFIDENTIALITY. A report, record, or working paper used or developed in
an investigation made under this subchapter and the name, address, and phone number of
any person making a report under this subchapter are confidential and may be disclosed
only for purposes consistent with the rules adopted by the board or the designated agency.
The report, record, or working paper and the name, address, and phone number of the
person making the report shall be disclosed to a law enforcement agency as necessary to
permit the law enforcement agency to investigate a report of abuse or neglect or other
complaint in accordance with Section 242.135.

Sec. 242.128. IMMUNITY.  
(a) A person who reports as provided by this subchapter is immune from civil or criminal liability that, in the absence of the immunity, might result from making the report.  
(b) The immunity provided by this section extends to participation in any judicial proceeding that results from the report.  
(c) This section does not apply to a person who reports in bad faith or with malice. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.129. PRIVILEGED COMMUNICATIONS. In a proceeding regarding the abuse or neglect of a resident or the cause of any abuse or neglect, evidence may not be excluded on the ground of privileged communication except in the case of a communication between an attorney and client. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.130. CENTRAL REGISTRY.  
(a) The department shall maintain in the city of Austin a central registry of reported cases of resident abuse or neglect.  
(b) The board may adopt rules necessary to carry out this section.  
(c) The rules shall provide for cooperation with hospitals and clinics in the exchange of reports of resident abuse or neglect. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.133. RETALIATION AGAINST EMPLOYEES PROHIBITED.  
(a) In this section, "employee" means a person who is an employee of an institution or any other person who provides services for an institution for compensation, including a contract laborer for the institution.  
(b) An employee has a cause of action against an institution, or the owner or another employee of the institution, that suspends or terminates the employment of the person or otherwise disciplines or discriminates or retaliates against the employee for reporting to the employee's supervisor, an administrator of the institution, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter or a rule adopted under this chapter, or for initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the institution.  
(c) The petitioner may recover:  
(1) the greater of $1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown and damages for lost wages if the petitioner’s employment was suspended or terminated;  
(2) exemplary damages;  
(3) court costs; and  
(4) reasonable attorney’s fees.
(d) In addition to the amounts that may be recovered under Subsection (c), a person whose employment is suspended or terminated is entitled to appropriate injunctive relief, including, if applicable:
   (1) reinstatement in the person's former position; and
   (2) reinstatement of lost fringe benefits or seniority rights.

(e) The petitioner, not later than the 90th day after the date on which the person's employment is suspended or terminated, must bring suit or notify the Texas Workforce Commission of the petitioner's intent to sue under this section. A petitioner who notifies the Texas Workforce Commission under this subsection must bring suit not later than the 90th day after the date of the delivery of the notice to the commission. On receipt of the notice, the commission shall notify the institution of the petitioner's intent to bring suit under this section.

(f) The petitioner has the burden of proof, except that there is a rebuttable presumption that the person's employment was suspended or terminated for reporting abuse or neglect if the person is suspended or terminated within 60 days after the date on which the person reported in good faith.

(g) A suit under this section may be brought in the district court of the county in which:
   (1) the plaintiff resides;
   (2) the plaintiff was employed by the defendant; or
   (3) the defendant conducts business.

(h) Each institution shall require each employee of the institution, as a condition of employment with the institution, to sign a statement that the employee understands the employee's rights under this section. The statement must be part of the statement required under Section 242.122. If an institution does not require an employee to read and sign the statement, the periods under Subsection (e) do not apply, and the petitioner must bring suit not later than the second anniversary of the date on which the person's employment is suspended or terminated.


Sec. 242.1335. RETALIATION AGAINST VOLUNTEERS, RESIDENTS, OR FAMILY MEMBERS OR GUARDIANS OF RESIDENTS.

(a) An institution may not retaliate or discriminate against a volunteer, a resident, or a family member or guardian of a resident because the volunteer, the resident, the resident's family member or guardian, or any other person:
   (1) makes a complaint or files a grievance concerning the facility;
   (2) reports a violation of law, including a violation of this chapter or a rule adopted under this chapter; or
   (3) initiates or cooperates in an investigation or proceeding of a governmental entity relating to care, services, or conditions at the institution.
(b) A volunteer, a resident, or a family member or guardian of a resident who is retaliated
or discriminated against in violation of Subsection (a) is entitled to sue for:
(1) injunctive relief;
(2) the greater of $1,000 or actual damages, including damages for mental anguish even if
an injury other than mental anguish is not shown;
(3) exemplary damages;
(4) court costs; and
(5) reasonable attorney's fees.

(c) A volunteer, a resident, or a family member or guardian of a resident who seeks relief
under this section must report the alleged violation not later than the 180th day after the
date on which the alleged violation of this section occurred or was discovered by the
volunteer, the resident, or the family member or guardian of the resident through
reasonable diligence.

(d) A suit under this section may be brought in the district court of the county in which the
institution is located or in a district court of Travis County.

Added by Acts 1995, 74th Leg., ch. 864, Sec. 1, eff. June 16, 1995. Amended by Acts 1997,
75th Leg., ch. 1159, Sec. 1.26, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 324, Sec. 2, eff. Sept.

Sec. 242.134. REPORTS RELATING TO RESIDENT DEATHS.

(a) An institution licensed under this chapter shall submit a report to the department
concerning deaths of residents of the institution. The report must be submitted within 10
working days after the last day of each month in which a resident of the institution dies.
The report must also include the death of a resident occurring within 24 hours after the
resident is transferred from the institution to a hospital.

(b) The institution must make the report on a form prescribed by the department. The
report must contain the name and social security number of the deceased.

(c) The department shall correlate reports under this section with death certificate
information to develop data relating to the:
(1) name and age of the deceased;
(2) official cause of death listed on the death certificate;
(3) date, time, and place of death; and
(4) name and address of the institution in which the deceased resided.

(d) Except as provided by Subsection (e), a record under this section is confidential and not
subject to the provisions of Chapter 552, Government Code.

(e) The department shall develop statistical information on official causes of death to
determine patterns and trends of incidents of death among the elderly and in specific
institutions. Information developed under this subsection is public.

(f) A licensed institution shall make available historical statistics on all required information
on request of an applicant or applicant's representative.
Sec. 242.501. RESIDENT'S RIGHTS.
(a) The department by rule shall adopt a statement of the rights of a resident. The statement must be consistent with Chapter 102, Human Resources Code, but shall reflect the unique circumstances of a resident at an institution. At a minimum, the statement of the rights of a resident must address the resident's constitutional, civil, and legal rights and the resident's right:
(1) to be free from abuse and exploitation; and
...(22) to be free from any physical or chemical restraints imposed for the purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

Sec. 242.848. REPORTING ABUSE AND NEGLECT.
(a) For purposes of the duty to report abuse or neglect under Section 242.122 and the criminal penalty for the failure to report abuse or neglect under Section 242.131, a person who is conducting electronic monitoring on behalf of a resident under this subchapter is considered to have viewed or listened to a tape or recording made by the electronic monitoring device on or before the 14th day after the date the tape or recording is made.
(b) If a resident who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring under this subchapter gives a tape or recording made by the electronic monitoring device to a person and directs the person to view or listen to the tape or recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the tape or recording is considered to have viewed or listened to the tape or recording on or before the seventh day after the date the person receives the tape or recording for purposes of the duty to report abuse or neglect under Section 242.122 and of the criminal penalty for the failure to report abuse or neglect under Section 242.131.
(c) A person is required to report abuse based on the person's viewing of or listening to a tape or recording only if the incident of abuse is acquired on the tape or recording. A person is required to report neglect based on the person's viewing of or listening to a tape or recording only if it is clear from viewing or listening to the tape or recording that neglect has occurred.
(d) If abuse or neglect of the resident is reported to the institution and the institution requests a copy of any relevant tape or recording made by an electronic monitoring device, the person who possesses the tape or recording shall provide the institution with a copy at the institution's expense.

§19.601  Resident Behavior and Facility Practice
(a) Restraints. The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.
(1) If physical restraints are used because they are required to treat the resident's medical condition, the restraints must be released and the resident repositioned as needed to prevent deterioration in the resident's condition. Residents must be monitored hourly and,
at a minimum, restraints must be released every two hours for a minimum of 10 minutes, and the resident repositioned.

(2) A facility must not administer to a resident a restraint that:
   -(A) obstructs the resident’s airway, including a procedure that places anything in, on, or over the resident’s mouth or nose;
   -(B) impairs the resident’s breathing by putting pressure on the resident’s torso;
   -(C) interferes with the resident’s ability to communicate; or
   -(D) places the resident in a prone or supine hold.

(3) A behavioral emergency is a situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:
   -(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;
   -(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;
   -(C) could not reasonably have been anticipated; and
   -(D) is not addressed in the resident’s comprehensive care plan.

(4) If restraint is used in a behavioral emergency, the facility must use only an acceptable restraint hold. An acceptable restraint hold is a hold in which the resident’s limbs are held close to the body to limit or prevent movement and that does not violate the provisions of paragraph (2) of this subsection.

(5) A staff person may use a restraint hold only for the shortest period of time necessary to ensure the protection of the resident or others in a behavioral emergency.

(6) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(7) Use of restraints and their release must be documented in the clinical record.

(b) Abuse. The resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

(c) Staff treatment of residents. The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents, and misappropriation of residents' property.

(1) The facility must:
   -(A) not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion; and
   -(B) not employ individuals who have:
      - (i) been found guilty of abusing, neglecting, or mistreating residents by a court of law, or
      - (ii) had a finding entered into the state nurse aide registry concerning abuse, neglect, mistreatment of residents, or misappropriation of their property; or
      - (iii) been convicted of any crime contained in §250.006, Health and Safety Code; and
   -(C) report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other staff to the state nurse aide registry or licensing authority.

(2) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property, are reported immediately to the administrator of the facility and to other officials in accordance
with Texas law through established procedures (see §19.602 of this title (relating to Incidents of Abuse and Neglect Reportable to the Texas Department of Human Services and Law Enforcement Agencies by Facilities)).

(3) The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with Texas law (including to the state survey and certification agency) within five workdays of the incident, and if the alleged violation is verified, appropriate corrective action must be taken.

§19.602 Incidents of Abuse and Neglect Reportable to the Texas Department of Human Services (DHS) and Law Enforcement Agencies by Facilities

(a) A facility owner or employee who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse, neglect, or exploitation caused by another person must report the abuse, neglect, or exploitation.

(b) Reports described in subsection (a) of this section are to be made to the DHS state office, Austin, Texas, at 1-800-458-9858.

(1) The person reporting must make the telephone report immediately on learning of the alleged abuse, neglect, exploitation, conduct, or conditions.

(2) The facility must conduct an investigation of the reported act(s). A written report of the investigation must be sent no later than the fifth working day after the oral report.

(c) Each employee of a facility must sign a statement which states:

(1) the employee may be criminally liable for failure to report abuses; and

(2) under the Health and Safety Code, Title 4, §242.133, the employee has a cause of action against a facility, its owner(s) or employee(s) if he is suspended, terminated, disciplined, or discriminated or retaliated against as a result of:

(A) reporting to the employee's supervisor, the administrator, DHS, or a law enforcement agency a violation of law, including a violation of laws or regulations regarding nursing facilities; or

(B) for initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the nursing facility.

(d) The statements described in subsection (c) of this section must be available for inspection by DHS.

(e) A local or state law enforcement agency must be notified of reports described in subsection (a) of this section, which allege that:

(1) a resident's health or safety is in imminent danger;

(2) a resident has recently died because of conduct alleged in the report of abuse or neglect or other complaint;

(3) a resident has been hospitalized or treated in an emergency room because of conduct alleged in the report of abuse or neglect or other complaint;

(4) a resident has been a victim of any act or attempted act described in the Penal Code, §§21.11, 22.011, or 22.021; or

(5) a resident has suffered bodily injury, as that term is defined in the Penal Code, §1.07, because of conduct alleged in the report of abuse or neglect or other complaint.
§19.604 Complaint Investigation
(a) A complaint is any allegation received by the Texas Department of Human Services (DHS) other than an incident reported by facility staff. These allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.
(b) DHS will furnish the facility with a notification of the complaint received and a summary of the complaint, without identifying the source of the complaint.

§19.606 Reporting of Resident Death Information
(a) All licensed facilities must submit to the Texas Department of Human Services (DHS) a report of deaths of any persons residing in the facility and those persons transferred from the facility to a hospital who expire within 24 hours after transfer.
(b) The facility must submit to DHS a standard DHS form within 10 workdays after the last day of the month in which a resident death occurs. The form must include:
   (1) name of deceased;
   (2) social security number of the deceased;
   (3) date of death; and
   (4) name and address of the institution.
(c) These reports are confidential under the Health and Safety Code, §242.134; however, licensed facilities must make available historical statistics provided to them by DHS and must provide the statistics, if requested, to the applicants for admission or their representative.
(d) DHS produces statistical information of official causes of death to determine patterns and trends of incidents of death among the elderly and in specific facilities and makes this information available to the public upon request.

RULE §19.1923 Incident or Accident Reporting
(a) The facility must detail in the medical record every accident or incident, including allegations of mistreatment of residents by facility staff, medication errors, and drug reactions.
(b) Accidents, whether or not resulting in injury, and any unusual incidents or abnormal events including allegations of mistreatment of residents by staff or personnel or visitors, must be described in a separate administrative record and reported by the facility in accordance with the licensure Act and this section.
   (1) If the incident appears to be of a serious nature, it must be investigated by or under the direction of the director of nurses, the facility administrator, or a committee charged with this responsibility.
   (2) If the incident involves a resident and is serious or requires special reporting to the Texas Department of Human Services (DHS), the resident’s responsible party and attending physician must be immediately notified.
(c) Accident or incident reports must be retained for at least two years following the occurrence and must contain the following information.
   (1) For incidents involving residents, the name of the resident; witnesses, if any; date, time, and description of the incident; circumstances under which it occurred; action taken
including documentation of notification of the responsible party and attending physician, if appropriate; and the resident's current (post-incident) health condition, including vital signs and date and time of entry.

(2) Incident reports describing incidents not involving residents must contain such information as names of individuals involved, date, time, witnesses (if witnesses were present), description of the event or occurrence, including the circumstances under which it occurred, action taken, and final disposition that indicates resolution of the event or occurrence.

(d) The facility must investigate incidents/accidents and complaints for trends which may indicate resident abuse. Trends that might be identified include but are not limited to: type of accident, type of injury, time of day, staff involved, staffing level, and relationship to past complaints.

(e) The facility must make incident reports available for review, upon request and without prior notice, by representatives of DHS, the U.S. Department of Health and Human Services, if applicable; and the Texas Department of Protective and Regulatory Services. Reports related to specific incidents must be available to the designated regional staff ombudsman, Office of the State Long Term Care Ombudsman, Texas Department on Aging.

RULE §19.2006 Reporting Incidents and Complaints

(a) Each incident or complaint report must reflect the reporting person's belief that a resident has been or will be abused or neglected and must contain the following information:

(1) the address or phone number of the person making the report so that the Texas Department of Human Services (DHS) can contact the person for any additional information, except for an anonymous report; the name and address of the resident; the name and address of the person responsible for the care of the resident, if available; information required by DHS guidelines, when the report is an incident; and

(5) any other relevant information. Relevant information includes the reporter's or complainant's basis or cause for reporting and his or her belief that a resident's physical or mental health or welfare has been or may be adversely affected by abuse or neglect caused by another person or persons, and any other information DHS considers relevant for the report.

(b) Should a report not include the information in paragraph (a) of this subsection, the report may be considered a complaint or an incident report not meeting the reporting criteria and may be investigated using other procedures. In receiving an oral report, the Texas Department of Human Services (DHS) will take all reasonable steps to elicit from the reporter all the information in paragraph (a) of this subsection.

(c) Anonymous complaints of abuse or neglect will be treated in the same manner as acknowledged reports unless the anonymous report accuses a specific individual of abuse or neglect, which report need not be investigated.

Source Note: The provisions of this §19.2006 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective August 1, 2000, 25 TexReg 6779
RULE §19.2008 Investigations of Incidents and Complaints

(a) In accordance with the memorandum of understanding between the Texas Department of Human Services (DHS) and the Texas Department of Protective and Regulatory Services (TDPRS) (relating to Memorandum of Understanding Concerning Protective Services for the Elderly), DHS will receive and investigate reports of abuse, neglect, and exploitation of elderly and disabled persons or other residents living in facilities licensed under this chapter. In investigating allegations of abuse and neglect of children residing in facilities, the definitions of "abuse," "neglect," and "person responsible for a child's care, custody, or welfare" are those found in §261.001 of the Texas Family Code.

(b) DHS will investigate complaints of abuse, neglect, or exploitation when the act occurs in the facility, when such licensed facility is responsible for the supervision of the resident at the time the act occurs, or when the alleged perpetrator is affiliated with the facility. Complaints of abuse, neglect, or exploitation not meeting this criteria will be referred to the Texas Department of Protective and Regulatory Services.

(c) The primary purpose of an investigation is the protection of the resident. If, before the completion of an investigation, DHS determines that the immediate removal of the resident is necessary to protect the resident from further abuse or neglect, DHS will petition a court to allow the immediate removal of the resident from the facility.

(d) Investigations under this section are conducted in accordance with Health and Safety Code, §242.126.

(e) Investigations of reports do not preclude actions under the provisions of Subchapter V of this chapter (relating to Enforcement).

(f) If the initial phase of an incident or complaint investigation concludes that no abuse or neglect adversely affecting the physical or mental health or welfare of a resident has occurred, no further investigation will be undertaken.

(g) The individual reporting the alleged abuse or neglect or other complaint, the resident, the resident's family, any person designated by the resident to receive information concerning the resident, and the facility will be notified of the results of DHS's investigation of a reported case of abuse or neglect or other complaint.

Source Note: The provisions of this §19.2008 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective June 1, 1997, 22 TexReg 3816; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective October 15, 1998, 23 TexReg 10496; amended to be effective July 1, 2001, 26 TexReg 3824; amended to be effective September 1, 2003, 28 TexReg 6939.

... (3) The facility shall ensure that each resident admitted to the facility has the right to:
... (g) be free from mental and physical abuse, and from chemical and physical restraints;


(1) Each resident has the right to be free from physical restraints imposed for purposes of discipline or convenience, or not required to treat the resident's medical symptoms.
(2) The facility must have written policies and procedures regarding the proper use of restraints.
(a) Physical and chemical restraints may only be used to assist residents to attain and maintain optimum levels of physical and emotional functioning.
(b) Physical and chemical restraints must not be used as substitutes for direct resident care, activities, or other services.
(c) Restraints must not unduly hinder evacuation of the resident in the event of fire or other emergency.
(d) If use of a physical or a chemical restraint is implemented, the facility must inform the resident, next of kin, and the legally designated representative of the reasons for the restraint, the circumstances under which the restraint shall be discontinued, and the hazards of the restraint, including potential physical side effects.
(3) The facility must develop and implement policies and procedures that govern the use of physical and chemical restraints. These policies shall promote optimal resident function in a safe, therapeutic manner and minimize adverse consequences of restraint use.
(4) Physical and chemical restraint policies must incorporate and address at least the following:
(a) resident assessment criteria which includes:
   (i) appropriateness of use;
   (ii) procedures for use;
   (iii) purpose and nature of the restraint;
   (iv) less restrictive alternatives prior to the use of more restrictive measures; and
   (v) behavior management and modification protocols including possible alterations to the physical environment;
(b) examples of the types of restraints and safety devices that are acceptable for the use indicated and possible resident conditions for which the restraint may be used; and
(c) physical restraint guidelines for periodic release and position change or exercise, with instructions for documentation of this action.
(5) Emergency use of physical and chemical restraints must comply with the following:
(a) A physician, a licensed health practitioner, the director of nursing, or the health services supervisor must authorize the emergency use of restraints.
(b) The facility must notify the attending physician as soon as possible, but at least within 24 hours of the application of the restraints.
(c) The facility must notify the director of nursing or health services supervisor no later than the beginning of the next day shift of the application of the restraints.
(d) The facility must document in the resident's record the circumstances necessitating emergency use of the restraint and the resident's response.
(6) Physical restraints must be authorized in writing by a licensed practitioner and incorporated into the resident's plan of care.
(a) The interdisciplinary team must review and document the use of physical restraints, including simple safety devices, during each resident care conference, and upon receipt of renewal orders from the licensed practitioner.
(b) The resident care plan must indicate the type of physical restraint or safety device, the length of time to be used, the frequency of release, and the type of exercise or ambulation to be provided.
(c) Staff application of physical restraints must ensure minimal discomfort to the resident and allow sufficient body movement for proper circulation.
(d) Staff application of physical restraints must not cause injury or allow a potential for injury.
(e) Leather restraints, straight jackets, or locked restraints are prohibited.

(7) Chemical restraints must be authorized in writing by a licensed practitioner and incorporated into the resident's plan of care in conjunction with an individualized behavior management program.
(a) The interdisciplinary team must review and document the use of chemical restraints during each resident care conference and upon receipt of renewal orders from the licensed practitioner.
(b) The facility must monitor each resident receiving chemical restraints for adverse effects that significantly hinder verbal, emotional, or physical abilities.
(c) Any medication given to a resident must be administered according to the requirements of professional and ethical practice and according to the policies and procedures of the facility.
(d) The facility must initiate drug holidays in accordance with R432-150-15(13)(b).

(8) Facility policy must include criteria for admission and retention of residents who require behavior management programs.

R432-200-12. Residents' Rights. [small health care facilities]
...(2) Each resident admitted to the facility shall have the following rights:
...(i) To be free from mental and physical abuse and to be free from chemical and (except in emergencies) physical restraints except as authorized in writing by a physician for a specified and limited period of time, or when necessary to protect the resident from injury to himself or to others (see R432-150-12);

See R432-150-14.

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2.9 Reports to the Licensing Agency
The following reports must be filed with the licensing agency:

(a) At any time a fire occurs in the home, regardless of the size or damage, the licensing agency and the Department of Labor and Industry must be notified by the next business
day. A written report must be submitted to both departments by the next business day. A copy of the report shall be kept on file in the facility.

(b) Any untimely death that occurs as a result of an untoward event, such as an accident that results in hospitalization, equipment failure, use of restraint, etc., shall be reported to the licensing agency by the next business day, followed by a written report that details and summarizes the event.

(c) Any unexplained or unaccounted for absence of a resident for a period of more than 30 minutes shall be reported promptly to the licensing agency. A written report must be submitted by the close of the next business day.

(d) Any breakdown or cessation to the facility's physical plant that has a potential for harm to the residents, such as a loss of water, power, heat or telephone communications, etc., for four hours or more, shall be reported within 24 hours to the licensing agency.

3. RESIDENTS’ RIGHTS

3.17 Freedom from Restraints and Abuse

(a) General. Each resident shall be free from mental and physical abuse, and free from chemical and (except in emergencies) physical restraints except as authorized in writing by a physician for a specified and limited period of time, or when necessary to protect the resident from injury to himself or herself or to others, or when exercising a right to refuse treatment under section 3.6.

(b) Restraints. The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms.

(1) The facility shall inform residents of its restraint policy and appeal rights under the facility's grievance procedure.

(2) The policy must include the release of the restraints at intervals of every two hours or less, for ten minutes for exercise and repositioning.

(c) Abuse. A resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

(d) Staff treatment of residents.

(1) The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

(2) The facility must not use verbal, mental, sexual or physical abuse, corporal punishment, or involuntary seclusion.

(3) A nursing facility shall not employ individuals who have been:

(i) found guilty of abusing, neglecting, exploiting or mistreating residents by a court of law; or

(ii) have had a finding entered into the Vermont State Nurse Assistants Registry or the Vermont Adult Abuse Registry concerning abuse, neglect, exploitation or mistreatment of residents or misappropriation of their property.

(e) A nursing facility shall report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the Vermont State Nurse Assistants Registry or the appropriate licensing authority.
and the licensing agency. Actions by a court of law which indicate unfitness for service include a charge of abuse, neglect or exploitation substantiated against an employee or conviction of an offense for actions related to bodily injury, theft or misuse of funds or property, or other crimes inimical to the public welfare, in any jurisdiction within or outside the State of Vermont.

(f) The facility must ensure that all alleged violations involving mistreatment, neglect, exploitation, or abuse, including injuries of unknown source and misappropriation of resident property are reported immediately to the administrator of the facility and the licensing agency and Adult Protective Services in accordance with 33 V.S.A. Chapter 69.

(g) The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.

(h) The results of all investigations must be reported to the administrator or his or her designated representative and to the licensing agency in accordance with 33 V.S.A. Chapter 69, and if the alleged violation is verified, appropriate corrective action must be taken.

12 VAC 5-371-70. Complaint investigation.
A. The OLC has the responsibility to investigate any complaints regarding alleged violations of the standards or statutes and complaints of the abuse or neglect of persons in care. The Department of Social Services and the State Ombudsman are notified of complaints received.
B. Complaints may be received in written or oral form and may be anonymous.
C. When the investigation is complete, the licensee and the complainant, if known will be notified of the findings of the investigation.
D. As applicable, the facility’s administrator of record shall submit an acceptable plan for correcting any deficiencies found during a complaint investigation.
E. The administrator of record will be notified whenever any item in the plan of correction is determined to be unacceptable.
F. The administrator of record shall be responsible for assuring the plan of correction is implemented and monitored so that compliance is maintained.

A. A resident shall be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident’s medical symptoms.
B. Restraints shall only be used:
1. In accordance with the comprehensive assessment and plan of care, which includes a schedule or plan of rehabilitation training enabling the progressive removal or the progressive use of less restrictive restraints when appropriate; and
2. As a last resort, after completing, implementing, and evaluating the resident’s
comprehensive assessment and plan of care, when the nursing facility has determined that 
less restrictive means have failed.

C. If a restraint is used in a nonemergency, the nursing facility shall: . Explain the use of the 
restraint, including potential negative outcomes of restraint use, to the resident or his legal 
representative, as appropriate; 
2. Explain the resident's right to refuse the restraint; 
3. Obtain written consent of the resident. If the resident has been legally declared 
incompetent, obtain written consent from the legal representative; and 
4. Include the use of restraint in the plan of care.

D. Restraints shall not be ordered on a standing or PRN basis.

E. Restraints shall be applied only by staff trained in their use.

F. At a minimum, for a resident placed in a restraint, the nursing facility shall: 
1. Check the resident at least every 30 minutes; 
2. Provide an opportunity for motion, exercise and elimination for not less than 10 minutes 
each hour in which a restraint is administered; and 
3. Document restraint usage, including outcomes, in accordance with facility policy.

G. Emergency orders for restraints shall not be in effect for longer than 24 hours and must 
be confirmed by a physician within one hour of administration. Each application of 
emergency restraint shall be considered a single event and shall require a separate 
physician's order.

H. Temporary restraints may be used for a brief period to allow a medical or surgical 
procedure, but shall not be used to impose a medical or surgical procedure which the 
resident has previously refused.

I. The nursing facility shall notify a resident's legal representative, if any, or designated 
family member as soon as practicable, but no later than 12 hours after administration of a 
restraint.

J. Chemical restraint shall only be ordered in an emergency situation when necessary to 
ensure the physical safety of the resident or other individuals.

K. Orders for chemical restraint shall be in writing, signed by a physician, specifying the 
dose, frequency, duration and circumstances under which the chemical restraint is to be 
used. Verbal orders for chemical restraints shall be implemented when an emergency 
necessitates parenteral administration of psychopharmacologic drugs, but only until a 
written order can reasonably be obtained.

L. Emergency orders for chemical restraints shall: 
1. Not be in effect for more than 24 hours; and 
2. Be administered only if the resident is monitored continually for the first 15 minutes after 
each parenteral administration (or 30 minutes for nonparenteral administration) and every 
15 minutes thereafter, for the first hour, and hourly for the next eight hours to ensure that 
any adverse side effects will be noticed and appropriate action taken as soon as possible.
388-97-0620 Chemical and physical restraints.

(1) The resident has the right to be free from any physical or chemical restraint imposed for purposes of:
(a) Discipline or convenience, and not required to treat the resident's medical symptoms; or
(b) Preventing or limiting independent mobility or activity.

(2) The nursing home must develop and implement written policies and procedures governing:
(a) The emergency use of restraints;
(b) The use of chemical and physical restraints, required for the treatment of the resident’s medical symptoms, not for discipline or convenience;
(c) The personnel authorized to administer restraints in an emergency; and
(d) Monitoring and controlling the use of restraints.

(3) Physical restraints may be used in an emergency only when:
(a) It has been assessed as necessary to prevent a resident from inflicting injury to self or to others;
(b) The restraint is the least restrictive form of restraint possible;
(c) A physician's order is obtained:
   (i) Within twenty-four hours; and
   (ii) The order includes treatments to assist in resolving the emergency situation and eliminating the need for the restraint.
(d) The resident is released from the restraint as soon as the emergency no longer exists.

(4) In certain situations, chemical or physical restraints may be necessary for residents with acute or chronic mental or physical impairments. When chemical or physical restraints are used the nursing home must ensure that:
(a) The use of the restraint is related to a specific medical need or problem identified through a multidisciplinary assessment;
(b) The informed consent process is followed as described under WAC 388-97-0260; and
(c) The resident’s plan of care provides approaches to reduce or eliminate the use of the restraint, where possible.

(5) The nursing home must ensure that any resident physically restrained is released:
(a) At intervals not to exceed two hours; and
(b) For periods long enough to provide for ambulation, exercise, elimination, food and fluid intake, and socialization as independently as possible.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0620, filed 9/24/08, effective 11/1/08.]
Prevention of abuse.

(1) Each resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

(2) The nursing home must develop and implement written policies and procedures that:
(a) Prohibit abandonment, abuse, and neglect of residents, financial exploitation, and misappropriation of resident property; and
(b) Require staff to report possible abuse, and other related incidents, as required by chapter 74.34 RCW, and for skilled nursing facilities and nursing facilities as required by 42 C.F.R. § 483.13.

(3) The nursing home must not allow staff to:
(a) Engage in verbal, mental, sexual, or physical abuse;
(b) Use corporal punishment;
(c) Involuntarily seclude, abandon, neglect, or financially exploit residents; or
(d) Misappropriate resident property.

(4) The nursing home must report any information it has about an action taken by a court of law against an employee to the department’s complaint resolution unit and the appropriate department of health licensing authority, if that action would disqualify the individual from employment as described in RCW 43.43.842.

(5) The nursing home must ensure that all allegations involving abandonment, abuse, neglect, financial exploitation, or misappropriation of resident property, including injuries of unknown origin, are reported immediately to the department, other applicable officials, and the administrator of the facility. The nursing home must:
(a) Ensure that the reports are made through established procedures in accordance with state law including chapter 74.34 RCW, and guidelines developed by the department; and
(b) Not have any policy or procedure that interferes with the requirement of chapter 74.34 RCW that employees and other mandatory reporters file reports directly with the department, and also with law enforcement, if they suspect sexual or physical assault has occurred.

(6) The nursing home must:
(a) Have evidence that all alleged violations are thoroughly investigated;
(b) Prevent further potential abandonment, abuse, neglect, financial exploitation, or misappropriation of resident property while the investigation is in progress; and
(c) Report the results of all investigations to the administrator or his designated representative and to other officials in accordance with state law and established procedures (including the state survey and certification agency) within five working days of the incident, and if the alleged violation is verified appropriate action must be taken.

(7) When a mandated reporter has:
(a) Reasonable cause to believe that a vulnerable adult has been abandoned, abused, neglected, financially exploited, or a resident’s property has been misappropriated, the individual mandatory reporter must immediately report the incident to the department’s aging and disability services administration (ADSA);
(b) Reason to suspect that a vulnerable adult has been sexually or physically assaulted, the
individual mandatory reporter must:
   (i) Immediately report the incident to the department’s aging and disability services administration (ADSA);
   (ii) Notify local law enforcement in accordance with the provisions of chapter 74.34 RCW.

(8) Under RCW 74.34.053, it is:
(a) A gross misdemeanor for a mandated reporter knowingly to fail to report as required under this section; and
(b) A misdemeanor for a person to intentionally, maliciously, or in bad faith make a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult.

(9) The nursing home must not employ individuals who are disqualified under the requirements of WAC 388-97-1820.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0640, filed 9/24/08, effective 11/1/08.]

388-97-0660 Resident protection program definition.
As used in WAC 388-97-0680 through 388-97-0840, the term "individual," means anyone, used by the nursing home to provide services to residents who is alleged to have abandoned, abused, neglected, misappropriated property of a resident or financially exploited a resident. "Individual" includes, but is not limited to, employees, contractors, and volunteers.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0660, filed 9/24/08, effective 11/1/08.]

388-97-0680 Investigation of mandated reports.

(1) The department will review all allegations of resident abandonment, abuse, neglect, or financial exploitation, or misappropriation of resident property, as those terms are defined in this chapter, RCW 74.34.020 or 42 C.F.R. 488.301.

(2) If, after the review of an allegation, the department concludes that there is reason to believe that an individual has abandoned, abused, neglected, or financially exploited a resident, or has misappropriated a resident's property, then the department will initiate an investigation.

(3) The department's investigation may include, but is not limited to:
   (a) The review of facility and state agency records;
   (b) Interviews with anyone who may have relevant information about the allegation; and
   (c) The collection of any evidence deemed necessary by the investigator.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0680, filed 9/24/08, effective 11/1/08.]

388-97-0700 Preliminary finding.
If, after review of the results of the investigation, the department determines that an individual has abandoned, abused, neglected, or financially exploited a resident, or has misappropriated a resident's property, the department will make a preliminary finding to
that effect. However, a preliminary finding of neglect will not be made if the individual demonstrates that the neglect was caused by factors beyond the control of the individual. [Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-970700, filed 9/24/08, effective 11/1/08.]

388-97-0720 Notice to individual of preliminary findings.
(1) The department will serve notice of the preliminary finding as provided in WAC 388-97-4425.
(2) The department may establish proof of service as provided in WAC 388-97-4430. [Statutory Authority: Chapters 18.51 and 74.42 RCW. 10-02-021, § 388-97-0720, filed 12/29/09, effective 1/29/10. Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-970720, filed 9/24/08, effective 11/1/08.]

388-97-0725 Notice to others of preliminary findings.
Consistent with confidentiality requirements concerning the resident, witnesses, and the reporter, the department may provide notification of a preliminary finding to:
- Other divisions within the department;
- The agency, program or employer where the incident occurred;
- The employer or program that is currently associated with the individual;
- Law enforcement;
- Other entities as authorized by law including chapter 74.34 RCW and this chapter; and
- The appropriate licensing agency. [Statutory Authority: Chapters 18.51 and 74.42 RCW. 10-02-021, § 388-97-0725, filed 12/29/09, effective 1/29/10.]

388-97-0740 Disputing a preliminary finding.
(1) The individual may request an administrative hearing to challenge a preliminary finding made by the department.
(2) The request must be made in writing to the office of administrative hearings.
(3) The office of administrative hearings must receive the individual's written request for an administrative hearing within thirty calendar days of the date of the notice of the preliminary finding; except under the circumstances described in subsection (4).
(4) If, an individual requests a hearing within one hundred eighty days of the date of the notice of the preliminary finding and the individual can demonstrate good cause for failing to request a hearing within thirty days, the office of administrative hearings may grant the request. Under these circumstances, the finding against the individual will remain on the department's registry pending the outcome of the hearing. [Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-970740, filed 9/24/08, effective 11/1/08.]

388-97-0760 Hearing procedures to dispute preliminary finding.
Upon receipt of a written request for a hearing from an individual, the office of administrative hearings will schedule a hearing, taking into account the following requirements:
(1) The hearing decision must be issued within one hundred twenty days of the date the office of administrative hearings receives a hearing request; except as provided in subsection (6);
(2) Neither the department nor the individual can waive the one hundred twenty day
requirement;
(3) The hearing will be conducted at a reasonable time and at a place that is convenient for the individual;
(4) The hearing, and any subsequent appeals, will be governed by this chapter, chapter 34.05 RCW, and chapter 388-02 WAC, or its successor regulations;
(5) A continuance may be granted for good cause upon the request of any party, as long as the hearing decision can still be issued within one hundred twenty days of the date of the receipt of the appeal; except under the circumstances described in subsection 6; If the administrative law judge finds that extenuating circumstances exist that will make it impossible to render a decision within one hundred twenty days, the administrative law judge may extend the one hundred twenty-day requirement by a maximum of sixty days; and
(6) To comply with the time limits described in this section, the individual must be available for the hearing and other preliminary matters. If the decision is not rendered within the time limit described in subsection (1), or if appropriate under subsection (6), the administrative law judge shall issue an order dismissing the appeal and the preliminary finding will become final.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0760, filed 9/24/08, effective 11/1/08.]

388-97-0780 Finalizing the preliminary finding.

(1) The preliminary finding becomes a final finding when:
(a) The department notifies the individual of a preliminary finding and the individual does not ask for an administrative hearing within the time frame provided under WAC 388-97-0740;
(b) The individual requested an administrative hearing to appeal the preliminary finding and the administrative law judge:
(i) Dismisses the appeal following withdrawal of the appeal or default;
(ii) Dismisses the appeal for failure to comply with the time limits under WAC 388-97-0760; or
(iii) Issues an initial order upholding the finding; or
(c) The board of appeals reverses an administrative law judge's initial order and issues a final order upholding the preliminary finding.

(2) A final finding is permanent, except under the circumstances described in (3).

(3) A final finding may be removed from the department's registry and, as appropriate, any other department lists under the following circumstances:
(a) The department determines the finding was made in error;
(b) The finding is rescinded following judicial review;
(c) At least one year after a single finding of neglect has been finalized, the department may remove the finding of neglect from the department's registry or department lists based upon a written petition by the individual and in accordance with requirements of federal law, 42 U.S.C. 1396r (g)(1)(D); or
(d) The department is notified of the individual's death.
388-97-0800 Reporting final findings.
The department will report a final finding of abandonment, abuse, neglect, financial
exploitation of a resident, and misappropriation of resident property within ten working
days to the following:
(a) The individual;
(b) The current administrator of the facility in which the incident occurred;
(c) The administrator of the facility that currently employs the individual, if known;
(d) The department’s registry;
(e) The appropriate licensing authority; and
(f) Any other lists maintained by a state or federal agency as appropriate.

388-97-0820 Appeal of administrative law judge's initial order or finding.
(a) If the individual or the department disagrees with the administrative law judge’s
decision, either party may appeal this decision by filing a petition for review with the
department’s board of appeals as provided under chapter 34.05 RCW and chapter 388-02
WAC.
(b) If the individual appeals the administrative law judge’s decision, the finding will remain
on the department's registry or other lists.

388-97-0840 Disclosure of investigative and finding information.
Information obtained during the investigation into allegations of abandonment, abuse,
neglect, misappropriation of property, or financial exploitation of a resident, and any
documents generated by the department will be maintained and disseminated with regard
for the privacy of the resident and any reporting individuals and in accordance with laws
and regulations regarding confidentiality and privacy. Confidential information about
resident and mandated reporters provided to the individual by the department must be
kept confidential and may only be used by the individual to challenge findings through the
appeals process. Confidential information such as the name and other personal identifying
information of the reporter, witnesses, or the resident will be redacted from the documents
unless release of that information is consistent with chapter 74.34 RCW and other
applicable state and federal laws.

38978-97-1620 General administration.
...(7) The nursing home must:
(a) Report to the local law enforcement agency and the department any individual
threatening bodily harm or causing a disturbance which threatens any individual’s welfare
and safety;
(b) Identify, investigate, and report incidents involving residents, according to department
established nursing home guidelines; and
(c) Comply with "whistle blower" rules as defined in chapter 74.34 RCW.

(8) The department will:
(a) Investigate complaints, made to the department according to established protocols
including protocols described in RCW 74.39A.060;
(b) Take action against a nursing home that is found to have used retaliatory treatment
toward a resident or employee who has voiced grievances to nursing home staff or
administration, or lodged a good faith complaint with the department; and
(c) Report to local law enforcement:
   (i) Any mandated reporter that knowingly fails to report in accordance with WAC 388-
670640; and
   (ii) Any person that intentionally, maliciously or in bad faith makes a false report of
alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult.

(9) Refer also to WAC 388-97-1840, Retaliation.
[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, §
388-97-1620, filed 9/24/08, effective 11/1/08.]

388-97-1640 Required notification and reporting.
(1) The nursing home must immediately notify the department’s aging and disability
services administration of:
(a) Any allegations of resident abandonment, abuse, or neglect, including substantial
injuries of an unknown source, financial exploitation and misappropriation of a resident’s
property;
(b) Any unusual event, having an actual or potential negative impact on residents, requiring
the actual or potential implementation of the nursing home’s disaster plan. These unusual
events include but are not limited to those listed under WAC 388-97-1740 (1)(a) through
(k), and could include the evacuation of all or part of the residents to another area of the
nursing home or to another address; and
(c) Circumstances which threaten the nursing home’s ability to ensure continuation of
services to residents.

(2) Mandated reporters must notify the department and law enforcement as directed in
WAC 388-97-0640, and according to department established nursing home guidelines.
[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, §
388-97-1640, filed 9/24/08, effective 11/1/08.]

388-97-1820 Disqualification from nursing home employment.
(1) The nursing home must not employ directly or by contract, or accept as a volunteer or
student, any individual:
(a) Who has been found to have abused, neglected, exploited or abandoned a minor or
vulnerable adult by a court of law, by a disciplining authority, including the state
department of health; With a finding of abuse or neglect of a child that is:
   (a)Listed on the department’s background check central unit (BCCU) report; or
   (b)Disclosed by the individual, except for findings made before December, 1998.
(c) With a finding of abandonment, abuse, neglect, or financial exploitation of a vulnerable
adult that is:
(i) Listed on any registry, including the department registry; 
(ii) Listed on the department’s background check central unit (BCCU) report; or 
(iii) Disclosed by the individual, except for adult protective services findings made before 

Except as provided in this section, the nursing home must not employ directly or by 
contract, or accept as a volunteer or student, any individual who may have unsupervised 
access to residents if the individual: 
Has been convicted of a "crime against children and other persons" as defined in RCW 
43.43.830, unless the individual has been convicted of one of the two crimes listed below 
and the required number of years has passed between the most recent conviction and the 
date of the application for employment: 
Simple assault, assault in the fourth degree, or the same offense as it may hereafter be 
renamed, and three or more years have passed; or 
Prostitution, or the same offense as it may hereafter be renamed, and three or more years 
have passed.

Has been convicted of crimes relating to financial exploitation as defined in RCW 43.43.830, 
unless the individual has been convicted of one of the three crimes listed below and the 
required number of years has passed between the most recent conviction and the date of 
the application for employment: 

(i) Theft in the second degree, or the same offense as it may hereafter be renamed, and five 
or more years have passed;  
(ii) Theft in the third degree, or the same offense as it may hereafter be renamed, and three 
or more years have passed; or 
(iii) Forgery, or the same offense as forgery may hereafter be renamed, and five or more 
years have passed.

Has been convicted of: 
(i) Violation of the imitation controlled substances act (VICSA);  
(ii) Violation of the uniform controlled substances act (VUCSA); 
(iii) Violation of the uniform legend drug act (VULDA); or 
(iv) Violation of the uniform precursor drug act (VUPDA).

(d) Has been convicted of sending or bringing into the state depictions of a minor engaged 
in sexually explicit conduct. 
(e) Has been convicted of criminal mistreatment. 
(f) Has been convicted in another state of a crime that is equivalent to a crime listed in 
subsection (2)(a) through (e) of this section.

(3) The term "vulnerable adult" is defined in RCW 74.34.020; the term "unsupervised 
access" is defined in RCW 43.43.830.

(4) In addition to chapters 18.51 and 74.42 RCW, these rules are authorized by RCW 
43.20A.710, 43.43.830 through 43.43.842 and 74.39A.050(8).

[Statutory Authority: Chapters 18.51 and 74.42 RCW. 10-02-021, § 388-97-1820, filed 
12/29/09, effective 1/29/10. Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 
C.F.R. 489.52. 08-20-062, § 388-971820, filed 9/24/08, effective 11/1/08.]
388-97-1840 Retaliation or discrimination prohibited.

(1) The licensee or the nursing home must not discriminate or retaliate in any manner against a resident or employee in its nursing home who has initiated or participated in any action or proceeding authorized under nursing home licensing law. Examples of such participation include, but are not limited to the following:
   (a) The resident, or someone acting on behalf of the resident, or the employee:
      (i) Made a complaint, including a whistle blower complaint, to the department, the department of health, the long-term care ombudsman, attorney general’s office, the courts or law enforcement;
      (ii) Provided information to the department, the department of health, the long-term care ombudsman, attorney general’s office, the courts or law enforcement; or
      (iii) Testified in a proceeding related to the nursing home or its staff.

(2) For purposes of this chapter, "retaliation" or "discrimination" against a resident means an act including, but not limited to:
   (a) Verbal or physical harassment or abuse;
   (b) Any attempt to expel the resident from the facility;
   (c) Nonmedically indicated social, dietary, or mobility restriction(s);
   (d) Lessening of the level of care when not medically appropriate;
   (e) Nonvoluntary relocation within a nursing home without appropriate medical, psychosocial, or nursing justification;
   (f) Neglect or negligent treatment;
   (g) Withholding privileges;
   (h) Monitoring resident’s phone, mail or visits without resident’s permission;
   (i) Withholding or threatening to withhold food or treatment unless authorized by terminally ill resident or the resident’s representative;
   (j) Persistently delaying responses to resident's request for services of assistance; or
   (k) Infringement on a resident's rights described in chapter 74.42 RCW, RCW 74.39A.060(7), WAC 388-97-0180, and also, for medicaid and medicare certified nursing facilities, in federal laws and regulations.

(3) For purposes of this chapter, "retaliation" or "discrimination" against an employee means an act including, but not limited to:
   (a) Harassment;
   (b) Unwarranted firing;
   (c) Unwarranted demotion;
   (d) Unjustified disciplinary action;
   (e) Denial of adequate staff to perform duties;
   (f) Frequent staff changes;
   (g) Frequent and undesirable office changes;
   (h) Refusal to assign meaningful work;
(i) Unwarranted and unsubstantiated report of misconduct under Title 18 RCW;

(j) Unsubstantiated letters of reprimand;

(k) Unsubstantiated unsatisfactory performance evaluations;

(l) Denial of employment;

(m) A supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistle blower; or

(n) Workplace reprisal or retaliatory action as defined in RCW 74.34.180 (3)(b).

(4) For purposes of this chapter, a "whistle blower" is defined in WAC 388-97-0001.

(5) If, within one year of the complaint by or on behalf of a resident, the resident is involuntarily discharged from the nursing home, or is subjected to any type of discriminatory treatment, there will be a presumption that the action was in retaliation for the filing of the complaint. Under these circumstances, the nursing home will have the burden of establishing that the action was not retaliatory, in accordance with RCW 18.51.220 and 74.34.180(2).

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1840, filed 9/24/08, effective 11/1/08.]

WEST VIRGINIA

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4.16. Freedom from Restraints and Abuse.

4.16.a. General. Each resident shall be free from mental and physical abuse, and free from chemical and physical restraints except when the restraint is authorized in writing by a physician for a specified and limited period of time, except under emergency circumstances.

4.16.a.1. The restraint is necessary to protect the resident from injury to himself or others; or 4.16.a.2. The restraint is used as a therapeutic intervention or enabler for specified periods of time to attain and maintain the resident's highest practicable physical, mental or psychosocial well-being.

4.16.b. Restraints.

4.16.b.1. Assessments.

4.16.b.1.A. Before a resident is restrained, the nursing home shall conduct and document a comprehensive restraint assessment that includes:

4.16.b.1.A.1. Identifying the behaviors or clinical indications for why the resident may be a candidate for use of a restraint. The resident, and in the case of incapacity, the resident's
legal representative, shall be involved throughout this process, as well as appropriate disciplines, as indicated based on the resident's needs;

4.16.b.1.A.2. Identifying the causal factors;

4.16.b.1.A.3. Identifying, assessing, and attempting restraint free interventions that are appropriate for the person; And

4.16.b. 1.A.4. The following, if alternatives to restraints are not found to be practicable:

4.16.b.1.A.4.(a). A full explanation to the resident, and in the case of incapacity, the resident's legal representative, of the reasons for using the restraint, the benefits and risks of the restraint, and the obtaining of written consent from the resident, and in the case of incapacity, the resident's legal representative;

4.16.b.1.A.4.(b). Documentation that the use of the restraint will enhance the resident's quality of life and functional abilities and is clinically beneficial; and 4.16.b.1.A.4.(c). An assessment of the resident to identify the least restrictive type of restraint that will provide for the resident's needs.

4.16.b.2. Physician's order.

4.16.b.2.A. After a comprehensive restraint assessment indicates the need for a restraint and the resident's attending physician concurs, the resident's attending physician shall write an order to be included in the resident's plan of care specifying the type, precise application, circumstances and duration of the restraint.

4.16.b.3. The resident's plan of care shall include, at a minimum:

4.16.b.3.A. The type and size of restraint that is to be used;

4.16.b.3.B. When the restraint is to be used;

4.16.b.3.C. For physical restraints, a schedule of release time and what individualized activity is to be provided during that period of time; and

4.16.b.3.D. A systematic and gradual process to reduce the restraint or eliminate it, or both.

4.16.b.4. Application. Nursing home staff shall apply the physical restraints in accordance with the manufacturer's instructions and in a manner to allow for quick release.

4.16.b.5. Monitoring and release. Nursing home staff shall directly monitor a resident who has been restrained at least every half hour and shall be released from the restraint at least every two (2) hours and provided exercise, toileting, and skin care.

4.16.b.6. Policies and procedures. A nursing home shall establish and implement policies and procedures for restraint use.

4.16.b.7. Emergency.

4.16.b.7.A. In the case of an emergency, licensed nursing personnel authorized by the nursing home in writing may order the use of a physical restraint for a specified and limited
period of time not to exceed twenty-four (24) hours until the resident’s attending physician can be notified of the resident’s condition requiring the emergency application.

4.16.b.7.B. Continued use is subject to the same evaluation process described in this Subdivision and shall be ordered by the resident’s attending physician.

4.16.c. Abuse.

4.16.c.1. A resident has the right to be free from verbal, sexual, physical, and mental abuse, financial exploitation, discrimination, denial of privileges, corporal punishment and involuntary seclusion.

4.16.c.2. Staff treatment of residents.

4.16.c.2.A. The nursing home shall develop and implement written policies and procedures that prohibit neglect, abuse of residents, and misappropriation of resident property.

4.16.c.3. A nursing home shall not employ persons who have:

4.16.c.3.A. Been found guilty of abusing, neglecting, exploiting or mistreating residents, incapacitated adults or children by a court of law; or 4.16.c.3.B. Had a finding entered into the Certified Nursing Assistant Registry or the West Virginia Adult Abuse Registry concerning abuse, neglect, exploitation or mistreatment of residents or misappropriation of their property.

4.16.c.4. A nursing home shall report any knowledge it has of actions by a court of law against an employee, that would indicate unfitness for service as a nurse aide or other nursing home staff to the West Virginia Certified Nursing Assistant Registry or the appropriate licensing authority and the director.

4.16.c.4.A. Actions by a court of law which indicate unfitness for service include a substantiated charge of abuse, neglect or exploitation against an employee, or conviction of an offense for actions related to bodily injury, theft or misuse of funds or property, or other crimes related to public welfare, in any jurisdiction within or outside of the State of West Virginia.

4.16.c.5. A nursing home shall ensure that all alleged violations involving mistreatment, neglect, exploitation or abuse, including injuries of unknown source, and misappropriation of resident property are reported in accordance with State law.

4.16.c.6. A nursing home shall document that all alleged violations are thoroughly investigated and shall take appropriate steps to prevent further potential abuse while the investigation is in progress.

4.16.c.7. The results of all investigations shall be reported to the administrator or his or her designated representative and to other officials in accordance with State law, including the director within five (5) working days of the incident, and if the alleged violation is verified appropriate corrective action shall be taken.

4.17.a. A nursing home shall develop and implement written procedures for registering and responding to complaints by residents, their legal representatives and the public.

4.17.b. A nursing home shall designate an employee to be responsible for receiving complaints.

4.17.c. A nursing home shall establish a method to inform the administrator of all complaints.

4.17.d. A nursing home shall establish a process for investigation and assessment of the validity of all complaints.

4.17.e. A nursing home shall provide a mechanism to record all complaints received and any action taken on them and to communicate the findings or outcomes to the resident, or the resident’s legal representative, making the complaint.

4.17.1 A nursing home shall assure that careful consideration is given to each complaint even when it has been made by a person who often makes complaints having no valid basis.

4.17.g. A nursing home shall establish a program to assure that its personnel are familiar with complaint policies and procedures.

4.17.h. A nursing home shall establish a program to educate residents and their legal representatives about the nursing home’s complaint policies and procedures.


11.3. Criminal Background Checks.

11.3.a. A nursing home shall conduct a criminal conviction investigation on all applicants for employment.

11.3.b. If an applicant has been convicted of a misdemeanor or a felony offense constituting child abuse or neglect or abuse or neglect of an incapacitated adult, he or she may not be employed by a nursing home.

11.3.c. An applicant may also not be employed by the nursing home if he or she is under indictment for, or convicted of, in any court of a crime punishable by imprisonment for more than one year or is a fugitive from justice.


15.2. Complaint Investigation.

15.2.a. Any person may register a complaint with the director alleging violation of applicable statutes and rules by a nursing home.

15.2.a.1. The director shall document all complaints and shall identify the nursing home involved.

15.2.b. A complaint that the director determines is willfully intended to harass a nursing home or is without any reasonable basis shall not be investigated.
15.2.b.1. The director shall notify a complainant presenting a complaint determined either as intended to harass a nursing home or as without reasonable basis that no further investigation will be conducted.

15.2.c. The director shall conduct an unannounced inspection of the nursing home to determine the validity of the complaint.

15.2.c.1. The director shall provide the nursing home with general notice of the substance of the complaint only at the time of the inspection.

15.2.d. The director shall conduct other investigations necessary to determine the validity of the complaint.

15.2.e. No later that twenty (20) working days after investigating and completing a complaint, the director shall notify the complainant and the nursing home in writing of the results of the investigation.

15.2.e.1. A description of the corrective action the nursing home shall be required to take and of any disciplinary action to be taken by the director shall be sent to the complainant.

15.2.e.2. If a complaint has been found to be substantiated, the director shall advise any injured party of the possibility of a civil remedy under W. Va. Code §16-5C-1 et. seq.

15.2.f. The names of a complainant or of any person named in a complaint shall not be disclosed by the department without that person's written authorization.

15.2.f.1. If a complaint becomes the subject of a judicial proceeding, nothing in this section shall be construed to restrict disclosure of information that would otherwise be disclosed in a judicial proceeding.

15.2.g. Before any complaint is disclosed to a nursing home or the public pursuant to Subdivision 16.2.v.of this rule, the nursing home shall redact any information in the complaint that could reasonably identify the complainant or a resident.

15.2.h. A nursing home is prohibited from discharging or in any manner discriminating against a resident or employee because the person, legal representative, next of kin or concerned party has filed a complaint or participated in a proceeding authorized by W. Va. Code §16-5C-1 et seq.

15.2.h.1. A rebuttable presumption of retaliatory action against a resident shall arise against any nursing home that adversely discriminates against a resident who submitted, or on whose behalf a complaint was submitted, to the director or who is involved in any proceeding instituted under W. Va. Code §16-5C-1 et seq. within one hundred and twenty (120) days of the filing of the complaint.

15.2.i. A nursing home shall make investigations of complaints involving immediate jeopardy to resident health or safety within twenty four (24) hours of the date of receipt of the complaint.

15.2.i.1. A nursing home shall make investigations of complaints involving harm that does not present immediate jeopardy, within ten (10) days of the date of the complaint.
15.2.i.2. A nursing home shall make investigations of complaints involving no harm, but with potential for greater than minimal harm, that are not immediate jeopardy, within forty-five (45) days of the date of the complaint.

15.2.i.3. A nursing home shall make investigations of complaints involving no harm with potential for minimal harm and all other complaints at the time of the next inspection.

15.2.j. If within one hundred twenty (120) days of an inspection or a complaint investigation, a nursing home fails to comply with the requirements of this rule, the director shall inform all residents of the nursing home’s non-compliance.

15.2.j.1. If the non-compliance results in an action against the license of the nursing home, the director shall notify residents of the time period during which residents may relocate if they wish prior to the deficient nursing home being reported to the Social Security Administration if the nursing home is certified under the Medicare or Medicaid programs.

15.2.j.2. The director shall provide all residents with a list of nursing homes and agencies to assist them in moving if they wish to relocate.

15.2.k. The director shall make copies and information concerning applications, inspections, investigations and other reports available for public inspection from the time of receipt of the plan of correction.

15.2.k.1. A nursing home shall make copies of all inspection reports available to the state long-term ombudsman, the local office of adult protective services, and the Social Security regional offices.

15.2.l. Within two hundred ten (210) days of an inspection or complaint investigation after which deficiencies are not timely corrected, the director shall send the name and address of the deficient nursing home to the appropriate regional office of the Social Security Administration and identify it as a deficient nursing home.

15.2.m. The director shall provide the State long-term care ombudsman with the following within ninety (90) days: 15.2.m.1. A statement of deficiencies reflecting nursing home noncompliance;

15.2.m.2. Reports of adverse actions imposed on a nursing home; and

15.2.m.3. The date and time of any inspection.

§64-85-7. Behavior Management. [ALZHEIMER'S/DEMENTIA SPECIAL CARE UNITS AND PROGRAMS]

7.1. The alzheimer’s/dementia special care unit or program shall conduct and document an ongoing evaluation of any resident with behaviors, which are persistent and constitute sources of distress or dysfunction to the resident, or present a danger to the resident or other individuals. The evaluation shall determine the following:

7.1.a. A baseline of the intensity, duration, and frequency of the behavior;

7.1.b. Antecedent behaviors and activities;
7.1.c. Recent changes or risk factors in the resident’s life;
7.1.d. Environment factors such as time of day, staff involved, noise, levels etc.;
7.1.e. The resident’s medical status;
7.1.f. Staffing patterns at times of inappropriate behavior;
7.1.g. Alternative, structured activities or behaviors that have been successful or unsuccessful in the past; and
7.1.h. The effectiveness of behavioral management approaches.

7.2. The facility shall implement a less restrictive, systematic, non-medication behavioral management approach to assist a resident prior to obtaining orders for psychotropic or behavioral modifying medications.

7.3. The facility shall ensure that any resident receiving a psychotropic or behavioral modifying medication shall:

7.3.a. Have that medication administered in a dose based on the age recommendations of the individual;
7.3.b. Have a diagnosed and documented condition justifying the use of the medication;
7.3.c. Receive daily monitoring for any side effects or adverse reaction to the medication;
7.3.d. Have adverse findings reported to the resident’s physician immediately; and
7.3.e. Have periodic dose reductions in the medication in an attempt to discontinue the medication unless the physician has determined that a dose reduction is contraindicated, based on the resident’s condition.

7.4. A registered professional nurse or other appropriate licensed health care professional shall evaluate all residents receiving psychotropic or behavioral modifying medications monthly to assess the resident’s functional level, identify potential adverse effects of the medication and consult with the resident’s physician to determine if the medication should be continued.

7.5. The resident’s physician shall document in the resident’s medical record every six (6) months a reassessment and determination for the continued use of the medications and reasons a dose reduction would be contraindicated.
(1) RESIDENTS’ RIGHTS. Every resident shall, except as provided in sub. (3), have the right to:

..(k) Abuse and restraints.

1. Be free from mental and physical abuse, and be free from chemical and physical restraints except when required to treat the resident’s medical symptoms and as authorized in writing by a physician for a specified and limited period of time and documented in the resident’s medical record.

2. Notwithstanding the limitation in subd. 1. for using restraints only to treat a resident’s medical symptoms, physical restraints may be used in an emergency when necessary to protect the resident or another person from injury or to prevent physical harm to the resident or another person resulting from the destruction of property, provided that written authorization for continued use of the physical restraints is obtained from the physician within 12 hours. Any use of physical restraints shall be noted in the resident's medical record. In this paragraph, “physical restraint” means any manual method, article, device or garment used primarily to modify resident behavior by interfering with the free movement of the resident or normal functioning of a portion of the body, and which the resident is unable to remove easily, or confinement in a locked room, but does not include a mechanical support as defined under s. HFS 132.60 (6) (a) 2.

Note: See ss. HFS 132.33, 132.43, and 132.60 (6).

HFS 132.43 Abuse of residents.

(1) CONSIDERATE CARE AND TREATMENT. Residents shall receive considerate care and treatment at all times consistent with s. 50.09 (1) (e), Stats.

(2) RESIDENT ABUSE. No one may abuse a resident.

History: Cr. Register, July, 1982, No. 319, eff. 8−1−82.

HFS 132.60 Resident care.

...(6) PHYSICAL AND CHEMICAL RESTRAINTS. (a) Definitions. As used in this subsection, the following definitions apply:

1. “Physical restraint” means any article, device or garment used primarily to modify resident behavior by interfering with the free movement of the resident or normal functioning of a portion of the body, and which the resident is unable to remove easily, or confinement in a locked room, but does not include a mechanical support.

Note: For rules governing locked units, see s. HFS 132.33.

2. “Mechanical support” means any article, device, or garment which is used only to achieve the proper position or balance of the resident, which may include but is not limited to a geri chair, posey belt, jacket, or a bedside rail.

3. “Chemical restraint” means a medication used primarily to modify behavior by interfering with the resident’s freedom of movement or mental alertness.

(b) Orders required. Physical or chemical restraints shall be applied or administered only on the written order of a physician which shall indicate the resident’s name, the reason for restraint, and the period during which the restraint is to be applied. The use of restraints shall be consistent with the provisions under s. HFS 132.31 (1) (k).

(c) Emergencies. A physical restraint may be applied temporarily without an order if necessary to protect the resident or another person from injury or to prevent physical harm to the resident or another person resulting from the destruction of property, provided that the physician is notified immediately and authorization for continued use is obtained from
the physician within 12 hours.
(d) Restriction. If the mobility of a resident is required to be restrained and can be appropriately restrained either by a physical or chemical restraint or by a locked unit, the provisions of s. HFS 132.33 shall apply.
(e) Type of restraints. Physical restraints shall be of a type which can be removed promptly in an emergency, and shall be the least restrictive type appropriate to the resident.
(f) Periodic care. Nursing personnel shall check a physically restrained resident as necessary, but at least every 2 hours, to see that the resident's personal needs are met and to change the resident's position.
(g) Records. Any use of restraints shall be noted, dated, and signed in the resident's clinical record on each tour of duty during which the restraints are in use.
Note: See s. HFS 132.45 (5) (c) 4. g., records.

WYOMING

Section 20. Grievance Investigations.
(a) Each Nursing Care Facility shall establish a system of reviewing allegations of violations of residents' rights and develop internal operating procedures for reporting and resolution.
(i) In order to ensure that residents continue to be aware of these rights and responsibilities, a written copy is to be prominently posted in a location that is available to all residents.
(ii) Prompt efforts must be demonstrated by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents and the services provided by the facility.

Section 21. Complaint Investigations.
(a) Residents' unresolved grievances and/or complaints shall be referred to the Long-Term Care Ombudsman.
(b) The Office of the Ombudsman shall complete all complaint investigations within an appropriate time frame depending upon the seriousness of the allegations.
(c) Written reports of investigations and the status of resolutions completed by the Nursing Care Facility shall be provided by the Long-Term Care Ombudsman to the Licensing Division within thirty (30) days after the completion of the investigation.

Exception: Those complaints or problems reported directly to the State Survey Agency or referred by the Long-Term Care Ombudsman to the State Survey Agency shall be investigated by the State Survey Agency as per the Agreement between the Secretary of the U.S. Department of Health and Human Services and the State of Wyoming dated June 18, 1985.
§ 483.13   Resident behavior and facility practices.

(a) Restraints. The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident’s medical symptoms.

(b) Abuse. The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

(c) Staff treatment of residents. The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

(1) The facility must—
(i) Not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion;
(ii) Not employ individuals who have been—
   (A) Found guilty of abusing, neglecting, or mistreating residents by a court of law; or
   (B) Have had a finding entered into the State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property; and
(iii) Report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the State nurse aide registry or licensing authorities.

(2) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency).

(3) The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with State law (including to the State survey and certification agency) within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.