

**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 inservice 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.

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