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AND MEDICAID CERTIFICATION****SUBCHAPTER G****RESIDENT BEHAVIOR AND FACILITY PRACTICE****RULE §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 ten 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.

Source Note: The provisions of this §19.601 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective June 1, 2006, 31 TexReg 4449

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AND MEDICAID CERTIFICATION****SUBCHAPTER G****RESIDENT BEHAVIOR AND FACILITY PRACTICE****RULE §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.

Source Note: The provisions of this §19.602 adopted to be effective May 1, 1995, 20 TexReg 2393; amended to be effective March 1, 1998, 23 TexReg 1314; amended to be effective October 15, 1998, 23 TexReg 10496; amended to be effective August 1, 2000, 25 TexReg 6779; amended to be effective September 1, 2003, 28 TexReg 6939; amended to be effective May 1, 2004, 29 TexReg 3235

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RESIDENT BEHAVIOR AND FACILITY PRACTICE

RULE §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.

Source Note: The provisions of this §19.604 adopted to be effective May 1, 1995, 20 TexReg 2393.

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RULE §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 ten 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.

Source Note: The provisions of this §19.606 adopted to be effective May 1, 1995, 20 TexReg 2393.

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