

seclusion who is competent to conduct a face-to-face assessment (as defined in regulations promulgated by the Secretary), will assess the mental and physical well-being of the child or youth being restrained or secluded and assure that the restraint or seclusion is being done in a safe manner;

(ii) ensure that the assessment required under clause (i) take place as soon as practicable, but in no case later than 1 hour after the initiation of the restraint or seclusion; and

(iii) ensure that the supervisory or senior staff person continues to monitor the situation for the duration of the restraint and seclusion.

(3) Limitations

(A) In general

The use of a drug or medication that is used as a restraint to control behavior or restrict the resident's freedom of movement that is not a standard treatment for the resident's medical or psychiatric condition in nonmedical community-based facilities for children and youth described in subsection (a)(1) is prohibited.

(B) Prohibition

The use of mechanical restraints in non-medical, community-based facilities for children and youth described in subsection (a)(1) is prohibited.

(C) Limitation

A non-medical, community-based facility for children and youth described in subsection (a)(1) may only use seclusion when a staff member is continuously face-to-face monitoring the resident and when strong licensing or accreditation and internal controls are in place.

(c) Rule of construction

(1) In general

Nothing in this section shall be construed as prohibiting the use of restraints for medical immobilization, adaptive support, or medical protection.

(2) Current law

This part shall not be construed to affect or impede any Federal or State law or regulations that provide greater protections than this part regarding seclusion and restraint.

(d) Definitions

In this section:

(1) Mechanical restraint

The term "mechanical restraint" means the use of devices as a means of restricting a resident's freedom of movement.

(2) Physical escort

The term "physical escort" means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a resident who is acting out to walk to a safe location.

(3) Physical restraint

The term "physical restraint" means a personal restriction that immobilizes or reduces

the ability of an individual to move his or her arms, legs, or head freely. Such term does not include a physical escort.

(4) Seclusion

The term "seclusion" means a behavior control technique involving locked isolation. Such term does not include a time out.

(5) Time out

The term "time out" means a behavior management technique that is part of an approved treatment program and may involve the separation of the resident from the group, in a non-locked setting, for the purpose of calming. Time out is not seclusion.

(July 1, 1944, ch. 373, title V, § 595, as added Pub. L. 106-310, div. B, title XXXII, § 3208, Oct. 17, 2000, 114 Stat. 1197.)

Editorial Notes

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 290jj-1. Reporting requirement

Each facility to which this part applies shall notify the appropriate State licensing or regulatory agency, as determined by the Secretary—

(1) of each death that occurs at each such facility. A notification under this section shall include the name of the resident and shall be provided not later than 24 hours after the time of the individuals¹ death; and

(2) of the use of seclusion or restraints in accordance with regulations promulgated by the Secretary, in consultation with the States.

(July 1, 1944, ch. 373, title V, § 595A, as added Pub. L. 106-310, div. B, title XXXII, § 3208, Oct. 17, 2000, 114 Stat. 1199.)

§ 290jj-2. Regulations and enforcement

(a) Training

Not later than 6 months after October 17, 2000, the Secretary, after consultation with appropriate State, local, public and private protection and advocacy organizations, health care professionals, social workers, facilities, and patients, shall promulgate regulations that—

(1) require States that license non-medical, community-based residential facilities for children and youth to develop licensing rules and monitoring requirements concerning behavior management practice that will ensure compliance with Federal regulations and to meet the requirements of subsection (b);

(2) require States to develop and implement such licensing rules and monitoring requirements within 1 year after the promulgation of the regulations referred to in the matter preceding paragraph (1); and

(3) support the development of national guidelines and standards on the quality, quan-

¹ So in original. Probably should be "individual's".