S T A T E O F N E W Y O R K

3487

2009-2010 Regular Sessions

I N S E N A T E

March 20, 2009

Introduced by Sen. HUNTLEY -- (at request of the Department of Mental Hygiene) -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law, in relation to restraint of individuals in facilities under the jurisdiction of the office of mental health

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision (a) of section 33.04 of the mental hygiene law, as added by chapter 779 of the laws of 1977 and such as section as renumbered by chapter 334 of the law of 1980, is amended to read as follows:

(a) As used in this section, "restraint" means the use of an apparatus on a patient which prevents the free movement of both arms or both legs or which totally immobilizes such patient, and which the patient is unable to remove easily, PROVIDED, HOWEVER, THAT RESTRAINT IN FACILITIES LICENSED OR OPERATED BY THE OFFICE OF MENTAL HEALTH SHALL BE AUTHORIZED AND IMPLEMENTED IN ACCORDANCE WITH SECTION 33.06 OF THIS ARTICLE, WHICH SHALL FULLY SUPERSEDE THE PROVISIONS OF THIS SECTION WITH RESPECT TO SUCH FACILITIES.

S 2. The mental hygiene law is amended by adding a new section 33.06 to read as follows:

S 33.06 RESTRAINT AND SECLUSION IN FACILITIES LICENSED OR OPERATED BY THE OFFICE OF MENTAL HEALTH.

(A) APPLICABILITY. THIS SECTION SHALL APPLY TO HOSPITALS AND RESIDENTIAL TREATMENT FACILITIES FOR CHILDREN AND YOUTH, AS BOTH TERMS ARE DEFINED IN SECTION 1.03 OF THIS CHAPTER, AND SECURE TREATMENT FACILITIES AS DEFINED IN SECTION 10.03 OF THIS CHAPTER, THAT ARE CERTIFIED OR OPERATED BY THE OFFICE OF MENTAL HEALTH. UNLESS SPECIFICALLY AUTHORIZED IN REGULATIONS ESTABLISHING ANY OTHER PROGRAM CATEGORY GOVERNED BY THE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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OFFICE OF MENTAL HEALTH, THE USE OF RESTRAINT OR SECLUSION IS NOT PERMITTED.

(B) DEFINITIONS. FOR PURPOSES OF THIS SECTION:

(1) "DRUG USED AS A RESTRAINT" MEANS THE USE OF A DRUG OR MEDICATION AS A RESTRICTION TO MANAGE A PATIENT'S BEHAVIOR OR RESTRICT HIS/HER FREEDOM OF MOVEMENT, THAT IS NOT A STANDARD TREATMENT OR DOSAGE FOR THE PATIENT'S MEDICAL OR PSYCHIATRIC CONDITION, PROVIDED, HOWEVER, THAT THE USE OF MEDICATION TO COMPLETELY IMMOBILIZE A PATIENT IS PROHIBITED.

(2) "MECHANICAL RESTRAINT" MEANS AN APPARATUS WHICH RESTRICTS AN INDIVIDUAL'S MOVEMENT OF THE HEAD, LIMBS OR BODY, AND WHICH THE INDIVIDUAL IS UNABLE TO REMOVE.

(3) "MANUAL RESTRAINT" MEANS A PHYSICAL METHOD USED TO RESTRICT A PERSON'S FREEDOM OF MOVEMENT OR NORMAL ACCESS TO HIS OR HER BODY.

(4) "RESTRAINT" MEANS A PHYSICAL, PHARMACOLOGICAL, OR MECHANICAL MEASURE WHICH RESTRICTS AN INDIVIDUAL'S ABILITY TO FREELY MOVE HIS OR HER HEAD, LIMBS, OR BODY, AND MEANS AND INCLUDES MECHANICAL RESTRAINT, MANUAL RESTRAINT, AND DRUG USED AS A RESTRAINT.

(5) "SECLUSION" MEANS THE INVOLUNTARY PLACEMENT OF AN INDIVIDUAL ALONE IN A ROOM OR AREA FROM WHICH HE OR SHE IS PHYSICALLY PREVENTED FROM LEAVING, OR FROM WHICH HE OR SHE REASONABLY BELIEVES THAT HE OR SHE WILL BE PREVENTED FROM LEAVING, PROVIDED, HOWEVER, IT SHALL NOT MEAN LOCKING, SECURING, OR OTHERWISE RESTRICTING A PERSON IN HIS OR HER ROOM DURING OVERNIGHT SLEEPING HOURS, WHEN SUCH PERSON IS HELD, COMMITTED OR CONFINED IN A SECURE TREATMENT FACILITY, AS DEFINED IN SECTION 10.03 OF THIS CHAPTER.

(C) CONDITIONS FOR USE. RESTRAINT AND SECLUSION ARE EMERGENCY SAFETY INTERVENTIONS THAT SHALL BE USED ONLY WHEN NECESSARY TO PREVENT A PATIENT FROM SERIOUSLY INJURING SELF OR OTHERS AND LESS RESTRICTIVE TECHNIQUES HAVE BEEN DETERMINED TO BE INEFFECTIVE.

(1) RESTRAINT OR SECLUSION SHALL NOT BE USED BY STAFF FOR THE PURPOSES OF DISCIPLINE, RETALIATION, OR COERCION, FOR THE CONVENIENCE OF STAFF, TO SUBSTITUTE FOR INADEQUATE STAFFING, OR AS A SUBSTITUTE FOR TREATMENT PROGRAMS.

(2) RESTRAINT SHALL BE PERFORMED IN ACCORDANCE WITH SAFE AND APPROPRIATE RESTRAINING TECHNIQUES DETERMINED BY THE COMMISSIONER TO BE CONSISTENT WITH EVIDENCE BASED PRACTICES. THE ONLY PERMISSIBLE FORMS OF MECHANICAL RESTRAINT SHALL BE THOSE DEVICES WHICH HAVE BEEN AUTHORIZED BY THE COMMISSIONER.

(D) ORDERS FOR RESTRAINT OR SECLUSION. RESTRAINT OR SECLUSION SHALL BE EFFECTED ONLY BY WRITTEN ORDER OF A PHYSICIAN, BASED ON THE RESULTS OF A FACE-TO-FACE EXAMINATION OF THE PATIENT BY THE PHYSICIAN, AND SHALL BE LIMITED IN DURATION IN ACCORDANCE WITH REGULATIONS OF THE COMMISSIONER, PROVIDED, HOWEVER, THAT IN NO EVENT MAY AN ORDER FOR RESTRAINT OR SECLUSION EXCEED TWO HOURS.

(E) INITIATION IN ABSENCE OF PHYSICIAN. RESTRAINT OR SECLUSION MAY BE INITIATED IN THE ABSENCE OF A PHYSICIAN'S WRITTEN ORDER ONLY IN SITUATIONS WHERE THE PATIENT PRESENTS AN IMMEDIATE DANGER TO SELF OR OTHERS AND A PHYSICIAN IS NOT IMMEDIATELY AVAILABLE TO EXAMINE THE PATIENT, PROVIDED, HOWEVER, THAT THE RESTRAINT OR SECLUSION MUST BE INITIATED AT THE DIRECTION OF A REGISTERED PROFESSIONAL NURSE OR NURSE PRACTITIONER LICENSED PURSUANT TO ARTICLE ONE HUNDRED THIRTY-NINE OF THE EDUCATION LAW OR, IN THE ABSENCE OF SUCH NURSE, AT THE DIRECTION OF THE SENIOR STAFF MEMBER OF THE STAFF WHO ARE PRESENT.

(1) THE NURSE OR SENIOR STAFF MEMBER SHALL CAUSE A PHYSICIAN TO BE IMMEDIATELY SUMMONED; IF THE PHYSICIAN CANNOT REASONABLY ARRIVE ON SITE

WITHIN TEN MINUTES TO ASSESS THE PATIENT AND WRITE AN ORDER, HE OR SHE MAY ISSUE A TELEPHONE ORDER TO INITIATE THE RESTRAINT OR SECLUSION;

(2) THE NURSE OR SENIOR STAFF MEMBER SHALL NOTE IN THE PATIENT'S RECORD THE TIME OF THE CALL, THE NAME OF THE PERSON MAKING THE CALL, THE NAME OF THE PHYSICIAN CONTACTED WHO GAVE THE TELEPHONE ORDER, AND THE NAME OF THE PERSON WHO INITIATED THE RESTRAINT OR SECLUSION;

(3) PENDING THE ARRIVAL OF THE PHYSICIAN, THE PATIENT SHALL BE KEPT UNDER CONSTANT SUPERVISION;

(4) IF THE PHYSICIAN DOES NOT ARRIVE WITHIN THIRTY MINUTES OF BEING SUMMONED, THE NURSE OR SENIOR STAFF MEMBER SHALL RECORD ANY SUCH DELAY IN THE PATIENT'S CLINICAL RECORD AND ALSO PLACE INTO THE PATIENT'S CLINICAL RECORD A WRITTEN DESCRIPTION OF THE FACTS JUSTIFYING THE EMERGENCY INTERVENTION, WHICH SHALL SPECIFY THE NATURE OF THE INTERVENTION AND ANY CONDITIONS FOR MAINTAINING IT UNTIL THE ARRIVAL OF THE PHYSICIAN, THE REASONS WHY LESS RESTRICTIVE FORMS OF RESTRAINT OR SECLUSION WERE NOT USED, AND A DESCRIPTION OF THE STEPS TAKEN TO ENSURE THE PATIENT'S COMFORT AND SAFETY;

(5) UPON ARRIVAL, SUCH PHYSICIAN MUST IMMEDIATELY CONDUCT A FACE-TO-FACE EXAMINATION OF THE PATIENT, IN ACCORDANCE WITH APPLICABLE FEDERAL AND STATE REGULATIONS, AND AUTHENTICATE THE TELEPHONE ORDER IN WRITING; AND

(6) THE PHYSICIAN SHALL PLACE IN THE CLINICAL RECORD AN EXPLANATION FOR ANY SUCH DELAY, PROVIDED, HOWEVER, THAT IN NO EVENT SHALL THE DELAY EXTEND BEYOND ONE HOUR AFTER THE INITIATION OF THE INTERVENTION.

(F) DURING THE TIME THAT A PATIENT IS IN RESTRAINT OR SECLUSION, HE OR SHE SHALL BE MONITORED TO SEE THAT HIS OR HER PHYSICAL NEEDS, COMFORT, AND SAFETY ARE PROPERLY CARED FOR.

(1) AN ASSESSMENT OF THE PATIENT'S CONDITION SHALL BE MADE AT LEAST ONCE EVERY THIRTY MINUTES OR AT MORE FREQUENT INTERVALS AS DIRECTED BY A PHYSICIAN. THE ASSESSMENT SHALL BE RECORDED AND PLACED IN THE PATIENT'S FILE.

(2) A PATIENT SHALL BE RELEASED FROM RESTRAINT OR SECLUSION AS SOON AS HE OR SHE NO LONGER PRESENTS AN IMMINENT RISK OF DANGER TO SELF OR OTHERS. UNLESS A NURSE, DOCTOR, OR SENIOR STAFF MEMBER DETERMINES THAT A PATIENT IS OBVIOUSLY DANGEROUS, AN ATTEMPT SHOULD BE MADE TO RELEASE THE PATIENT EVERY THIRTY MINUTES.

(G) REGULATIONS. THE COMMISSIONER SHALL PROMULGATE REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

S 3. This act shall take effect on the sixtieth day after it shall have become a law.