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HOUSE BILL 1520*
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Short Title: Restraints in Facilities.

(Public)

Sponsors:

Referred to:

May 15, 2000

A BILL TO BE ENTITLED
AN ACT PERTAINING TO THE USE OF RESTRAINTS AND SECLUSION IN
CERTAIN FACILITIES, REQUIRING THE REPORTING OF CERTAIN DEATHS
IN CERTAIN FACILITIES, AND IMPOSING A PENALTY FOR FAILURE TO
REPORT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-60 reads as rewritten:

"§ 122C-60. Use of physical restraints or seclusion.

(a) Physical restraint or seclusion of a client shall be employed only when there is imminent danger of abuse or injury to ~~himself~~ the client or others, when substantial property damage is occurring, or when the restraint or seclusion is necessary as a measure of therapeutic treatment. All instances of restraint or seclusion and the detailed reasons for such action shall be documented in the client's record. Each client who is restrained or secluded shall be observed frequently, and a written notation of the observation shall be made in the client's record.

(a1) A facility that employs physical restraint or seclusion of a client shall collect data on the use of the restraints and seclusion. The data shall reflect for each incidence, the type of procedure used, the length of time employed, alternatives considered or

1 employed, and the effectiveness of the procedure or alternative employed. The facility
2 shall analyze the data on at least a quarterly basis to monitor effectiveness, determine
3 trends, and take corrective action where necessary. The facility shall make the data
4 available to the Secretary upon request. Nothing in this subsection abrogates State or
5 federal law or requirements pertaining to the confidentiality, privilege, or other
6 prohibition against disclosure of information provided to the Secretary under this
7 subsection. In reviewing data requested under this subsection, the Secretary shall adhere
8 to State and federal requirements of confidentiality, privilege, and other prohibitions
9 against disclosure and release applicable to the information received under this
10 subsection.

11 (a2) Facilities shall implement policies and practices that emphasize the use of
12 alternatives to physical restraint and seclusion. Physical restraint and seclusion may be
13 employed only by staff who have been trained and have demonstrated competence in the
14 proper use of and alternatives to these procedures. Facilities shall ensure that staff
15 authorized to employ and terminate these procedures are retrained and have demonstrated
16 competence at least annually.

17 (b) The Commission ~~may~~ shall adopt rules to implement this section. In adopting
18 rules, the Commission shall take into consideration federal regulations and national
19 accreditation standards. Rules adopted by the Commission shall include:

20 (1) Staff training and competence in:

21 a. The use of positive behavioral supports.

22 b. Communication strategies for defusing and deescalating
23 potentially dangerous behavior.

24 c. Monitoring vital indicators.

25 d. Administration of CPR.

26 e. Debriefing with client and staff.

27 f. Methods for determining staff competence, including
28 qualifications of trainers and training curricula.

29 g. Other areas to ensure the safe and appropriate use of restraints
30 and seclusion.

31 (2) Other matters relating to the use of physical restraint or seclusion of
32 clients necessary to ensure the safety of clients and others.

33 The Department may investigate complaints and inspect a facility at any time to
34 ensure compliance with this section."

35 Section 2.(a) G.S. 131D-10.5 reads as rewritten:

36 "**§ 131D-10.5. Powers and duties of the Commission.**

37 In addition to other powers and duties prescribed by law, the Commission shall
38 exercise the following powers and duties:

39 (1) Adopt, amend and repeal rules consistent with the laws of this State and
40 the laws and regulations of the federal government to implement the
41 provisions and purposes of this Article;

42 (2) Issue declaratory rulings as may be needed to implement the provisions
43 and purposes of this Article;

- 1 (3) Adopt rules governing procedures to appeal Department decisions
2 pursuant to this Article granting, denying, suspending or revoking
3 licenses; and
4 (4) Adopt criteria for waiver of licensing rules adopted pursuant to this
5 ~~Article.~~ Article;
6 (5) Adopt rules on documenting the use of physical restraint in residential
7 child-care facilities; and
8 (6) Adopt rules establishing personnel and training requirements related to
9 the use of physical restraints and time-out for staff employed in
10 residential child-care facilities."

11 Section 2.(b) Article 1A of Chapter 131D of the General Statutes is amended
12 by adding the following new section to read:

13 **"§ 131D-10.5A. Collection of data on use of restraints in residential child-care**
14 **facilities.**

15 A residential child-care facility that employs physical restraint of a child shall collect
16 data on the use of the restraint. The data shall reflect for each incidence, the type of
17 procedure used, the length of time employed, alternatives considered or employed, and
18 the effectiveness of the procedure or alternative employed. The facility shall analyze the
19 data on at least a quarterly basis to monitor effectiveness, determine trends, and take
20 corrective action where necessary. The facility shall make the data available to the
21 Department upon request. Nothing in this subsection abrogates State or federal law or
22 requirements pertaining to the confidentiality, privilege, or other prohibition against
23 disclosure of information provided to the Department under this subsection. In reviewing
24 data requested under this subsection, the Department shall adhere to State and federal
25 requirements of confidentiality, privilege, and other prohibitions against disclosure and
26 release applicable to the information received under this subsection."

27 Section 3.(a) Article 2 of Chapter 122C of the General Statutes is amended by
28 adding the following new section to read:

29 **"§ 122C-31. Report required upon death of client.**

30 (a) A facility shall notify the Secretary immediately upon the death of any client of
31 the facility that occurs within seven days of physical restraint or seclusion of the client,
32 and shall notify the Secretary within three days of the death of any client of the facility
33 resulting from violence, accident, suicide, or homicide. The Secretary may assess a civil
34 penalty of not less than five hundred dollars (\$500.00) and not more than one thousand
35 dollars (\$1,000) against a facility that fails to notify the Secretary of a death and the
36 circumstances surrounding the death known to the facility. Chapter 150B of the General
37 Statutes governs the assessment of a penalty under this section. A civil penalty owed
38 under this section may be recovered in a civil action brought by the Secretary or the
39 Attorney General. The clear proceeds of the penalty shall be remitted to the State
40 Treasurer for deposit in accordance with State law.

41 (b) Upon receipt of notification from a facility in accordance with subsection (a) of
42 this section, the Secretary shall notify the Governor's Advocacy Council for Persons With
43 Disabilities that a person with a disability has died. The Secretary shall provide the

1 Council access to the information about each death reported pursuant to subsection (a) of
2 this section, including information resulting from any investigation of the death by the
3 Department and from reports received from the Chief Medical Examiner pursuant to G.S.
4 130A-385. The Council shall use the information in accordance with its powers and
5 duties under G.S. 143B-403.1 and applicable federal law and regulations.

6 (c) If the death of a client of a facility occurs within seven days of the use of
7 physical restraint or seclusion, then the Secretary shall initiate immediately an
8 investigation of the death.

9 (d) An inpatient psychiatric unit of a hospital licensed under Chapter 131E of the
10 General Statutes shall comply with this section.

11 (e) Nothing in this section abrogates State or federal law or requirements
12 pertaining to the confidentiality, privilege, or other prohibition against disclosure of
13 information provided to the Secretary or the Council. In carrying out the requirements of
14 this section, the Secretary and the Council shall adhere to State and federal requirements
15 of confidentiality, privilege, and other prohibitions against disclosure and release
16 applicable to the information received under this section. A facility or provider that
17 makes available confidential information in accordance with this section and with State
18 and federal law is not liable for the release of the information.

19 (f) The Secretary shall establish a standard reporting format for reporting deaths
20 pursuant to this section and shall provide to facilities subject to this section a form for the
21 facility's use in complying with this section."

22 Section 3.(b) Article 1 of Chapter 122C of the General Statutes is amended by
23 adding the following new section to read:

24 **"§ 122C-5. Report on restraint and seclusion.**

25 The Secretary shall report annually on October 1 to the Legislative Study Commission
26 on Mental Health, Developmental Disabilities, and Substance Abuse Services on the
27 following for the immediately preceding fiscal year:

28 (1) The level of compliance of each facility with applicable State and
29 federal laws, rules, and regulations governing the use of restraints and
30 seclusion. The information shall indicate areas of highest and lowest
31 levels of compliance.

32 (2) The total number of facilities that reported deaths under G.S. 122C-31,
33 the number of deaths reported by each facility, the number of deaths
34 investigated pursuant to G.S. 122C-31, and the number found by the
35 investigation to be related to the use of restraint or seclusion."

36 Section 4. G.S. 130A-385 is amended by adding the following new subsection
37 to read:

38 "(f) If a death occurred in a facility licensed subject to Article 2 or Article 3 of
39 Chapter 122C of the General Statutes, or Articles 1 or 1A of Chapter 131D of the General
40 Statutes, and the deceased was a client or resident of the facility or a recipient of facility
41 services at the time of death, then the Chief Medical Examiner shall forward a copy of
42 the medical examiner's report to the Secretary of Health and Human Services within 30
43 days of receipt of the report from the medical examiner."

1 Section 5.(a) Article 1A of Chapter 131D of the General Statutes is amended
2 by adding the following new section to read:

3 **"§ 131D-10.6B. Report of death.**

4 (a) A facility licensed under this Article shall notify the Department immediately
5 upon the death of any resident of the facility that occurs within seven days of physical
6 restraint of the resident, and shall notify the Department within three days of the death of
7 any resident of the facility resulting from violence, accident, suicide, or homicide. The
8 Department may assess a civil penalty of not less than five hundred dollars (\$500.00) and
9 not more than one thousand dollars (\$1,000) against a facility that fails to notify the
10 Department of a death and the circumstances surrounding the death known to the facility.
11 Chapter 150B of the General Statutes governs the assessment of a penalty under this
12 section. A civil penalty owed under this section may be recovered in a civil action
13 brought by the Department or the Attorney General. The clear proceeds of the penalty
14 shall be remitted to the State Treasurer for deposit in accordance with State law.

15 (b) Upon receipt of notification from a facility in accordance with subsection (a) of
16 this section, the Department shall notify the Governor's Advocacy Council for Persons
17 With Disabilities that a person with a disability has died. The Department shall provide
18 the Council access to the information about each death reported to the Council pursuant
19 to subsection (a) of this section, including information resulting from any investigation of
20 the death by the Department, and from reports received from the Chief Medical Examiner
21 pursuant to G.S. 130A-385. The Council shall use the information in accordance with its
22 powers and duties under G.S. 143B-403.1 and applicable federal law and regulations.

23 (c) If the death of a resident of the facility occurs within seven days of the use of
24 physical restraint, the Department shall initiate immediately an investigation of the death.

25 (d) Nothing in this section abrogates State or federal law or requirements
26 pertaining to the confidentiality, privilege, or other prohibition against disclosure of
27 information provided to the Department or the Council. In carrying out the requirements
28 of this section, the Department and the Council shall adhere to State and federal
29 requirements of confidentiality, privilege, and other prohibitions against disclosure and
30 release applicable to the information received under this section. A facility or provider
31 that makes available confidential information in accordance with this section and with
32 State and federal law is not liable for the release of the information.

33 (e) The Secretary shall establish a standard reporting format for reporting deaths
34 pursuant to this section and shall provide to facilities subject to this section a form for the
35 facility's use in complying with this section."

36 Section 5.(b) G.S. 131D-10.6 is amended by adding the following new
37 subdivision to read:

38 "(10) Report annually on October 1 to the Legislative Study Commission on
39 Mental Health, Developmental Disabilities, and Substance Abuse
40 Services the level of facility compliance with applicable State law
41 governing the use of restraint and time-out in residential child-care
42 facilities. The report shall also include the total number of facilities that
43 reported deaths under this section, the number of deaths reported by

1 each facility, the number of deaths investigated pursuant to this section,
2 and the number found by the investigation to be related to the use of
3 physical restraint or time-out."

4 Section 6.(a) Article 3 of Chapter 131D of the General Statutes is amended by
5 adding the following new section to read:

6 **"§ 131D-34.1. Report of death of resident.**

7 (a) An adult care home shall notify the Department of Health and Human Services
8 immediately upon the death of any resident that occurs in the adult care home or that
9 occurs within 24 hours of the resident's transfer to a hospital if the death occurred within
10 seven days of the adult care home's use of physical restraint or physical hold of the
11 resident, and shall notify the Department of Health and Human Services within three days
12 of the death of any resident of the adult care home resulting from violence, accident,
13 suicide, or homicide. The Department may assess a civil penalty of not less than five
14 hundred dollars (\$500.00) and not more than one thousand dollars (\$1,000) against a
15 facility that fails to notify the Department of a death and the circumstances surrounding
16 the death known to the facility. Chapter 150B of the General Statutes governs the
17 assessment of a penalty under this section. A civil penalty owed under this section may
18 be recovered in a civil action brought by the Department or the Attorney General. The
19 clear proceeds of the penalty shall be remitted to the State Treasurer for deposit in
20 accordance with State law.

21 (b) Upon receipt of notification from an adult care home in accordance with
22 subsection (a) of this section, the Department of Health and Human Services shall notify
23 the Governor's Advocacy Council for Persons With Disabilities that a person with a
24 disability has died. The Department shall provide the Council access to the information
25 about each death reported pursuant to subsection (a) of this section, including information
26 resulting from any investigation of the death by the Department and from reports
27 received from the Chief Medical Examiner pursuant to G.S. 130A-385. The Council shall
28 use the information in accordance with its powers and duties under G.S. 143B-403.1 and
29 applicable federal law and regulations.

30 (c) If the death of a resident of the adult care home occurs within seven days of the
31 adult care home's use of physical restraint or physical hold, the Department shall initiate
32 immediately an investigation of the death.

33 (d) Nothing in this section abrogates State or federal law or requirements
34 pertaining to the confidentiality, privilege, or other prohibition against disclosure of
35 information provided to the Department or the Council. In carrying out the requirements
36 of this section, the Department and the Council shall adhere to State and federal
37 requirements of confidentiality, privilege, and other prohibitions against disclosure and
38 release applicable to the information received under this section. A facility or provider
39 that makes available confidential information in accordance with this section and with
40 State and federal law is not liable for the release of the information.

41 (e) The Secretary shall establish a standard reporting format for reporting deaths
42 pursuant to this section and shall provide to facilities subject to this section a form for the
43 facility's use in complying with this section."

1 Section 6.(b) Article 5 of Chapter 131D of the General Statutes is amended by
2 adding the following new section to read:

3 **"§ 131D-42. Report on use of restraint.**

4 The Department shall report annually on October 1 to the Legislative Study
5 Commission on Mental Health, Developmental Disabilities, and Substance Abuse
6 Services the following for the immediately preceding fiscal year:

7 (1) The level of compliance of each adult care home with applicable State
8 law and rules governing the use of physical restraint and physical hold
9 of residents. The information shall indicate areas of highest and lowest
10 levels of compliance.

11 (2) The total number of adult care homes that reported deaths under G.S.
12 131D-34.1, the number of deaths reported by each facility, the number
13 of deaths investigated pursuant to G.S. 131D-34.1, and the number
14 found by the investigation to be related to the adult care home's use of
15 physical restraint or physical hold."

16 Section 7. This act becomes effective January 1, 2001.