

Rulemaking Hearing Rules
of
The Department of Mental Health and Developmental Disabilities
Mental Health Services Division

Chapter 0940-03-09
Use of Isolation, Mechanical Restraint, and Physical Holding Restraint
In Mental Health Residential Treatment Facilities

New Rules

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0940-03-09-.01 Purpose.

- (1) Isolation, mechanical restraint, or physical holding restraint may be used only in an emergency safety situation to assure the physical safety of the service recipient or others nearby or to prevent significant destruction of property, if the process of destroying the property puts the service recipient or persons nearby in danger. Isolation, mechanical restraint, or physical holding restraint may be used only when all less intrusive or restrictive methods have been ineffective or determined to be inappropriate. Isolation, mechanical restraint, or physical holding restraint must be performed in a manner that is safe, proportionate, and appropriate to the service recipient's age; size; gender; physical, medical, and psychiatric condition; and personal history. Isolation, mechanical restraint, or physical holding restraint must be evaluated continuously and ended at the earliest possible time based on the assessment and evaluation of the service recipient's condition and behaviors. Isolation, mechanical restraint, or physical holding restraint must not be imposed in any form as a means of coercion, discipline, convenience of or retaliation by staff or for lack of staff presence or competency.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, and 33-3-120; 42 C.F.R. §483.356(a) (1) and (3) (ii), and C.F.R. §483.356(b).

0940-03-09-.02 Scope.

- (1) Chapter 0940-03-09 applies to facilities and services licensed as a Mental Health Residential Treatment Facility for Children and Youth (Chapter 0940-5-37) or as a Mental Health Adult Residential Treatment Facility (Chapter 0940-5-17). Use of isolation, mechanical restraint or physical holding restraint in mental health treatment settings other than mental health residential treatment facilities is governed by other Department of Mental Health and Developmental Disabilities (DMHDD) rules. Use of chemical restraint is not permissible in mental health residential treatment facilities.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, and 33-3-120.

0940-03-09-.03 Definitions.

- (1) "Chemical restraint" means a medication that is prescribed to restrict the service recipient's freedom of movement for the control of extreme violent physical behavior. Chemical restraints are medications used in addition to, or in replacement of, the service recipient's regular drug regimen to control extreme violent physical behavior. The medications that comprise the service recipient's regular medical regimen (including PRN medications) are not considered chemical restraints, even if their purpose is to treat ongoing behavioral symptoms.
- (2) "Conservator" means a person appointed by a court under the conservatorship laws in Title 34, Chapter 3, Tenn. Code Ann. or the Uniform Veterans' Guardianship Law in Title 34, Chapter 5, Tenn. Code Ann. with authority to make decisions for an adult who lacks capacity to make informed health care decisions.
- (3) "Custodian" means an agency or individual appointed by a juvenile court to have full control of a service recipient who is a child.
- (4) "Durable power of attorney for health care" means a legal document authorized by Title 34, Chapter 6, Part 2, Tenn. Code Ann. that allows the attorney-in-fact to make decisions for health care.
- (5) "Emergency safety situation" means service recipient behavior that places the service recipient or others at serious threat of violence or injury or significant destruction of property, if the process of destroying the property puts the service recipient or persons nearby in danger, if no intervention occurs and calls for the use of isolation, mechanical restraint, or physical holding restraint.
- (6) "Guardian" means a person appointed by a court under Title 34, Chapter 2, Tenn. Code Ann. with authority to make decisions for a person under eighteen (18) years of age who lacks capacity to make informed health care decisions.
- (7) "Hospital" means a licensed public or private inpatient treatment resource or hospital or a part of such treatment resource or hospital that provides inpatient care and treatment for persons with mental illness or serious emotional disturbance.
- (8) "Involuntarily committed service recipient" means a service recipient who is receiving services on an involuntary basis under Title 33, Chapter 6, Part 4 or 5, Tenn. Code Ann., T.C.A. §§33-3-401—403, 412, 607, 33-7-301 and 303, or 37-1-128.
- (9) "Isolation" means the confinement of a service recipient alone in a room or an area where the service recipient is physically prevented from leaving. This definition is not limited to instances in which a service recipient is confined by a locked or closed door. Isolation does not include:

- (a) the segregation of a service recipient for the purpose of managing biological contagion consistent with the Centers for Disease Control Guidelines;
 - (b) confinement to a locked unit or ward where other service recipients are present. Isolation is not solely confinement of a service recipient to an area, but separation of the service recipient from other persons; or
 - (c) time-out, a behavior management procedure in which the opportunity for positive reinforcement is withheld, contingent upon the demonstration of undesired behavior. Time-out may involve the voluntary separation of an individual service recipient from others.
- (10) “Licensed practitioner” means an individual approved by the mental health residential treatment facility to order the use of isolation or mechanical restraint and who is licensed by the Tennessee Health Related Boards as a:
- (a) physician (medical doctor or doctor of osteopathy);
 - (b) certified nurse practitioner;
 - (c) physician assistant;
 - (d) nurse with a master’s degree in nursing who functions as a psychiatric nurse;
 - (e) psychologist with health service provider designation;
 - (f) licensed professional counselor;
 - (g) senior psychological examiner;
 - (h) licensed marriage and family therapist;
 - (i) licensed clinical social worker; or
 - (j) licensed psychological examiner.
- (11) “Mechanical restraint” means the application of a mechanical device, material, or equipment attached or adjacent to the service recipient’s body, including ambulatory restraints, which the service recipient cannot easily remove and that restrict freedom of movement or normal access to the service recipient’s body. Mechanical restraint does not include the use of:
- (a) restrictive devices or manual methods employed by a law enforcement agent or other public safety officer to maintain custody, detention, or public safety during the transport of a service recipient under the jurisdiction of the criminal justice system or juveniles with charges in the juvenile justice system;
 - (b) restraints for medical immobilization, adaptive support, or medical protection; or
 - (c) restrictive devices administratively ordered to ensure the safety of the service recipient or others when an involuntary committed service recipient must be transported.
- (12) “Mental health personnel” means a staff member who operates under the direct supervision of a licensed practitioner.

- (13) "Physical holding restraint" means the use of body contact by staff with a service recipient to restrict freedom of movement or normal access to his or her body. Physical holding restraint does not include the use of:
- (a) physical touch associated with prompting, comforting or assisting that does not prevent the service recipient's freedom of movement or normal access to his or her body;
 - (b) physical escort for the temporary touching or holding of the hand(s), wrist(s), arm(s), shoulder(s) or back for the purpose of inducing the service recipient to walk to a safe location; or
 - (c) physical intervention for the temporary holding of the hand(s), wrist(s), arm(s), shoulder(s), or leg(s) which does not otherwise restrict freedom of movement or access to one's body, for the purpose of terminating unsafe behavior.
- (14) "PRN" means authorization written to allow a medication or treatment to be given on an as-needed basis.
- (15) "Seclusion" means "Isolation."
- (16) "Service recipient," for purposes of this chapter, means an individual receiving mental health residential treatment services.
- (17) "Temporary caregiver" means an individual designated under T.C.A. §34-6-302 to make decisions as specified in §34-6-304 for a minor child as assigned by the parent or parents on the form provided by the Department of Children's Services for this purpose.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, 33-3-120; 42 C.F.R. §483.358 (a).

0940-03-09-.04 Use of Isolation, Mechanical Restraint, and Physical Holding Restraint.

- (1) Isolation, mechanical restraint or physical holding restraint may be used in mental health residential treatment facilities only in compliance with this chapter and with applicable federal regulations.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, 33-3-120; 42 C.F.R. §483.354 et seq.

0940-03-09-.05 Policies and Procedures.

- (1) Any mental health residential treatment facility that uses isolation, mechanical restraint, or physical holding restraint must develop and employ policies and procedures that ensure compliance with this chapter. Policies and procedures must identify approved techniques for the safe and appropriate application and removal of isolation, mechanical restraint, and physical holding restraint; devices, materials, and/or equipment that are approved by the mental health residential treatment facility for use as mechanical restraints; licensed practitioners by profession who are responsible for authorizing the isolation, mechanical restraint, or physical holding restraint; required elements in the order for isolation, mechanical restraint or physical holding restraint; and minimal physical and psychological elements that must be assessed. No policy or procedure may authorize the removal of clothing from a service recipient, other than that which is determined to place the service recipient or others at risk, in conjunction with the use of isolation, mechanical restraint, or physical holding restraint. Policies or procedures may not allow staff to use isolation, mechanical restraint, or physical holding restraint before receiving training under 0940-03-09-.18.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, and 33-3-120; 42 C.F.R. §483.356.

0940-03-09-.06 Initiation of Isolation, Mechanical Restraint, or Physical Holding Restraint.

- (1) A licensed practitioner may initiate isolation, mechanical restraint or physical holding restraint. In the absence of a licensed practitioner, isolation, mechanical restraint, or physical holding restraint may be initiated by a licensed practical nurse, a registered nurse or by mental health personnel. All staff who initiate the use of isolation, mechanical restraint, or physical holding restraint must have completed training requirements in compliance with this chapter prior to initiating isolation, mechanical restraint or physical holding restraint. A licensed practitioner who has been trained in the use of isolation, mechanical restraint, and physical holding restraint must be contacted immediately for order of the isolation, mechanical restraint, or physical holding restraint if a licensed practitioner did not initiate it.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, 33-3-120; 42 C.F.R. §§483.358 (a)-(d), (f), (g), (j) and 483.360.

0940-03-09-.07 Order.

- (1) Only a licensed practitioner who has been trained in the use of isolation, mechanical restraint, and physical holding restraint may order the use of isolation, mechanical restraint, or physical holding restraint. The order must be for the least restrictive intervention possible that is most likely to be effective.
- (2) All orders must specify isolation, mechanical restraint, or physical holding restraint. If mechanical restraint is ordered, the order must specify the type of restraint device(s) to be used and the number of points of restraint; the licensed practitioner's name and credentials; the date and time when the order was obtained; and the maximum length of time the intervention was ordered.
- (3) If the licensed practitioner who ordered the use of isolation, mechanical restraint, or physical holding restraint is not the service recipient's treating physician, the treating physician shall be consulted as soon as possible and the consultation must be documented in the service recipient's record. If the service recipient does not have a designated physician for treatment of mental illness or serious emotional disturbance, the mental health residential treatment facility's physician shall be consulted and the consultation must be documented in the service recipient's record.
- (4) If the order for restraint or isolation is verbal, the order must be received by a registered nurse or a licensed practical nurse and signed by the ordering licensed practitioner within twenty-four (24) hours of the order.
- (5) A new order is required if there is a change in the intervention utilized, including increasing the number of points of restraint or the application of additional restraint devices. If the use of isolation, mechanical restraint, or physical holding restraint has been discontinued, it may be used again only with a new order, even if a previously ordered time limit has not expired.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, and 33-3-120; 42 C.F.R. §§483.358 (a)-(e), (g), (j), and 483.360.

0940-03-09-.08 Length of Order.

- (1) Each order for isolation or mechanical restraint is limited to a maximum of four (4) hours for adults eighteen (18) years of age and older, two (2) hours for youth ages nine (9)

through seventeen (17), and one (1) hour for children under age nine (9). Each order for physical holding restraint for any age service recipient is limited to a maximum of thirty (30) minutes.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, and 33-3-120; 42 C.F.R. §483.358(e).

0940-03-09-.09 Renewal.

- (1) A licensed practitioner may renew the original order, including a verbal order, if a service recipient continues to need isolation, mechanical restraint, or physical holding restraint beyond the time limit of the original order. Renewals must comply with 0940-03-09-.07 and 0940-03-09-.08. Under no circumstance may isolation, mechanical restraint, or physical holding restraint exceed twenty-four (24) continuous hours.
- (2) Isolation, mechanical restraint, and physical holding restraint may not be ordered on a PRN basis or as a standing order. Mechanical restraint or physical holding restraint may not be used simultaneously with isolation.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, and 33-3-120; 42 C.F.R. §§483.356(a)(2) and (4), 483.362(b) and 483.364(c).

0940-03-09-.10 Assessment.

- (1) Risk assessments must be completed at admission; updated when there is significant change in mental status, behavior, or physical/medical condition; documented in the service recipient's record and reviewed by the treatment team. The risk assessment must be completed by a licensed practitioner or mental health personnel with a minimum of a bachelor's degree.
- (2) The assessment must identify any specific situations or issues including: chronological and developmental age; size; gender; physical, medical, and psychiatric condition; personal history, including any history of physical and/or sexual abuse; and cultural issues that may trigger behavior that might require the use of isolation, mechanical restraint, or physical holding restraint.
- (3) Assessment of Need:
 - (a) Prior to the use of isolation, mechanical restraint or physical holding restraint, the service recipient must have an assessment that supports that the use of isolation or restraint is necessary to assure the physical safety of the service recipient or a person nearby and that all less restrictive interventions have been ineffective or determined to be inappropriate.
 - (b) If the licensed practitioner authorizing the use of isolation, mechanical restraint or physical holding restraint is present at the time of the initiation of isolation or restraint, the licensed independent practitioner shall document the assessment of need in the service recipient's record.
 - (c) If the use of isolation, mechanical restraint or physical holding restraint is initiated in the absence of a licensed practitioner, an RN, LPN, or mental health personnel shall document the assessment of need in the service recipient's record at the time use of isolation or restraint is initiated. The licensed independent practitioner authorizing the use of isolation or restraint must document the rationale for the use of isolation or restraint in the service recipient's record at the time the verbal/telephone order is authenticated.

(4) Follow-Up Assessment

- (a) Within one (1) hour of the initiation of the use of isolation, mechanical restraint, or physical holding restraint, a licensed practitioner or a registered nurse trained in accordance with 0940-03-09-.18 must see and assess the service recipient's condition. This assessment must be conducted regardless of the length of time the service recipient is in isolation, mechanical restraint, or physical holding restraint. This assessment must be documented by the licensed independent practitioner or registered nurse in the service recipient's record.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, and 33-3-120; 42 C.F.R. §483.358(f).

0940-03-09-.11 Behavioral Criteria for Release.

- (1) Behavioral criteria for release from isolation, mechanical restraint or physical holding restraint must be specified by a licensed practitioner who may order the use of isolation or mechanical restraint or physical holding restraint. In the absence of a licensed practitioner, the behavioral criteria must be specified by a licensed practical nurse, a registered nurse or by mental health personnel with a minimum of a bachelor's degree or two (2) years of full time equivalent experience in a mental health inpatient or mental health residential treatment facility. The behavioral criteria must be communicated to the service recipient as soon as possible during the isolation, mechanical restraint or physical holding restraint procedure and documented in the service recipient's record. Behavioral criteria for release must identify the behaviors necessary to no longer justify the use of isolation, mechanical restraint, or physical holding restraint. The isolation, mechanical restraint, or physical holding restraint must be terminated as soon as the behavioral criteria for release have been met.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, and 33-3-120.

0940-03-09-.12 Monitoring and Assessment of Continued Need.

- (1) To continue the use of isolation, mechanical restraint, or physical holding restraint, there must be ongoing assessment of need that justifies the continued use. To continue use, the justification must indicate that the behavioral criteria for release have not been met. All results of monitoring must be documented in the service recipient's record. Use of isolation, mechanical restraint, or physical holding restraint must be monitored as outlined below.
- (a) Isolation: Staff trained in monitoring isolation must monitor a service recipient in isolation. The service recipient must be continuously monitored. Monitoring must be by direct visual observation.
- (b) Mechanical Restraint: Staff trained in the monitoring of mechanical restraint must monitor a service recipient in mechanical restraint. The service recipient must be continuously monitored. Monitoring must be by direct visual observation and staff must remain in the immediate physical presence of and in the same room as the service recipient.
- (c) Physical Holding Restraint: Staff trained in the monitoring of physical holding restraint must monitor a service recipient in a physical holding restraint. The service recipient must be continuously monitored. A staff member who is trained in the monitoring of physical holding restraints must be present as an observer at all times while a service recipient is in a physical holding restraint.
- (d) At intervals no greater than fifteen (15) minutes, staff must document visual observations of:

1. behavior justifying continued need for isolation, mechanical restraint, or physical holding restraint;
 2. if applicable, the application of the mechanical restraint or physical holding restraint;
 3. respiration;
 4. negative effects of isolation, mechanical restraint, or physical holding restraint;
 5. any sign of distress; and
 6. if applicable, an evaluation of the fatigue of the staff member employing a physical holding restraint.
- (e) At intervals no greater than one (1) hour for isolation, mechanical restraint or physical holding restraint, the service recipient must be allowed to toilet and be offered fluids. For mechanical and physical holding restraint, the service recipient must also be checked for range of motion. Nourishment must be offered at routine meal and snack times. The facility must document the requirements of 0940-3-8-.12(e) in the service recipient's record.
- (f) At intervals no greater than thirty (30) minutes for physical holding restraint, or one hour for isolation or mechanical restraint, staff who may initiate isolation, mechanical restraint, or physical holding restraint must document an assessment of continued need for isolation, mechanical restraint, or physical holding restraint.
- (g) A service recipient must be released from isolation, mechanical restraint, or physical holding restraint when the need for the intervention no longer exists. Before the shift ends, a staff member who may initiate isolation, mechanical restraint, or physical holding restraint must document in the service recipient's record an assessment of the service recipient's behavior, mental and physical status at the time the service recipient is released, the time the isolation, mechanical restraint, or physical holding restraint began and ended, and the name of all staff involved.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, and 33-3-120; 42 C.F.R. §§483.358(h), 483.362, and 483.364.-

0940-03-09-.13 Location of use.

- (1) Isolation may be provided only in a clean, dry, temperate location and be free of potentially hazardous conditions from which the service recipient might harm himself or herself or others. Rooms used for isolation must allow staff full view of the service recipient in all areas of the room. Mechanical restraint must be imposed in a clean, dry, temperate area as private as possible.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, 33-3-120; 42 C.F.R. §483.364 (b).

0940-03-09-.14 Termination.

- (1) Isolation, mechanical restraint, or physical holding restraint must be terminated when the behavior justifying its use no longer exists or if the face-to-face assessments required do not occur. Any threat to a service recipient's physical health or emotional well being requires immediate release.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, and 33-3-120; 42 C.F.R. §483.356 (a)(3)(ii); 42 C.F.R. §483.358(e)(1) and (f).

0940-03-09-.15 Notification.

- (1) Upon admission to the mental health residential treatment facility, both the incoming service recipient and the parent, guardian, temporary caregiver, or legal custodian, as appropriate, of an unemancipated child or the conservator, attorney-in-fact under a durable power of attorney which authorizes health care, or surrogate decision-maker of an adult selected under T.C.A. §§33-3-219 and 220 must be informed and provided a copy of the facility's policy regarding the use of isolation, mechanical restraint, and physical holding restraint during an emergency safety situation. If the parent, guardian, temporary caregiver, or legal custodian, as appropriate, of an unemancipated child or the conservator, attorney-in-fact under a durable power of attorney which authorizes health care, or surrogate decision-maker of an adult selected under T.C.A. §§33-3-219 and 220 is not available upon admission, information regarding the policy will be provided as soon as possible. This policy must be communicated in a way that is understood by the service recipient and his or her parent, guardian, temporary caregiver, legal custodian, conservator, attorney-in-fact under a durable power of attorney which authorizes health care, or surrogate decision-maker, as appropriate. When necessary, the facility must provide interpreters or translators.
- (2) An acknowledgement, in writing, from the service recipient and the parent, guardian, temporary caregiver, or legal custodian, as appropriate, of an unemancipated child or the conservator, attorney-in-fact under a durable power of attorney which authorizes health care, or surrogate decision-maker of an adult selected under T.C.A. §§33-3-219 and 220 that he or she has been informed of the facility's policy on the use of isolation, mechanical restraint, and physical holding restraint in an emergency safety situation. The acknowledgement must be placed in the service recipient's record.
- (3) Contact information, including phone number and mailing address, for the Disability Law & Advocacy Center of Tennessee (DLAC) must be provided to the service recipient or his or her parent, guardian, temporary caregiver, legal custodian, conservator, attorney-in-fact under a durable power of attorney which authorizes health care, or surrogate decision-maker, as appropriate, upon admission to the facility.
- (4) The mental health residential treatment facility must notify the parent, guardian, temporary caregiver, or legal custodian, as appropriate, of an unemancipated child or the conservator, attorney-in-fact under a durable power of attorney which authorizes health care, or surrogate decision-maker of an adult selected under T.C.A. §§33-3-219 and 220 of the use of isolation, mechanical restraint, or physical holding restraint as soon as possible but no later than twelve (12) hours following initiation of the intervention. Notification and/or unsuccessful attempts to notify must be documented in the service recipient's record. The parent, guardian, temporary caregiver, legal custodian, conservator, attorney-in-fact under a durable power of attorney which authorizes health care, or surrogate decision-maker, as appropriate, may choose to modify the notice requirements in a written agreement filed in the service recipient's record. Such individuals must be provided the opportunity to participate in a discussion with appropriate staff about the episode that precipitated the use of isolation, mechanical restraint or physical holding restraint.
- (5) The mental health residential treatment facility may notify other family members or significant others, with their agreement to be notified, as specified in 0940-3-8-.14, when a release has been signed by:
 - (a) the service recipient who is sixteen (16) years old or older;

- (b) the parent, guardian, temporary caregiver, or legal custodian, as appropriate, of an unemancipated child; or
- (c) the conservator, attorney-in-fact under a durable power of attorney, which authorizes health care or surrogate decision-maker of an adult, selected under T.C.A. §§33-3-219 and 220.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, and 33-3-120; 42 C.F.R. §483.356(c) and (d); 42 C.F.R. §483.366(a) and (b).

0940-03-09-.16 Internal Reviews.

- (1) The mental health residential treatment facility must provide and document three (3) types of reviews.

- (a) Service Recipient Review:

- 1. A licensed practitioner or mental health personnel who can initiate isolation, mechanical restraint, or physical holding restraint must review the episode upon termination of the intervention with the service recipient. When deemed appropriate by the facility, his or her parent, guardian, temporary caregiver, or legal custodian, as appropriate, of an unemancipated child, or the conservator, attorney-in-fact under a durable power of attorney which authorizes health care, or surrogate decision-maker of an adult selected under T.C.A. §§33-3-219 and 220 may participate if available. The review must occur as soon as possible, but no later than twenty-four (24) hours after termination of isolation, mechanical restraint, or physical holding restraint. The review must address the episode; any identified reasons for the behavior, and identify ways to alleviate any related trauma. Staff must document in the service recipient's record that this review took place and must include the names of staff who were present, the names of any staff excused, and any changes to the service recipient's treatment plan as a result of the review. Documentation from the review may also be maintained in the mental health residential treatment facility records.
- 2. If a review is clinically contraindicated, the rationale for the conclusion must be documented in the service recipient's record.

- (b) Episode Review:

- 1. Within twenty-four (24) hours of termination of isolation, mechanical restraint, or physical holding restraint, staff, including supervisory or administrative staff, must review the episode to determine the circumstances requiring the use, how it might be addressed differently, alternative techniques that might have prevented the use, any procedures that need to be implemented to prevent recurrence, and the outcome of the episode. Any injury to the service recipient or staff during the implementation or use of the isolation, mechanical restraint, or physical holding restraint must be included in the review and a plan must be developed to prevent future injuries. The review must also address any need to change the service recipient's treatment plan, opportunities for performance improvements and any need for alleviation of staff trauma associated with the episode. The staff review must include staff involved in the episode and, if possible, other staff who witnessed or have knowledge about the episode or the service recipient. The mental health residential treatment facility supervisor or designee may, for good cause,

allow an exception to the review within twenty-four (24) hours, but the review must be concluded within five (5) business days of the episode. Staff must document in the service recipient's record that the review occurred and must include the names of staff who were present, the names of any staff excused, and any changes to the service recipient's treatment plan as a result of the review. Documentation from the review may also be maintained in the mental health residential treatment facility records.

(c) Systematic Review:

1. The mental health residential treatment facility must develop and implement a process for systematic review of all isolation, mechanical restraint, or physical holding restraint episodes and the identification of trends of use of isolation, mechanical restraint, or physical holding restraint.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, and 33-3-120; 42 C.F.R. §483.370 (b) and (c).

0940-03-09-.17 Performance Improvement Activities.

- (1) The mental health residential treatment facility must engage in on-going performance improvement activities that focus on the reduction of the use of isolation, mechanical restraint, and physical holding restraint. Information obtained through the review processes under 0940-03-09-.16 must be considered, at least quarterly, in the identification of specific performance improvement activities and in the evaluation of the effectiveness of performance improvement activities.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, and 33-3-120.

0940-03-09-.18 Training.

- (1) The mental health residential treatment facility must identify specific staff, based on their job responsibilities, who may be involved in the use of isolation, mechanical restraint, or physical holding restraint. Staff must be appropriately trained and demonstrate competency in the correct application and safe usage of isolation, mechanical restraint, and physical holding restraint. Only trained staff who are qualified by education, training, and experience may train others. Staff training must include training exercises in which staff members successfully demonstrate in practice the techniques they have learned for managing emergency safety situations. Staff must be trained and demonstrate competency before assuming direct care responsibilities that include the use of isolation, mechanical restraint, or physical holding restraint. The mental health residential treatment facility must assure that staff are trained and competent in the following areas:

(a) Upon being hired and every six (6) months thereafter:

1. Specific techniques approved by the mental health residential treatment facility for the safe and appropriate application and removal of isolation, mechanical restraint, and physical holding restraint;
2. Use of non-physical intervention skills, such as de-escalation, mediation, conflict resolution, active listening, and verbal and observational methods, to prevent emergency safety situations;
3. Recognition of negative effects of use of isolation, mechanical restraint, and physical holding restraint, including signs of distress, and actions to take if negative effects or signs of distress occur;

4. Techniques to identify staff and service recipient behaviors, events, and environmental factors that may trigger emergency safety situations;
 5. Use of devices, materials, and/or equipment approved by the mental health residential treatment facility as mechanical restraints; and
 6. Procedures for conducting a comprehensive service recipient review and episode review as required in section 0940-03-09-.16.
- (b) Upon being hired and annually thereafter:
1. Medical/physical and psychological risks associated with the use of isolation, mechanical restraint, and physical holding restraint;
 2. Mental health residential treatment facility policies and procedures regarding isolation, mechanical restraint, and physical holding restraint;
 3. Needs and behaviors of the population served;
 4. Liability and other legal issues;
 5. Applicable state and federal law and rules; and
 6. Procedures to address problems associated with the use of isolation, mechanical restraint, or physical holding restraint.
- (2) If diploma, associate, or baccalaureate prepared registered nurses are responsible for the assessment of the service recipient's condition within one hour (1) hour of the initiation of isolation, mechanical restraint, or physical holding restraint, the mental health residential treatment facility must identify specific registered nurses with this responsibility and must assure that they are adequately trained and are competent in the following areas:
- (a) Anticipation of adverse medical/physical and psychological service recipient response(s) which had been identified in the risk assessments required in 0940-03-09-.10;
 - (b) Anticipation of adverse medical/physical and psychological response(s) based upon the current condition of the service recipient;
 - (c) Identification and management of adverse medical/physical and psychological response(s) resulting from the use of isolation, mechanical restraint, or physical holding restraint; and
 - (d) Identification and utilization of the service recipient's mental preparedness to self regulate and objectively appraise the isolation, mechanical restraint, or physical holding restraint event.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, and 33-3-120; 42 C.F.R. §§483.376.

0940-03-09-.19 Medical Treatment for Injuries and Reporting.

- (1) If a service recipient is injured as a result of the use of isolation, mechanical restraint, or physical holding restraint, staff must immediately obtain medical treatment. Staff must

document in the service recipient's record all injuries that occur as a result of isolation, mechanical restraint, or physical holding restraint.

- (2) The mental health residential treatment facility must report serious occurrences that result from the use of isolation, mechanical restraint, or physical holding restraint to the Department of Mental Health and Developmental Disabilities (DMHDD), the Disability Law & Advocacy Center of Tennessee (DLAC), and the Centers for Medicare and Medicaid Services if applicable. Occurrences include a service recipient's death, serious injury, suicide attempt, or injuries to staff and must be reported no later than close of business the next business day after the serious occurrence.
- (3) The mental health residential treatment facility must notify immediately the parent, guardian, temporary caregiver, or legal custodian, as appropriate, of an unemancipated child or the conservator, attorney-in-fact under a durable power of attorney which authorizes health care, or surrogate decision-maker of an adult selected under T.C.A. §§33-3-219 and 220 when a serious injury occurs as the result of the use of isolation, mechanical restraint, or physical holding restraint.
- (4) Staff must document in the service recipient's record that appropriate entities have been notified, the date notified, and the name of the person spoken to or sent a notice.
- (5) In addition to any other required notices, each mental health residential treatment facility that uses isolation, mechanical restraint, or physical holding restraint must annually report information specified by the Department of Mental Health and Developmental Disabilities (DMHDD) as required under T.C.A. §§33-1-307 and 33-3-120.

Authority: T.C.A. §§4-4-103, 4-5-202 and 204, 33-1-302, 305, 309, and 33-3-120; 42 C.F.R. §§483.372(c), 483.374(b), 483.374(b)(2) and 483.374(c).

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 3rd day of March, 2008 and will become effective on the 17th day May, 2008. (FS 03-01-08; DBID 2841)

TENNESSEE DEPARTMENT OF MENTAL HEALTH
AND DEVELOPMENTAL DISABILITIES

CHAPTER 0940—3—9
USE OF ISOLATION, MECHANICAL RESTRAINT, AND
PHYSICAL HOLDING RESTRAINT IN
MENTAL HEALTH RESIDENTIAL TREATMENT FACILITIES

ECONOMIC IMPACT STATEMENT

Public Chapter 464, effective June 21, 2007 requires that prior to initiating the rulemaking process pursuant to Tenn. Code Ann. §§ 4-5-202 (a)(3) and 4-5-202 (a), all boards and commissions shall review all proposed rules and the affect that the proposed rule has on small business. The public chapter requires that as a part of its analysis, each agency shall prepare an economic impact statement as an addendum to each rule that is deemed to affect small businesses, which shall be published in the Tennessee Administrative Register, filed with the Secretary of State's Office, and made available to all interested parties, including the Secretary of State, Attorney General, and the House and Senate Government Operations Committees.

Economic Impact Statement:

1. Type of small business directly affected:

Mental health residential treatment facilities that utilize isolation, mechanical restraint and/or physical holding restraint would be affected.

2. Projected reporting, recordkeeping, and other administrative costs:

These rules create no additional reporting or recordkeeping requirements and should not affect administrative costs.

3. Probable effect on small businesses:

The changes proposed to 0940-03-09 will offer mental health residential treatment facilities the option to utilize registered nurses to conduct the face-to-face assessment required within one hour of the initiation of isolation, mechanical restraint or physical holding restraint. This is a less costly and more flexible option than the current requirement for a qualified mental health professional to conduct this assessment, since mental health residential treatment facilities will be able to utilize staff that are already on-duty to perform the assessment, instead of having to call in a qualified mental health professional.

4. Less burdensome, intrusive, or costly alternative methods:

There are no less burdensome, intrusive, or costly alternative methods that would also comport with federal regulations.

5. Comparison with federal and state counterparts:

This rule implements a revision of Title 33 that allows 0940-03-09 to be modified to allow registered nurses to perform the face-to-face assessment. With this modification, 0940-03-09 will be consistent with the revision of the federal regulations on the use of isolation, mechanical restraint and physical holding restraint that was effective in December, 2006.

6. Effects of possible exemption of small businesses:

No exemption is permissible.