

Proposed Rules
of
The Department of Mental Health and Developmental Disabilities
Mental Health Services Division

Chapter 0940-03-06
Hospital Isolation and Restraint

Presented herein are proposed amendments of the Department of Mental Health and Developmental Disabilities submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Mental Health and Developmental Disabilities to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in The Office of Legal Counsel for the Department of Mental Health and Developmental Disabilities, Attention: Cindy Tyler, Director, 3rd Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, TN 37243 and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact: Office of Legal Counsel for the Department of Mental Health and Developmental Disabilities, Attention: Laura Benson, Paralegal, Third Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, TN 37243, and (615) 532-6520.

The text of the proposed amendments is as follows:

Paragraph (1) of 0940-03-06-.02 Definitions is amended by deleting the paragraph in its entirety and substituting the following language so that as amended the rule shall read:

- (1) Chemical Restraint: 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.

Subparagraph (e) of paragraph (5) of 0940-03-06-.02 Definitions is amended by deleting ", and is certified to prescribe medication" so that as amended the paragraph shall read:

- (e) nurse with a masters degree in nursing who functions as a psychiatric nurse;

Paragraph (5) of 0940-03-06-.02 Definitions is amended by deleting "or" from the end of subparagraph (i); inserting two new subparagraphs after subparagraph (i) and renumbering the subparagraphs so that as amended they shall read:

- (i) senior psychological examiner;
- (j) psychological examiner;
- (k) marriage and family therapist; or
- (l) other licensed mental health professional who is permitted by law to practice independently.

Paragraph (6) of 0940-03-06-.02 Definitions is amended by deleting “psychological examiner” from the last sentence so that as amended the subparagraph shall read:

- (6) Licensed Mental Health Professional: For purposes of this chapter, a licensed mental health professional is an individual who meets the requirements in the definition of Licensed Independent Practitioner or who is licensed by the Tennessee Health Related Boards as a registered nurse, licensed practical nurse, or substance abuse counselor.

0940-03-06-.08 Length of Authorization is amended by deleting paragraph (1) in its entirety and renumbering paragraph (2) as paragraph (1) so that as amended it shall read:

- (1) Each order for chemical restraint is limited to a single dose of medication to be administered at a single point in time. Each order for mechanical restraint or isolation is limited to a maximum of four (4) hours for adults, two (2) hours for youth ages 9 through 17, and one (1) hour for children under age 9. Each order for physical holding for any age service recipient is limited to a maximum of thirty (30) minutes.

Paragraph (1) of 0940-03-06-.10 Assessments is amended by deleting subparagraph (b) in its entirety and adding new subparagraphs (b) and (c) so that as amended the subparagraphs shall read:

(b) Assessment of Need:

- 1. Prior to the use of isolation or 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.
- 2. If the licensed independent practitioner authorizing the use of isolation or 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.
- 3. If the use of isolation or restraint is initiated in the absence of a licensed independent practitioner, a licensed mental health professional 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.

(c) Follow-up Assessment:

- 1. Within one (1) hour of the initiation of the use of isolation or physical restraint, a licensed independent practitioner or a registered nurse trained in accordance with 0940-03-06-.19 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 or physical restraint. This assessment must be documented by the licensed independent practitioner or registered nurse in the service recipient’s record.
- 2. When chemical restraint is used, a physician must see and assess the service recipient’s condition within one (1) hour of the administration of the medication used for chemical restraint. This assessment must be documented by the physician in the service recipient’s record.

0940-03-06-.12 Monitoring and Assessment of Continued Need is amended to correct the paragraph numbering by renumbering the paragraphs sequentially. Subparagraph (c) of renumbered paragraph (5) is amended by deleting the language "first dosage" in the first sentence and by adding the language "medication administration" after "of the" and before "and every" so that as amended the subparagraph shall read:

- (c) If oral medication is administered, the service recipient must be examined by either a physician, licensed nurse or physician assistant within thirty (30) minutes of the medication administration and every thirty (30) minutes for the first hour, if possible based on the service recipient's behavior, for mental status, blood pressure, pulse, respiration, signs of distress, signs and symptoms of adverse drug reaction, and other issues as indicated. These examinations must be documented in the service recipient's record.

0940-03-06-.12 Monitoring and Assessment of Continued Need is amended to correct the paragraph numbering by renumbering the paragraphs sequentially. Renumbered paragraph (6) is amended by deleting the language "either isolation or" so that as amended the subparagraph shall read:

- (6) Concurrent Use: Concurrent use of physical restraint with chemical restraint must meet the monitoring requirements for both interventions.

0940-03-06-.19 Training is amended by adding paragraph (3) and subparagraphs (a), (b), (c), and (d) so that as amended the paragraph shall read:

- (3) If diploma, associate, or baccalaureate prepared registered nurses are responsible for the assessment of the service recipient's condition within one (1) hour of the initiation of isolation or physical restraint, the hospital 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 0940-03-06-.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 or physical restraint; and
 - (d) Identification and utilization of the service recipient's mental preparedness to self regulate and objectively appraise the isolation or physical restraint event.

Authority: T.C.A. §§ 4-4-103, 4-5-202, 33-1-302, 33-1-305, 33-1-309, 33-2-301, and 33-2-302.

The proposed rules set out herein were properly filed in the Department of State on the 26th day of December, 2007 and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 29th day of April, 2008. (FS 12-30-07; DBID 2801)

TENNESSEE DEPARTMENT OF MENTAL HEALTH
AND DEVELOPMENTAL DISABILITIES

CHAPTER 0940—3—6
HOSPITAL ISOLATION AND RESTRAINT

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:

Small hospitals that utilize isolation and/or physical 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 0940-03-06 will offer hospitals the option to utilize registered nurses to conduct the face-to-face assessment required within one hour of the initiation of isolation or physical 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 hospitals will be able to utilize staff who 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 0940-03-06 to be modified to allow registered nurses to perform the face-to-face assessment. With this modification, 0940-03-06 will be consistent with the revision of the federal regulations on the use of isolation and physical restraint that was effective in December, 2006.

6. Effects of possible exemption of small businesses:

No exemption is permissible.