

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

2

HOUSE BILL 1520*
Committee Substitute Favorable 6/21/00

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, AND REQUIRING THE REPORTING OF CERTAIN
DEATHS IN CERTAIN FACILITIES.

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 employed, and the effectiveness of the procedure or alternative employed. The facility shall analyze the data on at least a quarterly basis to monitor effectiveness, determine trends, and take corrective action where necessary. The facility shall make the data

1 available to the Secretary upon request. Nothing in this subsection abrogates State or
2 federal law or requirements pertaining to the confidentiality, privilege, or other
3 prohibition against disclosure of information provided to the Secretary under this
4 subsection. In reviewing data requested under this subsection, the Secretary shall adhere
5 to State and federal requirements of confidentiality, privilege, and other prohibitions
6 against disclosure and release applicable to the information received under this
7 subsection.

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

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

17 (1) Staff training and competence in:

- 18 a. The use of positive behavioral supports.
- 19 b. Communication strategies for defusing and deescalating
20 potentially dangerous behavior.
- 21 c. Monitoring vital indicators.
- 22 d. Administration of CPR.
- 23 e. Debriefing with client and staff.
- 24 f. Methods for determining staff competence, including
25 qualifications of trainers and training curricula.
- 26 g. Other areas to ensure the safe and appropriate use of restraints
27 and seclusion.

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

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

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

33 **"§ 131D-10.5. Powers and duties of the Commission.**

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

- 36 (1) Adopt, amend and repeal rules consistent with the laws of this State and
37 the laws and regulations of the federal government to implement the
38 provisions and purposes of this Article;
- 39 (2) Issue declaratory rulings as may be needed to implement the provisions
40 and purposes of this Article;
- 41 (3) Adopt rules governing procedures to appeal Department decisions
42 pursuant to this Article granting, denying, suspending or revoking
43 licenses; and

1 (4) Adopt criteria for waiver of licensing rules adopted pursuant to this
2 Article.

3 (5) Adopt rules on documenting the use of physical restraint in residential
4 child-care facilities.

5 (6) Adopt rules establishing personnel and training requirements of staff
6 employed in residential child care facilities."

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

9 "**§ 131D-10.5A. Collection of data on use of restraints in residential child-care**
10 **facilities.**

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

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

25 "**§ 122C-31. Report required upon death of client.**

26 (a) A facility shall notify the Secretary immediately upon the death of any client of
27 the facility that occurs within seven days of physical restraint or seclusion of the client.

28 (b) Upon receipt of notification from a facility in accordance with subsection (a) of
29 this section, the Secretary shall notify the Governor's Advocacy Council for Persons With
30 Disabilities that a person with a disability has died. The Secretary shall provide the
31 Council access to the information about each death reported pursuant to subsection (a) of
32 this section, including information resulting from any investigation of the death by the
33 Department and from reports received from the Chief Medical Examiner pursuant to G.S.
34 130A-385. The Council shall use the information in accordance with its powers and
35 duties under G.S. 143B-403.1 and applicable federal law and regulations.

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

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

41 (e) Nothing in this section abrogates State or federal law or requirements
42 pertaining to the confidentiality, privilege, or other prohibition against disclosure of
43 information provided to the Secretary or the Council. In carrying out the requirements of

1 this section, the Secretary and the Council shall adhere to State and federal requirements
2 of confidentiality, privilege, and other prohibitions against disclosure and release
3 applicable to the information received under this section. A facility or provider that
4 makes available confidential information in accordance with this section and with State
5 and federal law is not liable for the release of the information.

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

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

11 **"§ 122C-5. Report on restraint and seclusion.**

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

15 (1) The level of compliance of each facility with applicable State and
16 federal laws, rules, and regulations governing the use of restraints and
17 seclusion. The information shall indicate areas of highest and lowest
18 levels of compliance.

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

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

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

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

33 **"§ 131D-10.6B. Report of death.**

34 (a) A facility licensed under this Article shall notify the Department immediately
35 upon the death of any resident of the facility that occurs within seven days of physical
36 restraint of the resident.

37 (b) Upon receipt of notification from a facility in accordance with subsection (a) of
38 this section, the Department shall notify the Governor's Advocacy Council for Persons
39 With Disabilities that a person with a disability has died. The Department shall provide
40 the Council access to the information about each death reported to the Council pursuant
41 to subsection (a) of this section, including information resulting from any investigation of
42 the death by the Department, and from reports received from the Chief Medical Examiner

1 pursuant to G.S. 130A-385. The Council shall use the information in accordance with its
2 powers and duties under G.S. 143B-403.1 and applicable federal law and regulations.

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

5 (d) Nothing in this section abrogates State or federal law or requirements
6 pertaining to the confidentiality, privilege, or other prohibition against disclosure of
7 information provided to the Department or the Council. In carrying out the requirements
8 of this section, the Department and the Council shall adhere to State and federal
9 requirements of confidentiality, privilege, and other prohibitions against disclosure and
10 release applicable to the information received under this section. A facility or provider
11 that makes available confidential information in accordance with this section and with
12 State and federal law is not liable for the release of the information.

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

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

18 "(10) Report annually on October 1 to the Legislative Study Commission on
19 Mental Health, Developmental Disabilities, and Substance Abuse
20 Services the level of facility compliance with applicable State law
21 governing the use of restraint and time-out in residential child-care
22 facilities. The report shall also include the total number of facilities that
23 reported deaths under this section, the number of deaths reported by
24 each facility, the number of deaths investigated pursuant to this section,
25 and the number found by the investigation to be related to the use of
26 physical restraint or time-out."

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

29 "**§ 131D-34.1. Report of death of resident.**

30 (a) An adult care home shall notify the Department of Health and Human Services
31 immediately upon the death of any resident that occurs in the adult care home or that
32 occurs within 24 hours of the resident's transfer to a hospital if the death occurred within
33 seven days of the adult care home's use of physical restraint or physical hold of the client.

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

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

4 (d) Nothing in this section abrogates State or federal law or requirements
5 pertaining to the confidentiality, privilege, or other prohibition against disclosure of
6 information provided to the Department or the Council. In carrying out the requirements
7 of this section, the Department and the Council shall adhere to State and federal
8 requirements of confidentiality, privilege, and other prohibitions against disclosure and
9 release applicable to the information received under this section. A facility or provider
10 that makes available confidential information in accordance with this section and with
11 State and federal law is not liable for the release of the information.

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

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

17 "**§ 131D-42. Report on use of restraint.**

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

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

25 (2) The total number of adult care homes that reported deaths under G.S.
26 131D-34.1, the number of deaths reported by each facility, the number
27 of deaths investigated pursuant to G.S. 131D-34.1, and the number
28 found by the investigation to be related to the adult care home's use of
29 physical restraint or physical hold."

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