

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 2000-129
HOUSE BILL 1520

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

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

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

- (1) Staff training and competence in:
 - a. The use of positive behavioral supports.
 - b. Communication strategies for defusing and deescalating potentially dangerous behavior.
 - c. Monitoring vital indicators.
 - d. Administration of CPR.
 - e. Debriefing with client and staff.
 - f. Methods for determining staff competence, including qualifications of trainers and training curricula.
 - g. Other areas to ensure the safe and appropriate use of restraints and seclusion.
- (2) Other matters relating to the use of physical restraint or seclusion of clients necessary to ensure the safety of clients and others.

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

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

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

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

- (1) Adopt, amend and repeal rules consistent with the laws of this State and the laws and regulations of the federal government to implement the provisions and purposes of this Article;
- (2) Issue declaratory rulings as may be needed to implement the provisions and purposes of this Article;
- (3) Adopt rules governing procedures to appeal Department decisions pursuant to this Article granting, denying, suspending or revoking licenses; ~~and~~
- (4) Adopt criteria for waiver of licensing rules adopted pursuant to this ~~Article.~~ Article;
- (5) Adopt rules on documenting the use of physical restraint in residential child-care facilities; and
- (6) Adopt rules establishing personnel and training requirements related to the use of physical restraints and time-out for staff employed in residential child-care facilities."

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

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

A residential child-care facility that employs physical restraint of a child shall collect data on the use of the restraint. 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 available to the Department upon request. Nothing in this subsection abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Department under this subsection. In reviewing data requested under this subsection, the Department shall adhere to State and federal requirements of confidentiality, privilege, and other prohibitions against disclosure and release applicable to the information received under this subsection."

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

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

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

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

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

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

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

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

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

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

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

- (1) The level of compliance of each facility with applicable State and federal laws, rules, and regulations governing the use of restraints and seclusion. The information shall indicate areas of highest and lowest levels of compliance.
- (2) The total number of facilities that reported deaths under G.S. 122C-31, the number of deaths reported by each facility, the number of deaths investigated pursuant to G.S. 122C-31, and the number found by the investigation to be related to the use of restraint or seclusion."

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

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

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

"§ 131D-10.6B. Report of death.

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

(b) Upon receipt of notification from a facility in accordance with subsection (a) of this section, the Department shall notify the Governor's Advocacy Council for Persons With Disabilities that a person with a disability has died. The Department shall provide the Council access to the information about each death reported to the Council pursuant to subsection (a) of this section, including information resulting from any

investigation of the death by the Department, and from reports received from the Chief Medical Examiner pursuant to G.S. 130A-385. The Council shall use the information in accordance with its powers and duties under G.S. 143B-403.1 and applicable federal law and regulations.

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

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

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

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

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

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

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

(a) An adult care home shall notify the Department of Health and Human Services immediately upon the death of any resident that occurs in the adult care home or that occurs within 24 hours of the resident's transfer to a hospital if the death occurred within seven days of the adult care home's use of physical restraint or physical hold of the resident, and shall notify the Department of Health and Human Services within three days of the death of any resident of the adult care home resulting from violence, accident, suicide, or homicide. The Department may assess a civil penalty of not less than five hundred dollars (\$500.00) and not more than one thousand dollars (\$1,000) against a facility that fails to notify the Department of a death and the circumstances surrounding the death known to the facility. Chapter 150B of the General Statutes governs the assessment of a penalty under this section. A civil penalty owed

under this section may be recovered in a civil action brought by the Department or the Attorney General. The clear proceeds of the penalty shall be remitted to the State Treasurer for deposit in accordance with State law.

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

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

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

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

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

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

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

- (1) The level of compliance of each adult care home with applicable State law and rules governing the use of physical restraint and physical hold of residents. The information shall indicate areas of highest and lowest levels of compliance.
- (2) The total number of adult care homes that reported deaths under G.S. 131D-34.1, the number of deaths reported by each facility, the number of deaths investigated pursuant to G.S. 131D-34.1, and the number found by the investigation to be related to the adult care home's use of physical restraint or physical hold."

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

In the General Assembly read three times and ratified this the 6th day of July,
2000.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 8:49 a.m. this 14th day of July, 2000