An Act To Require the Documentation of the Use of Seclusion and Restraint at Mental Health Institutions in the State

Reference to the Committee on Health and Human Services suggested and ordered printed.

Presented by Representative SIROCKI of Scarborough.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 34-B MRSA c. 1, sub-c. 8 is enacted to read:

**SUBCHAPTER 8**

**REPORTING AND DOCUMENTATION OF INCIDENTS OF USE OF SECLUSION AND RESTRAINT**

§1951. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Hospital program.** "Hospital program" includes recreation, education and other treatment programs offered in an institution.

2. **Incident.** "Incident" means an incidence of the use of restraint or seclusion of a client, beginning at the time when the client begins to create a risk of harm and ending at the time when the client ceases to pose a risk of harm and returns to the client's normal activities.

3. **Institution.** "Institution" means a state institution or any other public or private institution that provides services that fall under the jurisdiction of the department.

4. **Restraint.** "Restraint" means a mechanism or action that limits or controls a client's voluntary movement, deprives a client of the use of all or part of the client's body or maintains a client in an area against the client's will by another person's physical presence or coercion. "Restraint" does not include a prescribed therapeutic device or a safety device.

5. **Seclusion.** "Seclusion" means the solitary, involuntary confinement for any period of time of a client in a room or specific area from which egress is denied by a locking mechanism or barrier.

§1952. Reporting of an incident of restraint or seclusion

1. **Reporting to administrator and others.** After each incident:

   A. A staff member involved shall report the incident to the chief administrative officer of the institution by oral notification immediately; and

   B. If the client is under 21 years of age or is an incapacitated person, the chief administrative officer of the institution involved shall notify the parent or guardian of the client that an incident has occurred and of any related treatment administered as soon as practicable on the day of the incident. If the parent or guardian is unavailable, a telephone message must be left informing the parent or guardian to contact the institution as soon as possible. If a parent or guardian does not have access to a telephone, the chief administrative officer shall use whatever contact information is
available for emergencies. The parent or guardian must be informed that written
documentation of the incident that includes a report of all injuries associated with the
incident will be provided to the parent or guardian within 7 calendar days.

2. Reporting of serious bodily injury or death. If serious bodily injury or death of
a client occurs during an incident, in addition to the requirements of subsection 1, the
chief administrative officer of the institution involved shall notify the commissioner of
the incident within 24 hours or on the next business day after the incident.

§1953. Documentation in incident reports

1. Incident report. Each incident that occurs in an institution or in the course of a
hospital program must be documented in an incident report. The incident report must be
completed and provided to the chief administrative officer of the institution involved as
soon as practicable after the incident and in all cases within 2 business days. At a
minimum, the incident report must include:

A. The name of the client;
B. The age and gender of the client;
C. The location of the incident;
D. The date of the incident;
E. The date of the incident report;
F. The name of the person completing the report;
G. The beginning and ending times of the incident;
H. The duration of the use of restraint or seclusion;
I. A description of the events and circumstances immediately preceding the incident;
J. Any less restrictive interventions attempted prior to the incident. If a less
restrictive intervention was not attempted, a detailed explanation as to why it was not
attempted;
K. The behavior of the client that justified the use of restraint or seclusion;
L. A detailed description of the incident, including the specific restraint or seclusion
used and the resolution of the incident;
M. The name of every staff person involved or present and the role in the incident of
each staff person involved or present;
N. The name of every person other than a staff person present or involved and the
role of every other person present or involved in the incident;
O. If the client, a staff person or other person sustained bodily injury during the
incident, a description of the bodily injury, the name of the injured person and the
date and time of nurse or response personnel notification and treatment administered,
if any;
P. The date, time and method of notification under section 1952, subsection 1,
paragraph B; and
Q. The date and time of staff debriefing under section 1954, subsection 1, paragraph A.

2. Incident report provided to parent or guardian. If the client who is the subject of an incident report under subsection 1 is under 18 years of age or is an incapacitated person, the incident report must be provided to the parent or guardian of the client within 24 hours.

3. Other rules and policies. This section does not replace but is in addition to any other incident reporting requirements in the rules or policies of the department or institution.

§1954. Response to the use of restraint or seclusion

1. Debriefing. Following an incident, within 2 business days a supervisor of every staff person present at or involved in the incident, and, if possible, the client and the client's parent or guardian, shall review the incident:

   A. With every staff person who was present at or involved in the incident to discuss:

      (1) Whether the use of restraint or seclusion was implemented in compliance with this subchapter and department and institution rules; and

      (2) How to prevent or reduce the future need for restraint or seclusion of the client by the staff persons present; and

   B. With the client who was the subject of the incident and, if the client is under 18 years of age or is an incapacitated person, the parent or guardian of the client to discuss:

      (1) What triggered the client’s escalation; and

      (2) What the client and staff can do to reduce the future need for restraint or seclusion.

2. Serious bodily injury. When restraint or seclusion has resulted in serious bodily injury to a client, a staff member or other person requiring emergency medical treatment, the debriefing under subsection 1 must take place as soon as possible but no later than the next business day after the incident.

3. Written response plan. Following a debriefing under subsection 1, the staff responsible for the client must develop and implement a written plan for response and for prevention of incidents for the client that includes specific alternatives to avoid restraint and seclusion, or, if a written plan already exists, the staff must review and, if appropriate, revise the written plan. The written plan must be provided to the client's parent or guardian within 7 calendar days of the incident.

4. Multiple incidents of restraint or seclusion. After a client's 3rd incident within a one-year period, within 10 business days of the 3rd incident, the staff responsible for that client shall meet to discuss all the incidents and to evaluate the client's treatment plan to determine modifications of the treatment plan to prevent further occurrences requiring restraint or seclusion. After the client's 6th incident within a one-year period, the
institution shall furnish to the department within 10 business days following the 6th
incident copies of the incident reports concerning that client during that one-year period
and copies of that client's treatment plan or plans.

5. Parent or guardian participation. If a client under subsection 4 is under 18
years of age or is an incapacitated person, a parent or guardian of the client must be
encouraged to participate in a meeting under subsection 4, and the meeting must be
scheduled, if possible, at a time convenient for the parent or guardian to attend. A client
or parent or guardian of a client may not give permission for the future use of restraint or
seclusion.

§1955. Reporting

1. Definitions. As used in this section, unless the context otherwise indicates, the
following terms have the following meanings.

A. "Unit" means the area or department of an institution that provides specialized
patient care, including but not limited to a unit providing specialized care to children,
adolescents or individuals with developmental disabilities.

2. Reporting by the chief administrative officer. By January 1st of each year, the
chief administrative officer shall submit a report to the commissioner detailing for the
prior calendar year, by quarter, for that institution:

A. The aggregate number of uses of restraint, categorized by the type of restraint
used and by the specific unit of the institution in which the use of restraint occurred;
B. The aggregate number of uses of seclusion, categorized by the specific unit of the
institution in which the seclusion occurred;
C. The minimum, maximum, median and mean duration of incidents of restraint,
categorized by the type of restraint used and by the specific unit of the institution in
which the restraint occurred;
D. The minimum, maximum, median and mean duration of incidents of seclusion,
categorized by the specific unit of the institution in which the seclusion occurred;
E. The number of incidents for which the institution determined that the use of
restraint or seclusion was consistent with institution policies and procedures and with
the requirements of the federal Department of Health and Human Services, Centers
for Medicare and Medicaid Services;
F. The number of clients who sustained bodily injury related to the use of restraint or
seclusion of those clients;
G. The number of staff persons who sustained bodily injury related to the use of
restraint or seclusion of a client;
H. The number of persons other than clients or staff who sustained bodily injury
related to the use of restraint or seclusion of a client; and
I. The number of clients who were secluded after the use of restraint.
The report must also include documentation summarizing the reasons for the use of restraint or seclusion and the process used to decide that other less restrictive measures would not be effective. The chief administrative officer shall review the report under this subsection and identify areas that may be addressed to reduce the future use of restraint or seclusion for that institution.

3. Reporting by the commissioner. By February 1st of each year, the commissioner shall submit a report to the joint standing committee of the Legislature having jurisdiction over health and human services matters detailing for the prior calendar year for all institutions:

A. The aggregate number of uses of restraint, categorized by the type of restraint used and by the type of unit in which the use of restraint occurred;
B. The aggregate number of uses of seclusion, categorized by the type of unit in which the seclusion occurred;
C. The minimum, maximum, median and mean duration of incidents of restraint, categorized by the type of restraint used and by the type of unit in which the restraint occurred;
D. The minimum, maximum, median and mean duration of incidents of seclusion, categorized by the type of unit in which the seclusion occurred;
E. The number of incidents for which the institution determined that the use of restraint or seclusion was consistent with institution policies and procedures and with the requirements of the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services;
F. The number of clients who sustained bodily injury related to the use of restraint or seclusion of those clients;
G. The number of staff persons who sustained bodily injury related to the use of restraint or seclusion of a client;
H. The number of persons other than clients or staff who sustained bodily injury related to the use of restraint or seclusion of a client; and
I. The number of clients who were secluded after the use of restraint.

The commissioner shall include in the report any corrective action taken or planned to be taken to reduce the future use of restraint or seclusion at all institutions. Following receipt and review of the annual report required pursuant to this subsection, the joint standing committee of the Legislature having jurisdiction over health and human services matters is authorized to report out legislation regarding the use of restraint or seclusion.

§1956. Complaint process

1. Institution complaint process. A client or parent or guardian of a client may file a complaint with the chief administrative officer of the institution serving the client of the use of restraint or seclusion of the client at any time after an incident. The chief administrative officer shall issue to the complainant a written report with specific findings regarding the use of restraint or seclusion within 30 days of receiving the complaint. If a violation of law or of a policy of the institution is found in connection with the complaint
regarding the use of restraint or seclusion, the chief administrative officer shall develop a corrective action plan by which the institution will achieve compliance.

2. Department complaint process. Any complainant who is dissatisfied with the result of a complaint filed under subsection 1 may file a complaint with the department, and the complaint is not considered an appeal of the process under subsection 1. The department shall review the results of the process under subsection 1 and may initiate a department investigation of the complaint. The department shall issue to the complainant and the chief administrative officer a written report with specific findings within 60 days of receiving the complaint. If a violation of law or of a policy of the institution is found, the department shall develop a corrective action plan by which the institution will achieve compliance.

Sec. 2. 34-B MRSA §3003, sub-§2, ¶E, as enacted by PL 1983, c. 459, §7, is amended to read:

E. Standards pertaining to the use of seclusion and restraint that comply with chapter 1, subchapter 8;

Sec. 3. 34-B MRSA §3803, sub-§3, ¶A, as amended by PL 2007, c. 319, §5, is further amended to read:

A. The chief administrative officer of the psychiatric hospital or facility shall record and make available for inspection every use of mechanical restraint or seclusion and the reasons for its use pursuant to chapter 1, subchapter 8.

Sec. 4. 34-B MRSA §5604-A, sub-§1, as enacted by PL 2007, c. 356, §24 and affected by §31, is amended to read:

1. Report incident. A person with knowledge about an incident related to client care, including client-to-client assault, staff-to-client assault, use of seclusion or excessive use of mechanical or chemical restraint, incidents stemming from questionable psychiatric and medical practice or any other alleged abuse or neglect, shall immediately report the details of that incident pursuant to policies and procedures established by the department in rules and in chapter 1, subchapter 8.

Sec. 5. 34-B MRSA §5604-A, sub-§2, as amended by PL 2011, c. 542, Pt. A, §128, is further amended to read:

2. Maintain reporting system. The department shall maintain a reportable event and adult protective services system that provides for receiving reports of alleged incidents, prioritizing such reports, assigning reports for investigation by qualified investigators, reviewing the adequacy of the investigations, making recommendations for preventive and corrective actions as appropriate and substantiating allegations against individuals who have been found under the Adult Protective Services Act to have abused, neglected or exploited persons with intellectual disabilities or autism. The department shall fully establish the reportable event and adult protective services system through rulemaking and section 1953.
Sec. 6.  34-B MRSA §5605, sub-§14-A, as amended by PL 2011, c. 657, Pt. EE, §10, is further amended to read:

14-A. Restraints. A person with an intellectual disability or autism is entitled to be free from restraint unless:

A. The restraint is a short-term step to protect the person from imminent injury to that person or others; or

B. The restraint has been approved as a behavior management program in accordance with this section.

A restraint may not be used as punishment, for the convenience of the staff or as a substitute for habilitative services. A restraint may impose only the least possible restriction consistent with its purpose and must be removed as soon as the threat of imminent injury ends. A restraint may not cause physical injury to the person receiving services and must be designed to allow the greatest possible comfort and safety.

Daily records of the use of restraints identified in paragraph A must be kept, which may be accomplished by meeting reportable event requirements and the requirements of section 1953.

Daily records of the use of restraints identified in paragraph B must be kept, and a summary of the daily records pertaining to the person must be made available for review by the person's planning team, as defined in section 5461, subsection 8-C, on a schedule determined by the team. The review by the personal planning team may occur no less frequently than quarterly. The summary of the daily records must state the type of restraint used, the duration of the use and the reasons for the use. A monthly summary of all daily records pertaining to all persons must be relayed to the advocacy agency designated pursuant to Title 5, section 19502.

SUMMARY

This bill provides for the notice, reporting and documentation of the use of restraint or seclusion of a client of a public or private institution that provides services that fall under the jurisdiction of the Department of Health and Human Services. This bill requires the staff responsible for a client subject to restraint or seclusion to attend a debriefing after an incident of restraint or seclusion and to conduct a meeting after 3 incidents involving a client in a one-year period to determine how to reduce the use of restraint or seclusion with that client. This bill requires the chief administrative officer of each institution under the jurisdiction of the Department of Health and Human Services annually to report the aggregate number of incidents of restraint and seclusion for that institution to the Commissioner of Health and Human Services and for the commissioner to report the aggregate number of incidents of restraint and seclusion for all those institutions to the joint standing committee of the Legislature having jurisdiction over health and human services matters and authorizes the joint standing committee to report out legislation based on the report. This bill provides for a complaint process for a client or parent or guardian of a client subject to restraint or seclusion at the institution level and at the department level if the complainant is dissatisfied with the institution's response.