not including devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or any other methods that involves the physical holding of a resident for the purpose of conducting routine physical examinations or tests or to protect the resident from falling out of bed or to permit the resident to participate in activities without the risk of physical harm to the resident (such term does not include a physical escort); and

(B) a drug or medication that is used as a restraint to control behavior or restrict the resident's freedom of movement that is not a standard treatment for the resident's medical or psychiatric condition.

(2) Seclusion

The term ''seclusion'' means a behavior control technique involving locked isolation. Such term does not include a time out.

(3) Physical escort

The term ''physical escort'' means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a resident who is acting out to walk to a safe location.

(4) Time out

The term ''time out'' means a behavior management technique that is part of an approved treatment program and may involve the separation of the resident from the group, in a non-locked setting, for the purpose of calming. Time out is not seclusion.

(July 1, 1944, ch. 373, title V, § 591, as added Pub. L. 106–310, div. B, title XXXII, § 3207, Oct. 17, 2000, 114 Stat. 1195.)

§ 290ii–1. Reporting requirement

(a) In general

Each facility to which the Protection and Advocacy for Mentally Ill Individuals Act of 1986[1] [42 U.S.C. 10801 et seq.] applies shall notify the appropriate agency, as determined by the Secretary, of each death that occurs at each such facility while a patient is restrained or in seclusion, of each death occurring within 24 hours after the patient has been removed from restraints and seclusion, or where it is reasonable to assume that a patient's death is a result of such seclusion or restraint. A notification under this section shall include the name of the resident and shall be provided not later than 7 days after the date of the death of the individual involved.

(b) Facility

In this section, the term ''facility'' has the meaning given the term ''facilities'' in section 102(3) of the Protection and Advocacy for Mentally Ill Individuals Act of 1986[1] (42 U.S.C. 10802(3)).

(July 1, 1944, ch. 373, title V, § 592, as added Pub. L. 106–310, div. B, title XXXII, § 3207, Oct. 17, 2000, 114 Stat. 1196.)

REFERENCES IN TEXT

The Protection and Advocacy for Mentally Ill Individuals Act of 1986, referred to in text, was Pub. L. 99–319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99–319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106–310, div. B, title XXXII, § 3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§ 10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

[1] See References in Text note below.

§ 290ii–2. Regulations and enforcement

(a) Training

Not later than 1 year after October 17, 2000, the Secretary, after consultation with appropriate State and local protection and advocacy organizations, physicians, facilities, and other health care professionals and patients, shall promulgate regulations that require facilities to which the Protection and Advocacy for Mentally Ill Individuals Act of 1986[1] (42 U.S.C. 10801 et seq.) applies, to meet the requirements of subsection (b) of this section.

(b) Requirements

The regulations promulgated under subsection (a) of this section shall require that—

(1) facilities described in subsection (a) of this section ensure that there is an adequate number of qualified professional and supportive staff to evaluate patients, formulate written individualized, comprehensive treatment plans, and to provide active treatment measures;

(2) appropriate training be provided for the staff of such facilities in the use of restraints and any alternatives to the use of restraints; and

(3) such facilities provide complete and accurate notification of deaths, as required under section 290ii–1(a) of this title.

(c) Enforcement

A facility to which this part applies that fails to comply with any requirement of this part, including a failure to provide appropriate training, shall not be eligible for participation in any program supported in whole or in part by funds appropriated to any Federal department or agency.

(July 1, 1944, ch. 373, title V, § 593, as added Pub. L. 106–310, div. B, title XXXII, § 3207, Oct. 17, 2000, 114 Stat. 1196.)

REFERENCES IN TEXT

The Protection and Advocacy for Mentally Ill Individuals Act of 1986, referred to in subsec. (a), was Pub. L. 99–319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99–319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106–310, div. B, title XXXII, § 3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§ 10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

[1] See References in Text note below.

PART I—REQUIREMENT RELATING TO THE RIGHTS OF RESIDENTS OF CERTAIN NON-MEDICAL, COMMUNITY-BASED FACILITIES FOR CHILDREN AND YOUTH

§ 290jj. Requirement relating to the rights of residents of certain non-medical, community-based facilities for children and youth

(a) Protection of rights

(1) In general

A public or private non-medical, community-based facility for children and youth (as defined in regulations to be promulgated by the Secretary) that receives support in any form from any program supported in whole or in part with funds appropriated under this chapter shall protect and promote the rights of each resident of the facility, including the right to be free from physical or mental abuse, corporal punishment, and any restraints or involuntary seclusions imposed for purposes of discipline or convenience.

(2) Nonapplicability

Notwithstanding this part, a facility that provides inpatient psychiatric treatment services for individuals under the age of 21, as authorized and defined in subsections (a)(16) and (h) of section 1905 of the Social Security Act [42 U.S.C. 1396d], shall comply with the requirements of part H of this subchapter.

(3) Applicability of Medicaid provisions

A non-medical, community-based facility for children and youth funded under the Medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] shall continue to meet all existing requirements for participation in such program that are not affected by this part.

(b) Requirements

(1) In general

Physical restraints and seclusion may only be imposed on a resident of a facility described in subsection (a) of this section if—

(A) the restraints or seclusion are imposed only in emergency circumstances and only to ensure the immediate physical safety of the resident, a staff member, or others and less restrictive interventions have been determined to be ineffective; and

(B) the restraints or seclusion are imposed only by an individual trained and certified, by a State-recognized body (as defined in regulation promulgated by the Secretary) and pursuant to a process determined appropriate by the State and approved by the Secretary, in the prevention and use of physical restraint and seclusion, including the needs and behaviors of the population served, relationship building, alternatives to restraint and seclusion, de-escalation methods, avoiding power struggles, thresholds for restraints and seclusion, the physiological and psychological impact of restraint and seclusion, monitoring physical signs of distress and obtaining medical assistance, legal issues, position asphyxia, escape and evasion techniques, time limits, the process for obtaining approval for continued restraints, procedures to address problematic restraints, documentation, processing with children, and follow-up with staff, and investigation of injuries and complaints.

(2) Interim procedures relating to training and certification

(A) In general

Until such time as the State develops a process to assure the proper training and certification of facility personnel in the skills and competencies referred[1] in paragraph (1)(B), the facility involved shall develop and implement an interim procedure that meets the requirements of subparagraph (B).

(B) Requirements

A procedure developed under subparagraph (A) shall—

(i) ensure that a supervisory or senior staff person with training in restraint and seclusion who is competent to conduct a face-to-face assessment (as defined in regulations promulgated by the Secretary), will assess the mental and physical well-being of the child or youth being restrained or secluded and assure that the restraint or seclusion is being done in a safe manner;

(ii) ensure that the assessment required under clause (i) take place as soon as practicable, but in no case later than 1 hour after the initiation of the restraint or seclusion; and

(iii) ensure that the supervisory or senior staff person continues to monitor the situation for the duration of the restraint and seclusion.

(3) Limitations

(A) In general

The use of a drug or medication that is used as a restraint to control behavior or restrict the resident's freedom of movement that is not a standard treatment for the resident's medical or psychiatric condition in nonmedical community-based facilities for children and youth described in subsection (a)(1) of this section is prohibited.

(B) Prohibition

The use of mechanical restraints in non-medical, community-based facilities for children and youth described in subsection (a)(1) of this section is prohibited.

(C) Limitation

A non-medical, community-based facility for children and youth described in subsection (a)(1) of this section may only use seclusion when a staff member is continuously face-to-face monitoring the resident and when strong licensing or accreditation and internal controls are in place.

(c) Rule of construction

(1) In general

Nothing in this section shall be construed as prohibiting the use of restraints for medical

[1] So in original. Probably should be followed by ''to''.