

immobilization, adaptive support, or medical protection.

**(2) Current law**

This part shall not be construed to affect or impede any Federal or State law or regulations that provide greater protections than this part regarding seclusion and restraint.

**(d) Definitions**

In this section:

**(1) Mechanical restraint**

The term “mechanical restraint” means the use of devices as a means of restricting a resident’s freedom of movement.

**(2) 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.

**(3) Physical restraint**

The term “physical restraint” means a personal restriction that immobilizes or reduces the ability of an individual to move his or her arms, legs, or head freely. Such term does not include a physical escort.

**(4) Seclusion**

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

**(5) 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, §595, as added Pub. L. 106-310, div. B, title XXXII, §3208, Oct. 17, 2000, 114 Stat. 1197.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

**§ 290jj-1. Reporting requirement**

Each facility to which this part applies shall notify the appropriate State licensing or regulatory agency, as determined by the Secretary—

(1) of each death that occurs at each such facility. A notification under this section shall include the name of the resident and shall be provided not later than 24 hours after the time of the individuals<sup>1</sup> death; and

(2) of the use of seclusion or restraints in accordance with regulations promulgated by the Secretary, in consultation with the States.

(July 1, 1944, ch. 373, title V, §595A, as added Pub. L. 106-310, div. B, title XXXII, §3208, Oct. 17, 2000, 114 Stat. 1199.)

<sup>1</sup> So in original. Probably should be “individual’s”.

**§ 290jj-2. Regulations and enforcement**

**(a) Training**

Not later than 6 months after October 17, 2000, the Secretary, after consultation with appropriate State, local, public and private protection and advocacy organizations, health care professionals, social workers, facilities, and patients, shall promulgate regulations that—

(1) require States that license non-medical, community-based residential facilities for children and youth to develop licensing rules and monitoring requirements concerning behavior management practice that will ensure compliance with Federal regulations and to meet the requirements of subsection (b) of this section;

(2) require States to develop and implement such licensing rules and monitoring requirements within 1 year after the promulgation of the regulations referred to in the matter preceding paragraph (1); and

(3) support the development of national guidelines and standards on the quality, quantity, orientation and training, required under this part, as well as the certification or licensure of those staff responsible for the implementation of behavioral intervention concepts and techniques.

**(b) Requirements**

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

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

(2) the provision of appropriate training and certification of the staff of such facilities in the prevention and use of physical restraint and seclusion, including the needs and behaviors of the population served, relationship building, alternatives to restraint, de-escalation methods, avoiding power struggles, thresholds for restraints, the physiological impact of restraint and seclusion, monitoring physical signs of distress and obtaining medical assistance, legal issues, position asphyxia, escape and evasion techniques, time limits for the use of restraint and seclusion, the process for obtaining approval for continued restraints and seclusion, procedures to address problematic restraints, documentation, processing with children, and follow-up with staff, and investigation of injuries and complaints; and

(3) that such facilities provide complete and accurate notification of deaths, as required under section 290jj-1(1) of this title.

**(c) Enforcement**

A State to which this part applies that fails to comply with any requirement of this part, including a failure to provide appropriate training and certification, shall not be eligible for participation in any program supported in whole or in part by funds appropriated under this chapter.

(July 1, 1944, ch. 373, title V, §595B, as added Pub. L. 106-310, div. B, title XXXII, §3208, Oct. 17, 2000, 114 Stat. 1199.)

PART J—SERVICES PROVIDED THROUGH  
RELIGIOUS ORGANIZATIONS

CODIFICATION

This part was, in the original, part G of title V of act July 1, 1944, and has been redesignated as part J for purposes of codification. Another part G of title V of act July 1, 1944, is classified to part G (§ 290hh et seq.) of this subchapter.

**§ 290kk. Applicability to designated programs**

**(a) Designated programs**

Subject to subsection (b) of this section, this part applies to discretionary and formula grant programs administered by the Substance Abuse and Mental Health Services Administration that make awards of financial assistance to public or private entities for the purpose of carrying out activities to prevent or treat substance abuse (in this part referred to as a “designated program”). Designated programs include the program under subpart II of part B of subchapter XVII of this chapter (relating to formula grants to the States).

**(b) Limitation**

This part does not apply to any award of financial assistance under a designated program for a purpose other than the purpose specified in subsection (a) of this section.

**(c) Definitions**

For purposes of this part (and subject to subsection (b) of this section):

(1) The term “designated program” has the meaning given such term in subsection (a) of this section.

(2) The term “financial assistance” means a grant, cooperative agreement, or contract.

(3) The term “program beneficiary” means an individual who receives program services.

(4) The term “program participant” means a public or private entity that has received financial assistance under a designated program.

(5) The term “program services” means treatment for substance abuse, or preventive services regarding such abuse, provided pursuant to an award of financial assistance under a designated program.

(6) The term “religious organization” means a nonprofit religious organization.

(July 1, 1944, ch. 373, title V, § 581, as added Pub. L. 106-554, § 1(a)(7) [title I, § 144], Dec. 21, 2000, 114 Stat. 2763, 2763A-619.)

CODIFICATION

Another section 581 of act July 1, 1944, is classified to section 290hh of this title.

**§ 290kk-1. Religious organizations as program participants**

**(a) In general**

Notwithstanding any other provision of law, a religious organization, on the same basis as any other nonprofit private provider—

(1) may receive financial assistance under a designated program; and

(2) may be a provider of services under a designated program.

**(b) Religious organizations**

The purpose of this section is to allow religious organizations to be program participants

on the same basis as any other nonprofit private provider without impairing the religious character of such organizations, and without diminishing the religious freedom of program beneficiaries.

**(c) Nondiscrimination against religious organizations**

**(1) Eligibility as program participants**

Religious organizations are eligible to be program participants on the same basis as any other nonprofit private organization as long as the programs are implemented consistent with the Establishment Clause and Free Exercise Clause of the First Amendment to the United States Constitution. Nothing in this chapter shall be construed to restrict the ability of the Federal Government, or a State or local government receiving funds under such programs, to apply to religious organizations the same eligibility conditions in designated programs as are applied to any other nonprofit private organization.

**(2) Nondiscrimination**

Neither the Federal Government nor a State or local government receiving funds under designated programs shall discriminate against an organization that is or applies to be a program participant on the basis that the organization has a religious character.

**(d) Religious character and freedom**

**(1) Religious organizations**

Except as provided in this section, any religious organization that is a program participant shall retain its independence from Federal, State, and local government, including such organization’s control over the definition, development, practice, and expression of its religious beliefs.

**(2) Additional safeguards**

Neither the Federal Government nor a State shall require a religious organization to—

(A) alter its form of internal governance;

or

(B) remove religious art, icons, scripture, or other symbols,

in order to be a program participant.

**(e) Employment practices**

Nothing in this section shall be construed to modify or affect the provisions of any other Federal or State law or regulation that relates to discrimination in employment. A religious organization’s exemption provided under section 2000e-1 of this title regarding employment practices shall not be affected by its participation in, or receipt of funds from, a designated program.

**(f) Rights of program beneficiaries**

**(1) In general**

If an individual who is a program beneficiary or a prospective program beneficiary objects to the religious character of a program participant, within a reasonable period of time after the date of such objection such program participant shall refer such individual to, and the appropriate Federal, State, or local government that administers a designated pro-