Seclusion &/or Restraint

Seclusion and restraint issues are some of the most pervasive complaints advocates receive. The laws and regulations are complicated and many mental health systems and employees don’t really understand them.

Over the years many of us have developed tools that help us understand the laws and regulations, monitor their use in our facilities and investigate complaints of misuse. I have included some of them, if any of you have other tools that you find useful and would like to share, please forward them to us so we can share them with others.

Empowerment Resources #04

✔ **Legal Requirements for Seclusion and Restraint**

*Every facility has a license to operate, within that license are the regulations for the use of seclusion and/or restraint. These charts break out the specific regulations attached to five (5) types of facilities. This is an easy reference chart I created because I got tired of always having to look up the specifics.*

✔ **Health Care Financing Administration Regulations (HCFA)**

*This is a summary of the new HCFA regulations and what they are looking for. This was taken from the surveyor’s tool (what they look for when they are inspecting.) This is applicable for any facility that takes Medi-Cal or Medicare.*

✔ **Denial of Rights Memorandum**

*This is a memorandum that explains the “good cause” cause criteria necessary for denial of rights, important when a person has been placed in seclusion &/or restraints and any of their rights are denied during the incident.*
Federal Register
The complete Interim Final Rules for hospital conditions of participation in Medicare Medicaid programs. Put out July 2, 1999, went into effect August 2, 1999. This goes with the above summary of the rules.

Monitoring Tools
I have included two different tools that have been used in monitoring projects. One was designed for project out the this office and the second is a tool that was designed and has been used by Contra Costa/Solano County Program Director for patients’ rights Janet Wilson.

Joint Commission on Accreditation of Healthcare Organizations (JCAHO)
These are the standards for those facilities that are accredited by the Joint Commission. They do not over-ride laws and regulations but they are used to receive accreditation.

JCAHO/HCFA Comparison chart
This chart has the different standards that each of the two organizations are looking for and a place for you to put in your facility/county policy when monitoring a facility’s seclusion and/or restraint specific to these standards. It is important to note that some facilities are required to abide by HCFA regulations as part of their participation in the program and can also be JCAHO accredited, which is a certification program and finally some have neither and then only the C.C.R. Title 22 regulations apply.
The patient has the right to be free from seclusion and restraints, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff.

The term "restraint" includes either a physical restraint or a drug that is being used as a restraint.

A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to the patient's body that he or she cannot easily remove that restricts freedom of movement or normal access to one's body.

A drug used as a restraint is a medication used to control the behavior or to restrict the patient's freedom of movement and is not a standard treatment for the patient's medical or psychiatric condition.

Seclusion is the involuntary confinement of a person in a room or an area where the person is physically prevented from leaving.

Interpretive Guidelines: §482.13(f)(1)
"Seclusion" does not include confinement on a locked unit or ward where the patient is with others. Seclusion is not just confining an individual to an area but involuntarily confining him/her alone in a room or area where he/she is physically prevented from leaving. Seclusion is different from timeout which means the restriction of a patient for any period of time to a designated area from which the patient is not physically prevented from leaving and for the purpose of providing the patient an opportunity to regain self-control.

The behavior management standard for restraints and seclusion should be followed in emergency or crisis situations if a patient's behavior becomes aggressive or violent, presenting an immediate, serious danger to his/her safety or that of others. The behavior management standard governs the use of a restraint or seclusion in this type of a crisis situation whether it occurs on acute medical and surgical units, psychiatric units, Alzheimer's units, or in general, psychiatric, alcohol-drug, children's, rehabilitation, short-term, or long-term care hospitals. A restraint or seclusion for behavior management is used only as an emergency measure and is reserved for those occasions when severely aggressive or destructive behavior places the patient or others in imminent danger. While different factors may precipitate this type of psychiatric, behavioral, and physical outburst for an individual patient, the need for rapid assessment and continuous monitoring is applicable in each case.

The behavior management standard does not apply to situations where the hospital wishes to restrain a patient to address the risk of a fall or to control wandering. The use of restraint for a non-violent or non-aggressive, otherwise cooperative patient may be governed by the Restraint of acute medical and surgical care. It is important to note that the regulation specifically states that convenience is not an acceptable reason to restrain a patient nor can restraint use serve as a substitute for adequate staffing to monitor a patient.
Seclusion or restraint can only be used in emergency situations if needed to ensure the patient's physical safety and less restrictive interventions have been determined to be ineffective.

**Interpretive Guidelines: §482.13(f)(2)**

Emergency is defined as a situation where the patient's behavior is violent or aggressive and where the behavior presents an immediate and serious danger to the safety of the patient, other patients, staff, or others.

Documentation in the patient's medical record should include:
- The patient's behavior and the intervention used;
- The rationale for the use of the physical restraint or seclusion; and
- The patient's response to the use of physical restraint or seclusion.

Documentation in the patient's record should indicate a clear progression in how techniques are implemented with less intrusive restrictive interventions attempted (or considered prior to the introduction of more restrictive measures).

**Procedures: §482.13(f)(2)**

1. Review hospital procedures for emergency use of restraints and seclusion.
2. Look at incident and accident reports to determine if incidents and accidents are greater with restrained or secluded patients.
3. Examine patterns of restraints or seclusion use that may indicate that the intervention is not based on the patient's need, but on issues such as inadequate staffing or lack of training.

**Probes: §482.13(f)(2)**

1. Does the number of patients who are restrained or secluded increase on weekends, on holidays, at night, on certain shifts; where contract nurses are used; in one unit more than other units?
2. Do physician orders specify the reason for seclusion/restraint, the type of restraint and the duration?
3. Does the severity of the behavior justify seclusion or restraint usage by identifying an immediate and serious danger to the physical safety of the patient or others?
4. Is there evidence that the hospital considers factors other than the individual patient in determining causes for the need for restraints or seclusion (i.e., environmental factors)?
5. Does the clinical record reflect assessment and/or development of a plan of care?
The use of restraint or seclusion must be:

|--------------------------|---------------------------------------------|
| 1. Does the clinical record reflect changes in behavior and staff concerns regarding potential danger on the unit/ward prompting use of seclusion or restraints?  
2. Did the patient's behavior place others/self at risk of harm?  
3. Were other behavior interventions tried and documented? | Hospitals should have policies and procedures for the initiation of restraint or seclusion to manage violent, aggressive behavior that places the patient or others in danger. This protocol should specify who can initiate restraints or seclusion in an emergency prior to obtaining a physician's or LIP's order. The use of verbal orders should be addressed. |
| 1. Does the hospital have written policy indicating which practitioners are permitted to order seclusion or restraints in the facility?  
2. Do the hospital's written policies conform with State law?  
3. Does the hospital have written policies on the use of verbal orders?  
4. Does the hospital have established policies for who can initiate restraint and seclusion?  
5. Are the staff members who are able to initiate restraint and seclusion trained in the safe use of restraint and seclusion and able to demonstrate competency? |
The following requirements will be superseded by existing State laws that are more restrictive:

| Orders for the use of seclusion or a restraint must never be written as a standing order or on an as needed basis (that is, PRN). | Interpretive Guidelines: §482.13(f)(3)(ii)(A)  
Ongoing authorization of restrictive techniques is not permitted. The absence of evidence to justify such usage constitutes a "PRN order" to control inappropriate behavior, and is prohibited.  
Probe: §482.13(f)(3)(ii)(A)  
Is there evidence of restraints or seclusion being implemented on a PRN basis? |
|---|---|
| The treating physician must be consulted as soon as possible, if the restraint or seclusion is not ordered by the patient's treating physician. | Procedures: §482.13(f)(3)(B)  
1. Determine the hospital's policies and procedures for prompt notification of treating physician when seclusion or restraint is ordered by someone other than the treating physician.  
2. Determine if medical records reflect hospital's policies and procedures. |
| A physician or other licensed independent practitioner must see and evaluate the need for restraint or seclusion within 1 hour after the initiation of this intervention. | Interpretive Guidelines: §482.13(f)(3)(ii)(C)  
A physician or LIP (as recognized by State law and hospital policy) evaluation of a patient must be face-to-face. A telephone call is not adequate.  
If a patient who is restrained for aggressiveness or violence quickly recovers and is released before the physician or LIP arrives to perform the assessment, the physician or LIP must still see the patient face-to-face to perform the assessment within 1 hour after the initiation of this intervention. The fact that the patient's behavior warranted the use of a restraint or seclusion indicates a serious medical or psychological need for prompt assessment of the incident/situation that led to the intervention, as well as the physiological and psychological condition of the patient at the time of the assessment. |
### The following requirements will be superseded by existing State laws that are more restrictive:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Each written order for a physical restraint or seclusion is limited to 4 hours for adults; 2 hours for children and adolescents ages 9 to 17; or 1 hour for patients under 9.</td>
<td>The use of physical restraint or seclusion must be limited to the duration of the emergency safety situation regardless of the length of the order. The time frames specified in these requirements are maximums. The physician or LIP has the discretion to decide that the order should be written for a shorter period of time; and in the meantime, staff should be assessing, monitoring, and re-evaluating the patient so that he or she is released from the restraint or seclusion at the earliest possible time. If restraints or seclusion are discontinued prior to the expiration of the original order, a new order must be obtained prior to reinitiating seclusion or reapplying the restraints and the requirements restart. The physician is not required to perform another face-to-face assessment of the patient after 4 hours (or 2 hours or 1 hour for younger patients). While we encourage physician or LIP participation in the delivery of care and treatment, when the original order is about to expire, a nurse can telephone the physician or LIP, report the results of his/her most recent assessment, and request that the original order be renewed for another period of time (not to exceed the time limits established in the regulation).</td>
<td>Does the renewal for seclusion/restraint provide a rationale that is based on an individual assessment of the patient?</td>
</tr>
<tr>
<td>The original order may only be renewed in accordance with these limits for up to a total of 24 hours.</td>
<td>Interpretive Guidelines: §482.13(f)(ii)(D)(i)</td>
<td>Orders for restraints must be renewed on a daily basis.</td>
</tr>
<tr>
<td>After the original order expires, a physician or licensed independent practitioner (if allowed under State law) must see and assess the patient before issuing a new order.</td>
<td>At a minimum, if the patient has been in a restraint or in seclusion for 24 hours, the physician or LIP will at that point return to complete a face-to-face reevaluation. Twenty-four hours of restraint or seclusion is an extreme measure with the potential for serious harm to the patient.</td>
<td>If patients are in seclusion or restraints for longer than 24 hours, is there evidence of a new written order and assessment documentation in the medical record that provides a reasonable rationale supporting the decision to continue with that intervention?</td>
</tr>
</tbody>
</table>
The use of restraint or seclusion must be:

| ...in accordance with a written modification to the patient's plan of care. | **Interpretive Guidelines: §482.13(e)(3)(B)(iii)**  
The use of restraints (including drugs used as restraints and physical restraints) should be referred to in the patient's "modified" plan of care or treatment plan.  

**Procedures: §482.13(e)(3)(B)(iii)**  
Determine whether the hospital's procedure followed the expectations of restraint requirements. Does the plan of care reflect a loop of assessment, intervention, evaluation, and re-intervention.  

**Probes: §482.13 (e)(3)(B)(iii)**  
1. Is there evidence of assessment of the identified problem or of individual patient assessment?  
2. Does the patient's plan of care reflect that assessment?  
3. What was the goal? Was it outcome oriented?  
4. What was the described intervention?  
5. Who is responsible for implementation?  
6. Did the physician orders, which included a time-limit, get incorporated into the plan of care?  
7. After the discontinuation of the restraint intervention, was this information documented in the update of the plan of care? |
# The use of restraint or seclusion must be:

<table>
<thead>
<tr>
<th>Interpretive Guidelines: §482.13(f)(3)(ii)(D)(iv)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A comprehensive assessment of the patient must determine that the risks associated with the use of the restraint are outweighed by the risk of not using it. Alternative interventions do not always need to be tried, but should be considered prior to the use of a restraint/seclusion.</td>
</tr>
</tbody>
</table>

1. Is there clear documentation in the patient's medical record describing the steps or interventions used prior to the use of the needed restraint? That is, what documentation is in the medical record to explain the rationale for the use of restraints?
2. Were less intrusive measures tried or considered first?
3. Are those measures documented?
4. Is there evidence of consideration of the patient's health needs/problems prior to implementation of the intervention?

<table>
<thead>
<tr>
<th>Interpretive Guidelines: §482.13(f)(3)(ii)(D)(v)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restraint/seclusion use should not cause harm or pain to patient.</td>
</tr>
</tbody>
</table>

1. Examine and include patients for whom restraint is used in the sample.
2. Determine if the hospital's procedures reflect current standards of practice regarding appropriate restraining techniques.

1. Is there a clear description of the physical intervention utilized?
2. Did staff do an immediate assessment of the patient to ensure that the restraints were safely and correctly applied?
3. Was nursing procedure and policy followed?
4. What was the patient's response? If negative, were changes made?
5. Was there any evidence of injury to the patient?
The use of restraint or seclusion must be:

<table>
<thead>
<tr>
<th>...ended at the earliest possible time.</th>
</tr>
</thead>
</table>

**Interpretive Guidelines: §482.13(f)(3)(ii)(D)(vi)**
The use of restraints/seclusion should be frequently evaluated and ended at the earliest possible time based on the assessment and reevaluation of the patient's condition.

1. If the time of restraint use is lengthy, is there evidence that the symptoms necessitating the restraint use have persisted.
2. What are the hospital's policies and procedures for ending restraint use for behavior management?
3. Does the evidence indicate that the staff have evaluated the patient's behavior so that the restraint can safely be removed?
A restraint and seclusion may not be used simultaneously unless the patient is:

| Continually monitored face-to-face by an assigned staff member; or | Interpretive Guidelines: §482.13(f)(4)  
When using both seclusion and restraints at the same time, continual monitoring is defined as uninterrupted monitoring.  
Probes: §482.13(f)(4)(i)  
Does the clinical record reflect uninterrupted monitoring? |
|---------------------------------------------------------------|------------------------------------------------------------------------------------------|
| Continually monitored by staff using both video and audio equipment. This monitoring must be in close proximity to the patient. | Interpretive Guidelines: §482.13(f)(4)(ii)  
The use of video and audio equipment does not eliminate the need for frequent assessment of the patients needs and status. The hospital should ensure that staff who are assigned monitoring duties are competent to assess physical and psychological signs of distress.  
Probe §482.13(f)(4)(ii)  
1. Is the staff person monitoring the patient in close proximity to the patient so as to allow emergency intervention if a problem arises?  
2. Does the video equipment cover all areas of the room or location where the patient is restrained or secluded? |
The condition of the patient who is in a restraint or in seclusion must continually be assessed, monitored, and reevaluated.

Interpretive Guidelines: §482.13(f)(5)
The frequency of monitoring will vary according to the type and design of the device or intervention as well as the emotional, psychological and physical condition, needs, and symptoms of the patient.

Procedures: §482.13(f)(5)
1. Review the hospital's policy on restraints and seclusion to determine how the facility is assessing and monitoring patient medical and behavioral status. Obtain a sample of the patient population in restraints.
2. Look for a cycle of removing restraints, then reapplying them without evaluating the patient.

Probes: §482.13(f)(5)
1. Does hospital policy describe which staff members are responsible for assessing and monitoring the patient?
2. Are time frames described for how often a patient is monitored for vital signs, respiratory and cardiac status, skin integrity checks?
3. Does the policy include frequent opportunities for offering fluids and nourishment, toileting/elimination, range of motion, exercise of limbs and systematic release of restrained limbs? Is this documented in the record?
4. Is the mental status assessed? Is this documented in the record?
5. Is the patient assessed regarding continued need for use of seclusion or restraint? Is there adequate justification for continued use and is this documented?
6. Is there documentation of ongoing patient assessment (e.g., skin integrity, circulation, respiration, intake and output, weight, hygiene, injury, etc)?
7. Did the patients understand the reasons for the use of restraints or seclusion?
<table>
<thead>
<tr>
<th>All staff who have direct patient contact must have ongoing education and training in the proper and safe use of seclusion and restraint application and techniques and...</th>
<th><strong>Probe: §482.13 (f)(6)</strong> Does the hospital have evidence that all staff who have direct patient care responsibilities and any other individuals who may be involved in the application of restraints (e.g., security guards, EMTs on the premises) have been trained and are able to demonstrate competency in the safe use of seclusion and the safe application and use of restraints?</th>
</tr>
</thead>
<tbody>
<tr>
<td>...alternative methods for handling behavior, symptoms, and situations that traditionally have been treated through the use of restraints or seclusion.</td>
<td><strong>Probes: §482.13(f)(6)</strong> Is there evidence that staff are updated and trained on alternative interventions other than restraint/seclusion techniques?</td>
</tr>
<tr>
<td>The hospital must report to HCFA any death that occurs while a patient is restrained or in seclusion, or where it is reasonable to assume that a patient's death is a result of restraint or seclusion.</td>
<td><strong>Interpretive Guidelines: §482.13(f)(7)</strong> The hospital must report to HCFA any death that occurs while a patient is in seclusion, or where it is reasonable to assume that the patient's death is a result of being in seclusion. The hospital must report to HCFA any death that occurs while a patient is in restraints for behavioral management reasons or where it is reasonable to assume that the patient's death is a result of restraint use for behavioral management reasons. The hospital should report these deaths to their HCFA regional office by the next business day following the patient's death. <strong>Procedures: §482.13(f)(7)</strong> 1. Review the written hospital policy on reporting deaths that occur while a patient is restrained or in seclusion, or where it is reasonable to assume that a patient's death is a result of restraint or seclusion. 2. Interview patient care staff to determine their knowledge of the hospital's policy or protocol regarding the determination whether a death reasonably may have resulted from seclusion or restraint, and their knowledge of HCFA reporting requirements. <strong>Probes: §482.13(f)(7)</strong> 1. Is there evidence of deaths, associated with restraints or seclusion, not reported to HCFA? 2. If there have been deaths associated with seclusions or restraints, were they reported to HCFA in a timely manner? Was this documented in the medical record? 3. Does the hospital have a written policy on reporting deaths associated with seclusion or restraints to HCFA in a timely manner? 4. Do patient care staff know the HCFA death reporting requirements?</td>
</tr>
</tbody>
</table>
Health Care Financing Administration (HCFA)
Conditions of Participation (COP)
Seclusion and/or Restraint
Surveyor Summary

Became effective August 2, 1999

As conditions for participation in Medicaid, Medicare.

Applies to all Medicare/Medicaid participating hospitals
- Short-term psychiatric
- Rehabilitation
- Long term
- Children’s
- Alcohol-drug treatment

Basic Definitions

The patient has the right to be free from seclusion and restraint, of any form, imposed as a means of coercion, discipline, convenience, or retaliation.

The term “restraint” includes either a physical restraint or a drug that is being used as a restraint.

Seclusion is involuntarily confining an individual to an area where they are physically prevented from leaving for any period of time.

Timeout
Restriction of a patient for any period of time to a designated area from which the patient is not physically prevented from leaving and for the purposes of providing the pt an opportunity to regain self-control.

- A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to the patient’s body.
A drug used, as a restraint is a medication used to control behavior or to restrict the patient’s freedom of movement and is not a standard treatment for the patient’s medical or psychiatric condition.

- Seclusion is the involuntary confinement of a person in a room or an area where the person is physically prevented from leaving.

Seclusion or a restraint can only be used in emergency situations if needed to ensure the patient’s physical safety and less restrictive interventions have been determined to be ineffective.

What it means
- Convenience is not an acceptable reason to restrain a patient
- Nor can restraint use serve as a substitute for adequate staffing to monitor a patient.
- A situation where the patient’s behavior is violent or aggressive and where the behavior presents an immediate and serious danger to the safety of the patient, other patients, staff, or others.

Surveyors are looking at
- Documentation in the patients record
  - pt’s behavior and the the intervention used.
  - Rationale for the use
  - pt’s response
It should indicate a clear progression in how techniques are implemented with less intrusive restrictive interventions attempted (or considered prior to restraint)

- Procedures
  - Reviewing hospital procedures on use
  - Looking at incident and accident reports to determine if they are greater with use.
  - Examining patterns of use that may indicate intervention is based on inadequate staff or lack of training.
- Does the use increase on weekend, holidays, certain shifts or one unit or another.
- Whether the doctors order specifies the reason, type and duration.
- Whether the severity of the behavior justify the use.
- Does the hospital consider other factors other than the individual in the cause. (environmental)
- Whether the clinical record reflects assessment and/or a plan of care.
- Whether the clinical record reflects changes in behavior and staff concern.
- Documentation of other interventions.

______________________________

Used in accordance with the order of a physician or other licensed independent practitioner permitted by the State and hospital to order seclusion or restraint.

What it means
- There should be policies and procedures that specify who can initiate and how verbal orders will by used.

Surveyors are looking at
- Does the hospital have a written policy
- Does the policy conform to state law.
- Have the staff members who can initiate etc. have training and able to demonstrate competency.

______________________________

Orders for the use of Seclusion and restraint must never be written as a standing order or on an as need basis (prn)

What it means
- Absence of evidence to justify such usage constitutes a “PRN order” and is prohibited

Surveyors are looking at
- Is there evidence of PRN usage

______________________________
The treating physician must be consulted as soon as possible if the restraint or seclusion is not ordered by the patient’s treating physician.

What it means
- The patient’s doctor of record - treating physician must be notified as soon as possible.

Surveyors are looking at
- Do the policies and procedures reflect what is to be done if the patient’s physician is not who orders the restraint.
- Whether the medical record reflects this.

A physician or other licensed independent practitioner must see and evaluate the need for restraint or seclusion within 1 hour after the initiation of this intervention.

What it means
- The evaluation must be face-to-face. A telephone call is not adequate.
- If the pt is released before the 1 hour period the physician must still do a face-to-face assessment within 1 hour

Surveyors are looking at
- Do the policies and procedures reflect this.
- Whether the medical record reflects this.

Sets time limits for orders
- Adults – 4 hours
- Children 9 to 17 – 2 hours
- Children under 9 – 1 hour

- Original order may only be renewed for up to a total of 24 hours.

What it means
- The use must be limited to the duration of the emergency safety situation regardless of the order
- These times are maximums
- Staff should be assessing, monitoring, and reevaluating so the patient is released at the earliest possible time.

Surveyors are looking at
- Does the renewal provide a rationale that is based on an individual assessment?
- Does the documentation proved a reasonable rationale supporting the decision to continue?

After the original order expires, a physician or licensed independent practitioner must see and assess the patient before issuing a new order.

What it means
- At a minimum, if the patient has been in restraint and/or seclusion for 24 hours, the physician must do another face-to-face evaluation.

  “Twenty-four hours of restraint or seclusion is an extreme measure with the potential for serious harm to the patient.”

Surveyors are looking at
- Is there evidence of a new written order and assessment documentation that provides a reasonable rationale supporting its continuation.

In accordance with a written modification to the patient’s plan of care

What it means
- Does the care plan reflect a loop of assessment, intervention, evaluation, and re-intervention?

Surveyors are looking at
- Evidence of the identified problem or individual assessment.
- Does the care-plan reflect this assessment.
- What is the goal - is it outcome oriented
- What was the intervention
- Who is responsible for implementation
- Are the physician’s order in the care plan
Implemented in the least restrictive manner possible

What it means

- A comprehensive assessment of the pt must determine that the **risks associated with the use** of restraint are outweighed by the **risk of not using it**.
- Alternative interventions do not always need to be tried but need to be considered.

Surveyors are looking at

- Clear documentation
- Were less intrusive measures tried or considered first
- Are they documented
- Is there evidence of consideration of the patient’s health needs/problems prior to implementation.

In accordance with safe appropriate restraining techniques

What it means

- The use should not cause harm or pain to the patient.

Surveyors are looking at

- The actual patients who were restrained
- Determining whether the procedures reflect the current standards of practice.
- Whether staff did an immediate assessment.
- What was the patient’s response.
- Was there evidence of injury to the pt.

Ended at the earliest possible time.

What it means

- Restraint and seclusion should be frequently evaluated and ended at the earliest possible time.

Surveyors are looking at

- If the time is lengthy, is there evidence that the symptoms necessitating the restraint use persisted.
- What are the policies and procedures for ending the use of restraints.
Does the evidence show the staff evaluated the patients’ behavior so that he restraint can be removed. A restraint and seclusion may not be used simultaneously unless the patient is – continually monitored face-to-face by an assigned staff member; or continually monitored by staff using both video and audio equipment.

**What it means**
- Staff assigned should be competent to assess physical and psychological signs of distress.
- Continual monitoring is defined as “uninterrupted monitoring”
- Use of video and audio equipment does not eliminate the need for frequent assessment of the patient’s needs and status.

**Surveyors are looking at**
- Is the staff person monitoring the patient in close proximity to the patient as to allow emergency intervention if a problem arises?
- Does the video equipment cover all areas of the room or location?

The condition of the patient who is in a restraint or in seclusion must continually be assessed, monitored, and reevaluated.

**What it means**
- Frequency of monitoring will vary according to the type and design of device or intervention as well as the emotional, psychological and physical condition, needs, and symptoms of the patient.

**Surveyors are looking for**
- P&P on how staff is assessing and monitoring.
- Looking for a cycle of removing restraints then reapplying them without evaluating the patient.
- How nursing is provided
- Is mental status assessed and documented.
- Assessment for continued use.
- Pt understanding of reasons for use.

All staff who have direct patient contact must have ongoing education and training in the proper and safe use of seclusion and restraint application and techniques and **alternative methods for handling behavior, symptoms, and situations that traditionally have been treated through the use of restraints or seclusion.**
What it means

- Whether all staff who may be involved with application of restraints have been trained and are able to demonstrate competency in safe use and application.
- This includes security guards etc.

The hospital must report to HCFA any death that occurs while a patient is restrained or in seclusion, or where it is reasonable to assume that a patient’s death is a result of restraint or seclusion.
MEMORANDUM

TO: Interested Persons
FROM: Darla Rucker, Patients' Rights Specialist
RE: Denial of Rights
DATE: April 10, 2001

A very important principle to understand is that regardless of legal status or mental disability everyone retains rights basic to all citizens of the United States.

Persons with mental illness have the same legal rights and responsibilities guaranteed all other persons by the Federal constitution and laws, and the constitution and laws of the state of California, unless specifically limited by federal or state law or regulations. California Welfare and Institutions Code § 5325.1 (emphasis added)

Therefore, those rights guaranteed by California Welfare and Institutions Code § 5325 can only be denied by staff if the patient meets the legal criteria to have the right denied. They must fit the legal criteria for “good cause.”

There is a statutory definition of "good cause" and who may legally deny a patient their rights if they meet this criteria.
Good cause for the denial of a right exists when the professional person in charge of the facility or her/his designee has good reason to believe one or all of the following:

1) That the exercise of the specific right would be injurious to the patient; or
2) That there is evidence that the specific right, if exercised, would seriously infringe on the rights of others; or
3) That the institution or facility would suffer serious damage if the specific right is not denied; and
4) There is no less restrictive way of protecting the interest specified in (1), (2), or (3).

*California Code of Regulations, Title 9, § 865.2(a)* (emphasis added).

Also,

...[t]he reason used to justify the denial of a right to a patient/resident must be related to the Specific right denied. A right shall not be withheld or denied as a punitive measure, nor shall a right be considered a privilege to be earned. *(C.C.R. Title 9, § 865.2). (b)*

In addition, treatment modalities shall not include denial of any right specified in California *(Welfare and Institutions Code § 5325)*, and waivers signed by the patient and/or her authorized representative shall not be used as a basis for denying such rights in any treatment modality. *(C.C.R. Title 9,§ 865.2(c)) A person's rights under LPS ...may not be waived by the person's parent, guardian, or conservator. *(Welfare & Institutions Code § 5325(i))*

*County advocates should consult with legal counsel designated by the county to represent and/or advise the advocate (often referred to as the County Counsel.)*
<table>
<thead>
<tr>
<th>Time In</th>
<th>Time Out</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seclusion</td>
<td></td>
</tr>
<tr>
<td>5pt</td>
<td></td>
</tr>
<tr>
<td>4pt</td>
<td></td>
</tr>
<tr>
<td>2pt</td>
<td></td>
</tr>
<tr>
<td>Walking</td>
<td></td>
</tr>
</tbody>
</table>

**Seclusion**

**Total Time**

**Least Restrictive**

**Medication**

<table>
<thead>
<tr>
<th>Type</th>
<th>Dose</th>
<th>Rte</th>
<th>Time</th>
</tr>
</thead>
</table>

**Physician’s Progress Notes**

<table>
<thead>
<tr>
<th>Time</th>
</tr>
</thead>
</table>

**Admit**

**Legal Status**

**Unit**

**Age**

**Ethnicity**
### Doctor’s Orders

<table>
<thead>
<tr>
<th>Time</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Attempts to Release

<table>
<thead>
<tr>
<th>Time</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Nursing Care

<table>
<thead>
<tr>
<th>Right Denied</th>
<th>Form</th>
<th>Right Denied</th>
<th>Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>Body Search</td>
<td>Y N X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>In own clothes</td>
<td>Y N X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15min checks</td>
<td>Y N X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rotation/Exercise</td>
<td>Y N X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>VS/Circulation</td>
<td>Y N X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fluids</td>
<td>Y N X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bedpan/Toilet</td>
<td>Y N X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Meals</td>
<td>Y N X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Denial of Rights

<table>
<thead>
<tr>
<th>Right Denied</th>
<th>Form</th>
<th>Right Denied</th>
<th>Form</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### SIR

<table>
<thead>
<tr>
<th>Time</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>