

Act No. 531
Public Acts of 2004
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Senator Hammerstrom

ENROLLED SENATE BILL No. 1344

AN ACT to amend 1973 PA 116, entitled "An act to provide for the protection of children through the licensing and regulation of child care organizations; to provide for the establishment of standards of care for child care organizations; to prescribe powers and duties of certain departments of this state and adoption facilitators; to provide penalties; and to repeal acts and parts of acts," (MCL 722.111 to 722.128) by adding sections 2b, 2c, 2d, and 2e.

The People of the State of Michigan enact:

Sec. 2b. (1) As used in this section and sections 2c, 2d, and 2e, unless the context requires otherwise:

(a) "Adaptive device" means a mechanical device incorporated in the individual plan of services that is intended to provide anatomical support or to assist the minor child with adaptive skills.

(b) "Chemical restraint" means a drug that meets all of the following criteria:

(i) Is administered to manage a minor child's behavior in a way that reduces the safety risk to the minor child or others.

(ii) Has the temporary effect of restricting the minor child's freedom of movement.

(iii) Is not a standard treatment for the minor child's medical or psychiatric condition.

(c) "Emergency safety intervention" means use of personal restraint or seclusion as an immediate response to an emergency safety situation.

(d) "Emergency safety situation" means the onset of an unanticipated, severely aggressive, or destructive behavior that places the minor child or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention.

(e) "Individual plan of services" means that term as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

(f) "Licensed practitioner" means an individual who has been trained in the use of personal restraint and seclusion, who is knowledgeable of the risks inherent in the implementation of personal restraint and seclusion, and who is 1 of the following:

(i) A physician licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(ii) An individual who has been issued a specialty certification as a nurse practitioner under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(iii) A physician's assistant licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(iv) A registered nurse licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(v) A psychologist and a limited licensed psychologist licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(vi) A counselor and a limited licensed counselor licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(vii) Until July 1, 2005, a certified social worker registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838. Beginning July 1, 2005, a licensed master's social worker licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(g) "Mechanical restraint" means a device attached or adjacent to the minor child's body that he or she cannot easily remove and that restricts freedom of movement or normal access to his or her body. Mechanical restraint does not include the use of a protective or adaptive device or a device primarily intended to provide anatomical support. Mechanical restraint does not include use of a mechanical device to ensure security precautions appropriate to the condition and circumstances of a minor child placed in the child caring institution as a result of an order of the family division of circuit court under section 2(a) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

(h) "Personal restraint" means the application of physical force without the use of a device, for the purpose of restraining the free movement of a minor child's body. Personal restraint does not include:

(i) The use of a protective or adaptive device.

(ii) Briefly holding a minor child without undue force in order to calm or comfort him or her.

(iii) Holding a minor child's hand, wrist, shoulder, or arm to safely escort him or her from 1 area to another.

(iv) The use of a protective or adaptive device or a device primarily intended to provide anatomical support.

(i) "Protective device" means an individually fabricated mechanical device or physical barrier, the use of which is incorporated in the individualized written plan of service. The use of a protective device is intended to prevent the minor child from causing serious self-injury associated with documented, frequent, and unavoidable hazardous events.

(j) "Seclusion" means the involuntary placement of a minor child in a room alone, where the minor child is prevented from exiting by any means, including the physical presence of a staff person if the sole purpose of that staff person's presence is to prevent the minor child from exiting the room. Seclusion does not include the use of a sleeping room during regular sleeping hours to ensure security precautions appropriate to the condition and circumstances of a minor child placed in the child caring institution as a result of an order of the family division of circuit court under section 2(a) and (b) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, if the minor child's individual case treatment plan indicates that the security precautions would be in the minor child's best interest.

(k) "Serious injury" means any significant impairment of the physical condition of the minor child as determined by qualified medical personnel that results from an emergency safety intervention. This includes, but is not limited to, burns, lacerations, bone fractures, substantial hematoma, and injuries to internal organs, whether self-inflicted or inflicted by someone else.

(2) The provisions of this section and sections 2c, 2d, and 2e only apply to a child caring institution that contracts with or receives payment from a community mental health services program or prepaid inpatient health plan for the care, treatment, maintenance, and supervision of a minor child in that child caring institution.

Sec. 2c. (1) If a child caring institution contracts with and receives payment from a community mental health services program or prepaid inpatient health plan for the care, treatment, maintenance, and supervision of a minor child in a child caring institution, the child caring institution may place a minor child in personal restraint or seclusion only as provided in this section and sections 2d and 2e but shall not use mechanical restraint or chemical restraint.

(2) Not later than 180 days after the effective date of the amendatory act that added this section, a child caring institution shall require its staff to have ongoing education, training, and demonstrated knowledge of all of the following:

(a) Techniques to identify minor children's behaviors, events, and environmental factors that may trigger emergency safety situations.

(b) The use of nonphysical intervention skills, such as de-escalation, mediation conflict resolution, active listening, and verbal and observational methods to prevent emergency safety situations.

(c) The safe use of personal restraint or seclusion, including the ability to recognize and respond to signs of physical distress in minor children who are in personal restraint or seclusion or who are being placed in personal restraint or seclusion.

(3) A child caring institution's staff shall be trained in the use of personal restraint and seclusion, shall be knowledgeable of the risks inherent in the implementation of personal restraint and seclusion, and shall demonstrate competency regarding personal restraint or seclusion before participating in the implementation of personal restraint or seclusion. A child caring institution's staff shall demonstrate their competencies in these areas on a semiannual basis. The state agency licensing child caring institutions shall review and determine the acceptability of the child caring institutions' staff education, training, knowledge, and competency requirements required by this subsection and the training and knowledge required of a licensed practitioner in the use of personal restraint and seclusion.

Sec. 2d. (1) Personal restraint or seclusion shall not be imposed as a means of coercion, discipline, convenience, or retaliation by a child caring institution's staff.

(2) An order for personal restraint or seclusion shall not be written as a standing order or on an as-needed basis.

(3) Personal restraint or seclusion must not result in harm or injury to the minor child and shall be used only to ensure the minor child's safety or the safety of others during an emergency safety situation. Personal restraint or seclusion shall only be used until the emergency safety situation has ceased and the minor child's safety and the safety of others can be ensured even if the order for personal restraint or seclusion has not expired. Personal restraint and seclusion of a minor child shall not be used simultaneously.

(4) Personal restraint or seclusion shall be performed in a manner that is safe, appropriate, and proportionate to the severity of the minor child's behavior, chronological and developmental age, size, gender, physical condition, medical condition, psychiatric condition, and personal history, including any history of physical or sexual abuse.

(5) Except as provided in subsection (6), at the time a minor child is admitted to a child caring institution, the child caring institution shall do all of the following:

(a) Inform the minor child and his or her parent or legal guardian of the provider's policy regarding the use of personal restraint or seclusion during an emergency safety situation that may occur while the minor child is under the care of the child caring institution.

(b) Communicate the provider's personal restraint and seclusion policy in a language that the minor child or his or her parent or legal guardian will understand, including American sign language, if appropriate. The provider shall procure an interpreter or translator, if necessary to fulfill the requirement of this subdivision.

(c) Obtain a written acknowledgment from the minor child's parent or legal guardian that he or she has been informed of the provider's policy on the use of personal restraint and seclusion during an emergency safety situation. The child caring institution's staff shall file the acknowledgment in the minor child's records.

(d) Provide a copy of the policy to the minor child's parent or legal guardian.

(6) The child caring institution is not required to inform, communicate, and obtain the written acknowledgment from a minor child's parent or legal guardian as specified in subsection (5) if the minor child is within the care and supervision of the child caring institution as a result of an order of commitment of the family division of circuit court to a state institution, state agency, or otherwise, and has been adjudicated to be a dependent, neglected, or delinquent under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, if the minor child's individual case treatment plan indicates that notice would not be in the minor child's best interest.

(7) An order for personal restraint or seclusion shall only be written by a licensed practitioner.

(8) A licensed practitioner shall order the least restrictive emergency safety intervention measure that is most likely to be effective in resolving the emergency safety situation based on consultation with staff. Consideration of less restrictive emergency safety intervention measures shall be documented in the minor child's record.

(9) If the order for personal restraint or seclusion is verbal, it must be received by a child caring institution staff member who is 1 of the following:

(a) A licensed practitioner.

(b) A social services supervisor as described in R 400.4118 of the Michigan administrative code.

(c) A supervisor of direct care workers as described in R 400.4120 of the Michigan administrative code.

(d) A practical nurse licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(10) A verbal order must be received while personal restraint or seclusion is being initiated by child caring institution staff or immediately after the emergency safety situation begins. The licensed practitioner shall be available to staff for consultation, at least by telephone, throughout the period of personal restraint or seclusion. The licensed practitioner shall verify the verbal order in signed written form in the minor child's record.

(11) An order for personal restraint or seclusion shall meet both of the following criteria:

(a) Be limited to no longer than the duration of the emergency safety situation.

(b) Not exceed 4 hours for a minor child 18 years of age or older; 2 hours for a minor child 9 to 17 years of age; or 1 hour for a minor child under 9 years of age.

(12) If more than 2 orders for personal restraint or seclusion are ordered for a minor child within a 24-hour period, the director of the child caring institution or his or her designated management staff shall be notified to determine whether additional measures should be taken to facilitate discontinuation of personal restraint or seclusion.

(13) If personal restraint continues for less than 15 minutes or seclusion continues for less than 30 minutes from the onset of the emergency safety intervention, the child caring institution staff qualified to receive a verbal order for personal restraint or seclusion, in consultation with the licensed practitioner, shall evaluate the minor child's psychological well-being immediately after the minor child is removed from seclusion or personal restraint. Staff shall

also evaluate the minor child's physical well-being or determine if an evaluation is needed by a licensed practitioner authorized to conduct a face-to-face assessment under subsection (14).

(14) A face-to-face assessment shall be conducted if the personal restraint continues for 15 minutes or more from the onset of the emergency safety intervention or if seclusion continues for 30 minutes or more from the onset of the emergency safety intervention. This face-to-face assessment shall be conducted by a licensed practitioner who is 1 of the following:

(a) A physician licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(b) An individual who has been issued a speciality certification as a nurse practitioner under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(c) A physician's assistant licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(d) A registered nurse licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(15) The face-to-face assessment shall be conducted within 1 hour of the onset of the emergency safety intervention and immediately after the minor child is removed from personal restraint or seclusion. The face-to-face assessment of the physical and psychological well-being of the minor child shall include, but is not limited to, all of the following:

(a) The minor child's physical and psychological status.

(b) The minor child's behavior.

(c) The appropriateness of the intervention measures.

(d) Any complications resulting from the intervention.

Sec. 2e. (1) A minor child shall be released from personal restraint or seclusion whenever the circumstance that justified the use of personal restraint or seclusion no longer exists.

(2) Each instance of personal restraint or seclusion requires full justification for its use, and the results of the evaluation immediately following the use of personal restraint or seclusion shall be placed in the minor child's record.

(3) Each order for personal restraint or seclusion shall include all of the following:

(a) The name of the licensed practitioner ordering personal restraint or seclusion.

(b) The date and time the order was obtained.

(c) The personal restraint or seclusion ordered, including the length of time for which the licensed practitioner ordered its use.

(4) The child caring institution staff shall document the use of the personal restraint or seclusion in the minor child's record. That documentation shall be completed by the end of the shift in which the personal restraint or seclusion occurred. If the personal restraint or seclusion does not end during the shift in which it began, documentation shall be completed during the shift in which the personal restraint or seclusion ends. Documentation shall include all of the following:

(a) Each order for personal restraint or seclusion.

(b) The time the personal restraint or seclusion actually began and ended.

(c) The time and results of the 1-hour assessment.

(d) The emergency safety situation that required the resident to be personally restrained or secluded.

(e) The name of the staff involved in the personal restraint or seclusion.

(5) The child caring institution staff trained in the use of personal restraint shall continually assess and monitor the physical and psychological well-being of the minor child and the safe use of personal restraint throughout the duration of its implementation.

(6) The child caring institution staff trained in the use of seclusion shall be physically present in or immediately outside the seclusion room, continually assessing, monitoring, and evaluating the physical and psychological well-being of the minor. Video monitoring shall not be exclusively used to meet this requirement.

(7) The child caring institution staff shall ensure that documentation of staff monitoring and observation is entered into the minor child's record.

(8) If the emergency safety intervention continues beyond the time limit of the order for use of personal restraint or seclusion, child caring institution staff authorized to receive verbal orders for personal restraint or seclusion shall immediately contact the licensed practitioner to receive further instructions.

(9) The child caring institution staff shall notify the minor child's parent or legal guardian and the appropriate state or local government agency that has responsibility for the minor child if the minor child is under the supervision of the child caring institution as a result of an order of commitment by the family division of circuit court to a state institution or otherwise as soon as possible after the initiation of personal restraint or seclusion. This notification shall be

documented in the minor child's record, including the date and time of the notification, the name of the staff person providing the notification, and the name of the person to whom notification of the incident was reported. The child caring institution is not required to notify the parent or legal guardian as provided in this subsection if the minor child is within the care and supervision of the child caring institution as a result of an order of commitment of the family division of circuit court to a state institution, state agency, or otherwise, and has been adjudged to be dependent, neglected, or delinquent under chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, if the minor child's individual case treatment plan indicates that the notice would not be in the minor child's best interest.

(10) Within 24 hours after the use of personal restraint or seclusion, child caring institution staff involved in the emergency safety intervention and the minor child shall have a face-to-face debriefing session. The debriefing shall include all staff involved in the seclusion or personal restraint except if the presence of a particular staff person may jeopardize the well-being of the minor child. Other staff members and the minor child's parent or legal guardian may participate in the debriefing if it is considered appropriate by the child caring institution.

(11) The child caring institution shall conduct a debriefing in a language that is understood by the minor child. The debriefing shall provide both the minor child and the staff opportunity to discuss the circumstances resulting in the use of personal restraint or seclusion and strategies to be used by staff, the minor child, or others that could prevent the future use of personal restraint or seclusion.

(12) Within 24 hours after the use of personal restraint or seclusion, all child caring institution staff involved in the emergency safety intervention, and appropriate supervisory and administrative staff, shall conduct a debriefing session that includes, at a minimum, all of the following:

(a) Discussion of the emergency safety situation that required personal restraint or seclusion, including a discussion of precipitating factors that led up to the situation.

(b) Alternative techniques that might have prevented the use of personal restraint or seclusion.

(c) The procedures, if any, that child caring institution staff are to implement to prevent a recurrence of the use of personal restraint or seclusion.

(d) The outcome of the emergency safety intervention, including any injury that may have resulted from the use of personal restraint or seclusion.

(13) The child caring institution staff shall document in the minor child's record that both debriefing sessions took place and shall include the names of staff who were present for the debriefings, names of staff that were excused from the debriefings, and changes to the minor child's treatment plan that result from the debriefings.

(14) Each child caring institution subject to this section and sections 2c and 2d shall report each serious occurrence to the state agency licensing the child caring institution. The state agency licensing the child caring institution shall make the reports available to the designated state protection and advocacy system upon request of the designated state protection and advocacy system. Serious occurrences to be reported include a minor child's death, a serious injury to a minor child, and a minor child's suicide attempt. Staff shall report any serious occurrence involving a minor child by no later than close of business of the next business day after a serious occurrence. The report shall include the name of the minor child involved in the serious occurrence, a description of the occurrence, and the name, street address, and telephone number of the child caring institution. The child caring institution shall notify the minor child's parent or legal guardian and the appropriate state or local government agency that has responsibility for the minor child if the minor child is under the supervision of the child caring institution as a result of an order of commitment by the family division of circuit court to a state institution or otherwise as soon as possible and not later than 24 hours after the serious occurrence. Staff shall document in the minor child's record that the serious occurrence was reported to both the state agency licensing the child caring institution and the state-designated protection and advocacy system, including the name of the person to whom notification of the incident was reported. A copy of the report shall be maintained in the minor child's record, as well as in the incident and accident report logs kept by the child caring institution.

(15) Each child caring institution subject to this section and sections 2c and 2d shall maintain a record of the incidences in which personal restraint or seclusion was used for all minor children. The record shall include all of the following information:

(a) Whether personal restraint or seclusion was used.

(b) The setting, unit, or location in which personal restraint or seclusion was used.

(c) Staff who initiated the process.

(d) The duration of each use of personal restraint or seclusion.

(e) The date, time, and day of the week restraint or seclusion was initiated.

(f) Whether injuries were sustained by the minor child or staff.

(g) The age and gender of the minor child.

(16) Each child caring institution subject to this section and sections 2c and 2d shall submit a report annually to the state agency that licenses the child caring institution containing the aggregate data from the record of incidences for

each 12-month period as directed by the state licensing agency. The state licensing agency shall prepare reporting forms to be used by the child caring institution, shall aggregate the data collected from each child caring institution, and shall annually report the data to each child caring institution and the state-designated protection and advocacy system.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 231 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Sam E. Randall

Clerk of the House of Representatives

Approved _____

Governor