

**YOUR RIGHTS REGARDING
RESTRAINT AND SECLUSION IN FACILITIES LICENSED BY,
CONTRACTED FOR, OR OPERATED BY THE MASSACHUSETTS
DEPARTMENT OF MENTAL HEALTH**

Facilities licensed by, contracted for, or operated by the Massachusetts Department of Mental Health (DMH) may use restraint and seclusion only in cases of emergency and in compliance with strict standards

MUST A FACILITY DEVELOP AN INDIVIDUAL CRISIS PREVENTION PLAN FOR EACH PATIENT?

A facility must develop an individual crisis prevention plan for each patient. The plan must be appropriate to your biological age and developmental stage. The plan must include:

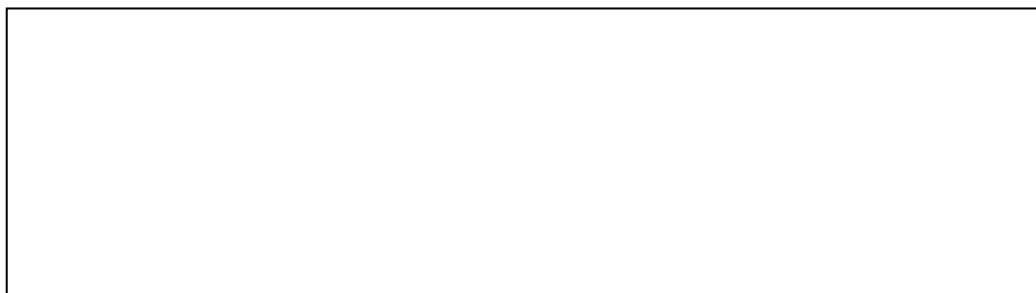
- A list of the triggers that might cause you to feel agitated or distressed;
- strategies to help calm you down and de-escalate the situation
- your preferences, such as the type of restraint and positioning, the gender of the staff person restraining you, and ways in which you would like to be calmed.¹

The plan must be developed as soon as possible after admission.² Facility staff should work with you, your legally authorized representative, and, when appropriate, with others.³ If you refuse to participate, the staff should develop the plan on their own.⁴ The plan should be kept updated.⁵

WHAT IS RESTRAINT?

The term "restraint" includes medication, mechanical or physical restraint. Restraint means bodily physical restriction, mechanical devices, or medication that unreasonably limits freedom of movement. Restraint does not include restraints used in acute medical or surgical care, adaptive support in response to assessed physical needs, or standard practices in various types of medical care.⁶

- **Medication restraint** – giving medication against your will for the purpose of restraint.⁷
- **Mechanical restraint** -- using a device, such as four-point or full-sheet restraint, to restrict your movement or the movement of a body part.⁸



- **Physical restraint** – holding you in a way that restricts your freedom of movement or normal access to the body. Physical restraint does not include non-forcible staff guiding you to another area or taking reasonable steps to prevent an imminent danger (such as blocking a blow, breaking up a fight, or preventing a fall).⁹

WHAT IS SECLUSION?

Seclusion is when you are placed against your will in a room so that you are prevented from leaving or believe that you cannot leave.¹⁰ There are a number of situations that might lead you to believe that you cannot leave a room (and which thereby constitute seclusion). These include situations in which you are threatened with coercive measures, such as threat of restraint, sanctions, or a loss of privileges for leaving the room.¹¹

Seclusion does not include your decision to voluntarily separate from a group to calm down.¹²

Seclusion cannot be used on you when you are also in mechanical restraints.¹³

WHEN MAY RESTRAINT OR SECLUSION BE USED?

Restraint or seclusion “**may only be used in an emergency, such as the occurrence of, or serious threat of, extreme violence, personal injury, or attempted suicide.**”¹⁴ Such emergencies only include situations where there is a substantial risk of, or occurrence of, either serious self-destructive behavior or serious physical assault.¹⁵

Restraint or seclusion may only be used after the failure of less restrictive interventions.¹⁶

Your preferences, which you stated in the individual crisis prevention plan that you made upon admission, must be considered in ordering a restraint.¹⁷

Restraint or seclusion may not be used on an "as needed" basis (PRN orders).¹⁸ They cannot be used for treatment, punishment, behavior modification, or staff convenience.

A medication restraint may only be used if it is the least restrictive and most appropriate alternative available.¹⁹

WHO MAY ORDER RESTRAINT OR SECLUSION?

Only an authorized physician may order **medication restraint**, but he or she may issue the order over the telephone by speaking to a registered nurse or certified physician's assistant who has personally examined you.²⁰ If the authorizing

physician authorizes the restraint by phone, he or she must evaluate you in person as soon as possible, and no later than one hour after the beginning of the restraint.²¹

Mechanical restraint, physical restraint and seclusion require written orders by an authorized physician who is present when the emergency occurs or, if the physician is not present, another authorized staff person.²² An authorized staff person may authorize restraint or seclusion for no more than one hour.²³ At the time of initiation, the physician or staff must observe and write notes of your physical status.²⁴

An authorized physician must examine you as soon as possible but no later than one hour after the initiation of the intervention.²⁵

In exceptional circumstances, when an authorized physician has not examined you within the first hour of restraint or seclusion, an authorized staff person may issue a single renewal for a second one hour period, with certain limitations.²⁶ An authorized physician must examine you as soon as possible, but no later than one hour from the renewal point and may order the restraint or seclusion to continue no more than two hours from the initiation by the authorized staff person.²⁷

Otherwise, renewals of orders may be made for up to two-hour periods if an authorized physician has examined you and ordered the renewal prior to the end of the preceding order, with limitations.²⁸

If you are released from restraint or seclusion prior to the end of an order and an emergency occurs prior to the expiration of the order, but no later than one-half hour after release, an authorized staff person may return you to restraint or seclusion without a new order, for the time remaining in the order.²⁹

HOW LONG MAY A RESTRAINT OR SECLUSION CONTINUE?

When an emergency no longer exists, you must be released. Thus, staff should release you when, upon examination, you appear calm. The total time for which you may be restrained is limited. The following limits, in addition to those discussed in the preceding section, apply regarding the duration of restraint and seclusion.

- An incident of physical restraint cannot exceed two hours.³⁰
- If a mechanical restraint or seclusion has exceeded five hours and staff expect to issue a new order to extend the episode beyond six hours, or if there are two or more episodes of any restraint or seclusion within 12 hours, staff must notify the facility director and facility medical director.³¹ At that point, the facility medical director must take certain steps.³²

- If a mechanical restraint or seclusion has exceeded 11 hours and staff expect to issue a new order to extend the episode beyond 12 hours, or if episodes of restraint and/or seclusion have exceeded 12 hours in any 48 hours, the facility staff must take the following steps:
 - Medically assess you;
 - Notify the facility director and facility medical director and the facility medical director must take additional steps;
 - Report the episode to the DMH Commissioner or designee by the next business day.

Special provisions for children

- No order for the restraint or seclusion of a minor under age 9 may exceed one hour.
- No minor under age 9 shall be in seclusion or restraint for more than one hour in any 24-hour period.
- No minor age 9 through 17 shall be in seclusion for more than two hours in any 24-hour period
- Parents or legal guardians of a minor must be informed by staff of any incidents of restraint or seclusion

WHAT PROTECTIONS EXIST FOR PATIENTS IN RESTRAINT OR SECLUSION?

- You shall be placed in a position that allows airway access and does not compromise respiration.³³

A face down position should not be used unless you inform staff that this is your preference (and there is no medical contradiction to its use) or there is an overriding psychological or medical justification for its use. This information needs to be documented.

- Staff will give appropriate attention to your personal needs, including access to food, drink and toileting facilities.³⁴
- When in restraints or seclusion, you will be fully clothed, limited only by safety concerns.³⁵

- The physical environment should be as conducive as possible to aiding early release.³⁶
- The staff should use sensory interventions to calm you.³⁷
- The staff must be able to observe you visually while you are in seclusion.³⁸
- No locked mechanical restraint devices requiring the use of a key for their release may be used.³⁹

WHAT ARE THE MONITORING AND ASSESSMENT REQUIREMENTS FOR PATIENTS IN RESTRAINT OR SECLUSION?

- If you are in a physical or mechanical restraint or seclusion, you will have a staff member assigned to monitor you one-on-one.⁴⁰

When **you are secluded without a mechanical restraint**, the staff member must keep you in full view and be able to observe you at all times.⁴¹

When **you are in a mechanical or physical restraint**, the staff member must be able to hear and be heard by you and visually observe you at all times.⁴²

- Every 15 minutes, the staff will monitor your vital signs, physical and psychological status, body alignment and circulation, and readiness for release.⁴³
- Staff will use appropriate interventions designed to calm you throughout the episode of restraint or seclusion.⁴⁴
- Staff will ensure that you have access to a means of marking the passage of time, either visually or verbally.⁴⁵

WHAT ARE THE DOCUMENTATION REQUIREMENTS?

Staff must complete a form each time a patient is placed in restraint and seclusion. The facility will produce three copies of this form. One will be placed in your record. One will be used for your comments. And, one will be used for review by the DMH Commissioner.⁴⁶

At the end of each month, a facility will submit copies of all restraint forms to the DMH Commissioner and the human rights committee at the facility.⁴⁷

WHAT DEBRIEFING ACTIVITIES MUST OCCUR?

Within 24 hours after you are released from restraint or seclusion, you will be asked to debrief and comment on the episode.⁴⁸ You will receive a copy of the Restraint and Seclusion Order Form to assist with this process.⁴⁹ A staff member will assist you in the debriefing activities and in completing the comment form. Preferably, this staff member should not have been involved in the restraint or seclusion.⁵⁰ During this process, you will also be notified of the DMH complaint procedure.⁵¹

You may complete the comment form either in writing or verbally (with a staff member transcribing it). It should include:

- the circumstances leading to the episode;
- the actions (either your own or the staff's) that may have helped to prevent it;
- the type of restraint or seclusion used;
- any physical or psychological effects you may be experiencing from the restraint or seclusion.⁵²

A copy of the comment form will be included in your record and another forwarded to the treatment team and the facility's Human Rights Officer.⁵³

The Human Rights Officer will meet with you if you have expressed a response to an episode of restraint and seclusion that suggests a possible rights violation or other harmful consequence.⁵⁴

WHAT SHOULD YOU DO IF YOU BELIEVE YOU HAVE BEEN ILLEGALLY RESTRAINED?

- If you believe that you were illegally restrained, you should ask to speak with the facility's Human Rights Officer. You can find out who the Human Rights Officer is by asking staff. If you experience difficulty in accessing the Human Rights Officer, contact our agency at 800-342-9092, ext. 20.
- You may also file a written **complaint** with the person in charge of the program or facility. You can give your complaint to any facility employee. He or she must forward it to the person in charge. If you are dissatisfied with the response of the person in charge and believe that additional fact-finding should occur, you have 10 days to request **reconsideration**. You also may file an **appeal** to a higher level facility administrator up to 10 days after receiving a decision. The person to whom the appeal is made depends upon the type of complaint and the type of facility. In most cases, you have the right to a **further appeal**, which must be filed within 10 days of receiving the appeal decision.
- If you have questions about the complaint process, contact our agency at 800-342-9092, ext. 20.

Mental Health Legal Advisors Committee
399 Washington Street, 4th Floor
Boston, MA 02108
(617) 338-2345
(800) 342-9092

ENDNOTES

¹ 104 CMR 27.12(3)(b). This and subsequent citations to 104 Code of Massachusetts Regulations (CMR) refer to regulations of the Massachusetts Department of Mental Health which are applicable to all hospitals licensed, contracted for, or operated by the Department of Mental Health).

² 104 CMR 27.12(3)(b).

³ 104 CMR 27.12(3)(b).

⁴ 104 CMR 27.12(3)(b).

⁵ 104 CMR 27.12(3)(c).

⁶ 104 CMR 27.12(5)(a)(3).

⁷ 104 CMR 27.12(5)(a)(3)(a).

⁸ 104 CMR 27.12(5)(a)(3)(b).

⁹ 104 CMR 27.12(5)(a)(3)(c).

¹⁰ 104 CMR 27.12(5)(a)(4)(a).

¹¹ 104 CMR 27.12(5)(a)(4)(a).

¹² 104 CMR 27.12(5)(a)(4)(b).

¹³ 104 CMR 27.12(5)(b)(4).

¹⁴ Mass. Gen. L. ch. 123, § 21. This and subsequent references to Mass. Gen. L. refer to the general laws of Massachusetts.

¹⁵ 104 CMR 27.12(5)(b)(1).

¹⁶ 104 CMR 27.12(5)(b)(1).

¹⁷ 104 CMR 27.12(5)(b)(1).

¹⁸ 104 CMR 27.12(5)(b)(3).

¹⁹ 104 CMR 27.12(5)(d).

²⁰ 104 CMR 27.12(5)(d).

²¹ 104 CMR 27.12(5)(d)(4).

²² 104 CMR 27.12(5)(e).

²³ Mass. Gen. L. ch. 123, § 21; 104 CMR 27.12(5)(e)(2)(d).

²⁴ 104 CMR 27.12(5)(e)(3).

²⁵ 104 CMR 27.12(5)(e)(2)(d).

²⁶ 104 CMR 27.12(5)(f)(1).

²⁷ 104 CMR 27.12(5)(f)(1)(d).

²⁸ 104 CMR 27.12(5)(f)(2).

²⁹ 104 CMR 27.12(5)(g)(8).

³⁰ 104 CMR 27.12(5)(g)(1).

³¹ 104 CMR 27.12(6).

³² 104 CMR 27.12(6).

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- ³³ 104 CMR 27.12(5)(c)(1).
 - ³⁴ 104 CMR 27.12(5)(c)(2).
 - ³⁵ 104 CMR 27.12(5)(c)(3).
 - ³⁶ 104 CMR 27.12(5)(c)(4).
 - ³⁷ 104 CMR 27.12(5)(c)(4).
 - ³⁸ 104 CMR 27.12(5)(c)(5).
 - ³⁹ 104 CMR 27.12(5)(c)(6).
 - ⁴⁰ 104 CMR 27.12(5)(h)(1).
 - ⁴¹ 104 CMR 27.12(5)(h)(2).
 - ⁴² 104 CMR 27.12(5)(h)(3).
 - ⁴³ 104 CMR 27.12(5)(h)(4).
 - ⁴⁴ 104 CMR 27.12(5)(h)(5).
 - ⁴⁵ 104 CMR 27.12(5)(h)(5).
 - ⁴⁶ 104 CMR 27.12(5)(i)(1).
 - ⁴⁷ 104 CMR 27.12(5)(i)(2).
 - ⁴⁸ 104 CMR 27.12(4)(b).
 - ⁴⁹ 104 CMR 27.12(4)(b).
 - ⁵⁰ 104 CMR 27.12(4)(b).
 - ⁵¹ 104 CMR 27.12(4)(b).
 - ⁵² 104 CMR 27.12(4)(b).
 - ⁵³ 104 CMR 27.12(4)(b).
 - ⁵⁴ 104 CMR 27.12(4)(b).