

**Department of State Health Services
Council Work Session Agenda Memo for State Health Services Council
November 20-21, 2013**

Agenda Item Title: New rules and repeal of rules concerning interventions in mental health programs

Agenda Number: 4.b

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Mental Health and Substance Abuse (MHSA) Division, State Hospitals Section has 7,936 state hospital employees, which includes 810 nurses and 143 physicians. The state hospitals have a bed capacity of 2,531 and DSHS staff provide voluntary, civil, and forensic mental health services for ten state mental health hospitals and one infectious diseases hospital. The state hospitals have approximately 16,000 unique admissions every year.

The MHSA Division, Program Services Section develops and implements programs concerning the provision of mental health community services. The Division develops standards to ensure that the 37 local mental health authorities and one managed care organization that contract directly with DSHS provide appropriate, adequate community mental health services to the citizens of Texas.

Funding for community mental health services comes from the Mental Health Block Grant, General Revenue, and third-party payers, such as Medicare, Medicaid, and private insurance.

Summary:

The purpose of the new rules and repeal of rules is to describe requirements for ensuring the safe and effective use of restraint and seclusion in certain types of facilities in which mental health services are provided. The rule changes will be consistent with the provisions of Texas Health and Safety Code, Chapter 322, as amended by Senate Bill (SB) 325, 79th Legislature, Regular Session, 2005, and as amended by SB 1842, 83rd Legislature, Regular Session, 2013. In addition, the proposed new rules incorporate certain changes in terminology and other changes in federal requirements governing the use of restraint and seclusion in hospitals, including psychiatric hospitals. These federal requirements are set forth at 42 Code of Federal Regulations, Section 482.13, and Conditions of Participation: Patients' Rights.

The rule changes affect the following types of facilities:

- a state hospital or a state center operated by the Department of State Health Services;
- a psychiatric hospital licensed under Texas Health and Safety Code, Chapter 577, to the extent and as provided by 25 Texas Administrative Code (TAC), Chapter 134;
- a hospital providing mental health services that is licensed under Texas Health and Safety Code, Chapter 241, to the extent and as provided by 25 TAC, Chapter 133;
- a crisis stabilization unit licensed under Texas Health and Safety Code, Chapter 577, and 25 TAC, Chapter 134;
- the Waco Center for Youth;
- a community mental health service provider governed by 25 TAC, Chapter 412, Subchapter G; and
- the Texas Center for Infectious Disease, to the extent that mental health services are provided by that facility pursuant to its authority, under Texas Health and Safety Code, Section 13.004, to receive an individual who is mentally ill and who is infected with tuberculosis.

Collectively, the statutory revisions to Texas Health and Safety Code, Chapter 322 require DSHS to implement, through rule, best practices and procedures intended to reduce, and to ensure the safe use of, restraint and seclusion occurring within facilities subject to the DSHS's jurisdiction; authorize registered nurses to conduct the one hour face-to-face following a restraint or seclusion; require a physician to evaluate the individual face-to-face when an order for restraint or seclusion is renewed; and require facilities to file with DSHS a quarterly report regarding hospital-based inpatient psychiatric services measures related to the use of restraint and seclusion that is required by the federal Centers for Medicare and Medicaid Services.

Key Health Measures:

The new rules seek to reduce the use of restraint, seclusion, and involuntary medications and to protect individuals and staff from injury within entities providing mental health services that are operated by, licensed by, or contract with DSHS. The new reporting requirements will allow data regarding the use of restraint and seclusion to be collected and analyzed at the state level, in order to identify trends and any systemic issues that may be impede the reduction of such interventions.

Currently, state mental health facilities report the data described in the chart below. With the adoption of the new rules, private psychiatric hospitals, general hospitals, and crisis stabilization units will be reporting the same data to the Regulatory Division. Annually, DSHS will submit a report to the Health and Human Services Commission that consolidates the data from state mental health facilities and private entities.

State Mental Health Facilities Reportable Incidents of Restraints, Seclusions, or Involuntary Medication Orders	FY 2010	FY 2011	FY 2012
Seclusions	486	346	359
Seclusions w/serious injury	0	0	1
Seclusions resulting in death	0	0	0
Personal restraints	6,861	8,083	8,000
Personal restraints w/serious injury	14	17	19
Personal restraints resulting in death	0	0	0
Mechanical restraints	3,340	4,008	4,561
Mechanical restraints w/serious injury	0	0	0
Mechanical restraints resulting in death	0	0	1
Involuntary emergency medication orders	31,069	32,108	31,122
Involuntary emergency medication orders w/serious injury	0	0	0
Involuntary emergency medication orders resulting in death	0	0	0

Summary of Input from Stakeholder Groups:

The draft rules have been developed by a cross-functional workgroup of DSHS staff. The draft rules have been distributed for informal comment to the Local Authority Network Advisory Committee, Council on Advising and Planning for Mental Health and Substance Use Disorders, Disability Rights Texas, local mental health authorities, Texas Council of Community Mental Health and Mental Retardation Centers, and Texas Hospital Association. The rules were also provided to professional organizations representing psychiatrists and social workers, and stakeholders who have signed up to receive information. The draft rules are currently out for stakeholder feedback, so comments that result clarifying revision to the rules will be incorporated on adoption.

Proposed Motion:

Motion to recommend HHSC approval for publication of rules contained in agenda item #4.b.

Approved by Assistant Commissioner/Director:	<u>Mike Maples</u>	Date:	<u>11/18/13</u>
Presenter:	<u>Peggy Perry</u>	Program:	<u>Hospital Section</u>
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Approved by CCEA:	Carolyn Bivens	Date:	11/18/13

Title 25. Health Services

Part 1. Department of State Health Services

Chapter 415. Provider Clinical Responsibilities--Mental Health Services

Subchapter F. Interventions in Mental Health Programs

Repeals - Division 1. General Provisions, §§415.251 - 415.257

Repeals - Division 2. Restraint or Seclusion Initiated in Response to a Behavioral Emergency, §§415.261 - 415.274

Repeals - Division 3. Restraint During Certain Procedures, §415.285

Repeals - Division 4. Procedures That Are Not Restraint or Seclusion, §§415.290 - 415.292

Repeals - Division 5. References and Distribution, §415.299 and §415.300

New §§415.251 - 415.276

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), proposes the repeal of §§415.251 - 415.257, 415.261 - 415.274, 415.285, 415.290 - 415.292, 415.299 and 415.300, and new §§415.251 - 415.276, concerning interventions in mental health programs.

BACKGROUND AND PURPOSE

The purpose of this subchapter is to describe requirements for ensuring the safe and effective use of restraint and seclusion in certain types of facilities in which mental health services are provided, consistent with the provisions of Health and Safety Code, Chapter 322, concerning Use of Restraint or Seclusion in Certain Health Care Facilities, as amended by Senate Bill (SB) 325, 79th Legislature, Regular Session, 2005, and as amended by SB 1842, 83rd Legislature, Regular Session, 2013. In addition, the new subchapter as proposed incorporates certain changes in terminology and other changes in federal requirements governing the use of restraint and seclusion in hospitals, including psychiatric hospitals. These federal requirements are set forth at 42 Code of Federal Regulations (CFR) §482.13, Conditions of Participation: Patients' rights.

Collectively, the statutory revisions to Health and Safety Code, Chapter 322, require the department to implement, through rules, best practices and procedures intended to reduce, and to ensure the safe use of, restraint and seclusion occurring within facilities subject to the department's jurisdiction; authorize registered nurses to conduct the one hour face-to-face following a restraint or seclusion; require a physician to evaluate the individual face-to-face when an order for restraint or seclusion is renewed; and require facilities to file with the department a quarterly report regarding hospital-based inpatient psychiatric services measures related to the use of restraint and seclusion that is required by the federal Centers for Medicare and Medicaid Services (CMS).

After the adoption of this subchapter the department intends to resume its broader review of the rules contained in this subchapter, to address input it has previously received from the stakeholder community and from others, regarding certain aspects of the rules that are not being changed at this time, due to the legislative requirement that the current rule revisions be made effective no later than January 2014.

SECTION-BY-SECTION SUMMARY

Changes made throughout the subchapter include various grammatical, punctuation, and formatting changes. Also, any references to the “Texas Department of Mental and Mental Retardation” or TDMHMR” have been changed to the “Department of State Health Services (DSHS)” as applicable. Any reference to the term, “patient,” has been replaced with the term, “individual.” Sections within the subchapter have been reorganized to promote clarity, and division designations are deleted. In addition to these overall changes, more specific proposed changes included in the new subchapter are described as follows.

Section 415.251 states the purpose of the subchapter; incorporates the new CMS Conditions of Participation terminology concerning the use of restraint or seclusion for the management of violent, self-destructive behavior and non-violent, non-self-destructive behavior; and emphasizes the need to reduce the use of restraint and seclusion as much as possible, to ensure that the least restrictive methods of intervention are used, and to ensure that, wherever possible, alternatives are first attempted and determined ineffective. Although this language is not included in current §415.251, relating to “Purpose,” similar language is included in §415.261(a) of the current rules and is being moved to the new §415.251 related to “Purpose,” as a more logical placement of DSHS’ stated intentions in connection with the use of restraint and seclusion.

Section 415.252 identifies the types of facilities to which the new subchapter applies. Consistent with Health and Safety Code, §241.0265 (concerning Standards for Care for Mental Health and Chemical Dependency), language in this section clarifies that this new subchapter applies not only to an “identifiable mental health service unit” of a hospital licensed under Health and Safety Code, Chapter 241, but also to such a facility regardless of where in the facility mental health services are provided, to the extent and as provided by Chapter 133 of this title (relating to Hospital Licensing). In addition, the Texas Center for Disease is added, to the extent that mental health services are provided in that facility.

Section 415.253 sets forth definitions of terms used throughout the subchapter. Definitions are added for the terms, "declaration for mental health treatment," "face-to-face," "initiate," "PRN," "seclusion room," and "treatment team." In addition, the term, "advanced practice nurse," is replaced with the term, "advance practice registered nurse or APRN," consistent with the terminology used by the Texas Board of Nursing in its rules found at 22 TAC Part 11.

Consistent with 42 CFR §482.13, the definition of the term "behavioral emergency" is revised to clarify that a behavioral emergency situation involves an individual who is behaving in a violent or self-destructive manner and in which preventive, de-escalative, or verbal techniques have been attempted and determined to be ineffective or clearly would be ineffective.

The term, "clinically competent registered nurse," is replaced with the term, "registered nurse," and the requirement for clinical competency is added to the definition.

Clarifying language is added to the terms "chief executive officer," "clinical timeout," "continuous face-to-face observation," "emergency medical condition," "personal restraint,"

"physician assistant," "protective device," "staff member," and "treating physician." Consistent with 42 CFR §482.13, revisions are made to the definitions for the terms "mechanical restraint," "personal restraint, and "restraint," except that the use of drugs or medications (chemical restraint) continues to be excluded from the definition of restraint.

Section 415.254 sets forth the general prohibition that restraint or seclusion may not be used, except as provided by this subchapter, and identifies, in subsection (b), the circumstances in which personal or mechanical restraint or seclusion are permissible.

Subsection (c) further prohibits the use of restraint or seclusion unless a facility develops, implements, and enforces written policies and procedures, as well as a staff training program, that are consistent with this subchapter. Additionally, subsection (c)(3) prohibits a facility's use of restraint or seclusion unless staff members of the facility are trained and have demonstrated competence in the use of restraint and seclusion in accordance with the facility's written policies and procedures and training program before assuming direct care duties and before performing restraint and seclusion on the individual.

Subsection (d) requires that a facility notify an individual or the individual's legally authorized representative (LAR) of the facility's policies related to the use of restraint and seclusion. This new language is required by Health and Safety Code, §322.053, enacted by SB 325.

Subsection (e) states that it represents minimum standards and that a facility may, through its written policies and procedures, adopt more stringent standards that are consistent with this subchapter and do not conflict with department rules, state or federal law, or applicable accreditation standards. This language, revised somewhat, is currently found in §415.261(b) of this subchapter.

Section 415.255 describes the prohibited and restricted practices associated with the use of restraint or seclusion. Chemical restraint continues to be a prohibited practice. Language in paragraph (b), which relates to the use of a prone or supine hold, is revised from the language found in current §415.254(i) of this subchapter, and is more restrictive than the current language in that it explicitly prohibits the use of either a prone or supine hold during a restraint. The revised language further states that, should an individual become prone or supine during a restraint, then any staff member involved in administering the restraint shall immediately transition the individual to a side lying or other appropriate position.

Section 415.256 addresses the use of mechanical restraints, and the language of this new section is largely the same as the language of the current §415.256. In subsection (c), added to the list of prohibited devices, regardless of their commercial availability, is a new paragraph (6), regarding spit hoods, or anything that obstructs an individual's airway, including a device that places anything in, on, or over the individual's mouth or nose. In subsection (e), strait jackets are removed from the list of approved mechanical devices.

Section 415.257 requires facilities to ensure that all staff members are informed of their roles and responsibilities under this subchapter and that they be trained and demonstrate competence accordingly. Subsection (b) identifies the required elements of a facility's training program,

including the requirement that it be standardized throughout the facility; emphasize the importance of reducing and preventing the unnecessary use of restraint or seclusion; be evaluated annually; incorporate evidence-based and best practices; and provide information about declarations for mental health treatment.

In addition to requirements already identified in subsections (c) and (d) of the current §415.257, subsections (c) and (d) include a number of new required elements that must be included in training for all staff members, and in which staff members must demonstrate their competence before assuming job duties involving direct care responsibilities (and before initiating any restraint or seclusion), and at least annually thereafter. The new requirements place a greater emphasis on knowledge and demonstrated competency in skills intended to reduce the number of preventable incidences of restraint and seclusion, such as the use of team work; identifying underlying medical, physical, emotional, cultural, and other factors that may contribute to an incidence of a behavioral emergency; use of de-escalation, mediation, problem solving and other nonphysical interventions such as clinical timeout and quiet time; recognition and response to signs of physical distress during restraint or seclusion, including asphyxiation, aspiration, and trauma; and use of restraint or seclusion only as a last resort in a behavioral emergency.

Similarly, language in paragraph (6) of subsection (e), regarding annual training for registered nurses, is changed to require that such training (and demonstrated competency) address providing assistance to individuals in de-escalating a behavioral emergency, including through identification and removal of any known stimuli that may be contributing to the circumstances surrounding the behavioral emergency. This proposed new language substitution eliminates current rule language that arguably places greater responsibility on the individual to demonstrate that they meet certain criteria for discontinuing a restraint or seclusion, rather than the development of staff members' knowledge and skills that enable them to assist the individual.

Section 415.258 sets forth the actions to be taken to release an individual from restraint or seclusion in a medical or environmental emergency. The language of this section, which is not changed from the language of current §415.255, addresses how staff members must respond when an individual experiences an emergency medical condition while in restraint or seclusion, as well as how staff members must respond when an emergency evacuation or evacuation drill occurs while an individual is in restraint or seclusion.

Section 415.259 relates to subsection (a) special considerations a physician must consider before ordering the use of restraint or seclusion for a particular individual; subsection (b) certain staff member responsibilities while an individual is in restraint or seclusion; subsection (c) alternative strategies that must be reviewed, implemented, and documented by an individual's treatment team when an individual's behavior has necessitated the use of a restraint or seclusion at a particular frequency of occurrence or duration; and subsection (d) modification of an individual's treatment plan, after consultation with the facility's medical director or designee, to address alternative treatment strategies. The language in subsections (a) - (c) is largely unchanged from the language in current §415.261(a)(3) - (12), and includes an additional circumstance in which alternative strategies must be considered by the individual's treatment plan: when an episode of restraint or seclusion has continued for more than the maximum time permitted under new

§415.261(b), which specifies certain time limitations on orders for restraint or seclusion initiated in response to a behavioral emergency.

Subsection (d), relating to modification of an individual's treatment plan, is new, and requires that an individual's treatment team consult with the facility's medical director (or designee) to explore alternative treatment strategies and a written modification to the individual's treatment plan, in the event that the frequency of occurrence or duration of episodes of restraint or seclusion recurs or continues even after the treatment team has, in accordance with subsection (c), already attempted to identify alternative strategies for dealing with an individual's behaviors that necessitate the use of restraint or seclusion. The addition of subsection (d) is intended to ensure that a facility exhausts all possible avenues, including consultation with the facility's medical director, for identifying alternative strategies and alternative treatment strategies for dealing with an individual's behaviors that necessitate the use of restraint or seclusion, thereby reducing the number of restraints and seclusions at facilities subject to the requirements of this subchapter.

Section 415.260 sets forth the process and responsibilities of staff members for initiating a restraint or seclusion. Much of the language of this section is unchanged from the current language found in §415.262 of this subchapter. However, new language included in this new section, consistent with amendments to Health and Safety Code, Chapter 322 (the addition of a new §322.052, pursuant to SB 1842), authorizes the face-to-face evaluation required in subsection (c) to be conducted not only by a physician, as provided in the current rule, but also by a registered nurse who is trained to assess medical and psychiatric stability with demonstrated competence, other than the registered nurse who initiated the use of restraint or seclusion. In addition, reference to an "advanced practice nurse" is not included in paragraph (4) of subsection (c), as registered nurses are now permitted to conduct a face-to-face assessment without delegation from a physician, and the term, "advanced practice nurse," is included within the broader term, "registered nurse" under the Texas Board of Nursing rules found at 22 TAC §221.1. Finally, paragraphs (3), (5) and (6) of subsection (c) are new. Paragraph (3) states what must be assessed during a face-to-face evaluation. Paragraph (5) requires a physician assistant or registered nurse who has conducted the face-to-face evaluation to contact a physician and request that the physician perform a face-to-face evaluation of the individual when, in his or her professional judgment, the physician assistant or registered nurse determines that there are circumstances outside the physician assistant's or registered nurse's scope of practice or expertise. Paragraph (6) requires the registered nurse or physician assistant to consult the physician who is responsible for the care of the individual as soon as possible after the completion of the one hour face-to-face evaluation, and to document the consultation in the individual's medical record.

Section 415.261 sets forth the time limitations for original orders and renewed orders for restraint or seclusion. These time limits are not changed from those in the current §415.263, and are consistent with those required by 42 CFR §482.13. This section is revised to incorporate new requirements established by SB 1842, relating to a physician's renewal of such orders that have not yet expired. A physician is required to conduct a face-to-face evaluation before issuing or renewing an order that continues the use of a restraint or seclusion. In addition, the physician is

required to document the clinical justification for continuing the restraint or seclusion before issuing a renewal order.

Section 415.262 requires that the CEO or CEO's designee notify the individual's LAR or an authorized family member of each episode of restraint or seclusion. A new requirement is added to this section, that such notification be provided as soon as possible, but no later than 12 hours following the initiation of the restraint or seclusion, when the restraint or seclusion has involved an individual who is a minor under age 18 and who is not or has not been married. The CMS Conditions of Participation, 42 CFR §483.366(a), require that this notification occur "as soon as possible." The current rule reflects this requirement; however, the department has determined that an outside limit of no more than 12 hours from the initiation of the restraint or seclusion is reasonable and accounts for instances that occur in the middle of the night, when it may be inconvenient for an individual's LAR or authorized family member to be contacted. The new language does not require a facility to refrain from contacting the LAR or authorized family member immediately, but it does allow for an agreed upon time frame, within the 12-hour limitation, to be arranged between the facility and the LAR or authorized family member. The current rule language in §415.264 could be interpreted as not allowing such an agreement to be made. Subsection (b) contains a new requirement that the documentation of such notification include any unsuccessful attempts, the phone number called, and the name(s) of person(s) with whom the staff member spoke. This ensures that the documentation is sufficient to meet the standards set forth in the CMS Conditions of Participation, found at 42 CFR §483.366(b), and better assures DSHS, in its regulatory capacity, that facilities are in fact attempting to notify an LAR or authorized family member by documenting those attempts.

Section 415.263 explains that an individual's right to retain personal possessions and personal articles of clothing may be suspended during mechanical restraint or seclusion. It also describes a process for inventorying, storing, and returning individuals' possessions and clothing. A new requirement, found in subsection (e) of this section, requires that if the individual is unwilling to sign the documentation, a staff member shall document the refusal in the individual's medical record and list the items that were returned to the individual, the time they were returned, and the staff member who returned the items.

Section 415.264 describes the procedures for responding to behavioral emergencies during off-premises transport, excursions off facility premises, restraint initiated prior to transport, or restraint initiated during transport. Subsection (c) of this section clarifies that it applies to a restraint initiated prior to transportation of any sort, not just to transportation to another facility and also recognizes that a restraint can be used not only when criteria for a behavioral emergency are present but also when an individual has been determined to be manifestly dangerous within one month prior to transporting the individual. This change reflects a need to ensure the safety of individuals and staff members involved in such transportation. Concerning comfort during transportation, subsection (c) is changed by deleting reference to the need to provide reasonable opportunities for food, water, and to use the bathroom, and now refers to §415.266(c) of this title (relating to Observation, Monitoring, and Care of the Individual in Restraint or Seclusion Initiated in Response to a Behavioral Emergency), which includes not only those requirements but also provides for additional requirements for the care of individuals in a restraint or seclusion

initiated in response to a behavioral emergency, thus making all of these requirements applicable to transportation of an individual as well.

Section 415.265 describes how to communicate with an individual in restraint or seclusion initiated in response to a behavioral emergency. The section has been changed by adding a requirement that a staff member shall refer to the individual's declaration for mental health treatment (if any) in determining and implementing an individual's preferences. The section is also changed by requiring the staff member to communicate reassurance and commitment to the individual's safety on an ongoing basis, including inquiring how the staff member can assist the individual in de-escalating. This proposed new language, and the deletion of the current language in §415.267, emphasizes a more positive and therapeutically appropriate interaction between staff members and individuals in a restraint or seclusion, as well as a more effective means of managing the circumstances surrounding a restraint or seclusion.

Section 415.266 sets forth the requirements for observing, monitoring and caring for individuals while in restraint or seclusion. This rule replaces §415.268. A staff member is required to maintain continuous face-to-face observation while an individual is in seclusion for at least one hour. After one hour, the staff member may monitor the individual continuously using simultaneous video and audio equipment in close proximity to the individual. In addition to certain changes intended to clarify subsection (c), new language in that subsection describes more specifically the circumstances in which certain care must be provided.

Section 415.267 describes the requirements for the facility to develop and implement policies and procedures to ensure that appropriate techniques are used and the environment is safe when initiating restraint or seclusion. Paragraphs (2) and (3) of subsection (a) include new proposed language that clarifies that the environment in which an individual is restrained to be observable by other staff members and is away from other individuals. A new subsection (b) requires a facility to develop and implement policies and procedures to ensure that it is in compliance with the requirements of this section.

Section 415.268 describes the actions to be taken when an individual falls asleep in restraint or seclusion, which include releasing the individual immediately. This new rule replaces §415.270.

Section 415.269 describes the process for transferring primary responsibility between staff members for an individual in restraint or seclusion, including such a transfer at the time of a shift change. This rule replaces §415.271. Language added in subsection (a) of this section requires a staff member to monitor the individual during the transfer process. This new language makes it clear that there must be no gap in the responsibility to maintain continuous face-to-face monitoring and the other requirements of a staff member under §415.266 of this title. Language added in subsection (b) requires documentation of the nature of the circumstances requiring restraint or seclusion.

Section 415.270 describes the steps to be taken for the release of an individual from a restraint or seclusion. This new rule, which replaces §415.272 of this title, provides additional detail regarding the procedures to be taken for a personal restraint and those to be taken for a mechanical restraint or seclusion. The changes distinguish between a personal restraint and a

mechanical restraint or seclusion, in that it requires a staff member to release the individual as soon as the unsafe condition has ended, when a personal restraint has been used, but requires that only a physician, physician's assistant, or registered nurse evaluate the individual before a staff member can release the individual who is in a mechanical restraint or seclusion. These changes are consistent with the requirements of SB 325, which requires DSHS to adopt rules to define acceptable restraint holds that minimize the risk of harm to a facility resident, as well as the requirements of the CMS Conditions of Participation.

Section 415.271 describes the actions to be taken following the release of an individual from restraint or seclusion; e.g., facilitating the individual's reentry into the social milieu, observing and documenting the individual's behavior, and debriefing the individual and staff members who are involved. This rule replaces §415.273. Language is added to paragraph (3) of subsection (a) requiring that documentation be included in the individual's medical record not only of observations made but also of steps taken by the staff member during this transition period. Language is added to paragraph (5) of subsection (b) to require that appropriate modifications be made not only to the treatment plan of an individual who has been restrained or secluded, but also to the treatment plans of other individuals, when indicated. New subsections (c) and (d) require that debriefings with the individual and staff members be conducted following restraint or seclusion, and to specify what must be addressed in the debriefing as well as a timeframe within which the documentation must be completed (within 24 hours after the debriefing is conducted or attempted).

Section 415.272 establishes requirements for facilities to document use of restraint and seclusion and to report restraint and seclusion data to DSHS. This rule replaces §415.274. Subsection (a) requires additional information in the medical record including signatures and identification of roles of staff members present during initiation; the name of the individual and type of restraint or seclusion used; the time and results of observations and monitoring; and other documentation relating to an episode of restraint and seclusion otherwise required under the rule. This subsection as proposed contains a number of new requirements for information that must be documented. Also, certain language has been deleted from this subsection (a), including the deletion of paragraph (4)(B), which requires that an individual's medical record include documentation of other generally accepted less intrusive forms of intervention, if any that the physician evaluated but rejected, and the reasons those interventions were rejected. This documentation requirement has been moved to new §415.260(b)(1)(D) of this title, which describes the types of information that must be documented in the physician's order.

New requirements in subsection (b) include a report to the facility's CEO to address use of restraint or seclusion that is determined or suspected of being improper at the time it occurs; as well as the types and dosages of emergency medications administered during the restraint or seclusion. Paragraph (1) of the subsection includes a new requirement that the CEO or designee take appropriate action to identify and correct unusual or unwarranted utilization patterns on a systemic basis, and to address each specific use of restraint or seclusion that is determined or suspected of being improper at the time it occurs. This will allow the facility to identify and evaluate systemic issues arising from the use of restraint and seclusion, thereby ensuring proper use of restraint and seclusion as well as a reduction of their use. Paragraph (2)(D) is also added, requiring that the facility's central file contain the types and dosage of emergency medications

administered during the restraint or seclusion, if any. This additional data will better inform the CEO's evaluation of systemic issues arising from the use of restraint and seclusion, as required by paragraph (1).

Subsection (c) requires facilities to report data on serious injuries as well as deaths that occur during or after restraint or seclusion. Subsection (c) also adds new provisions defining which deaths to report, including a death that occurs 24 hours after the individual has been removed from restraint or seclusion; and each death known to the facility that occurs within one week after restraint or seclusion where it is reasonable to assume that use of restraint or placement in seclusion contributed directly or indirectly to the patient's death.

Subsection (d) identifies the various entities to which a facility must submit the reports required by subsection (c). This subsection replaces current subsection (c) and also adds a new reporting requirement for facilities licensed under Chapter 133 or Chapter 134 of this title, that a death or serious injury be reported to the Patient Quality Care Unit of DSHS's Division for Regulatory Services.

Subsections (e) and (f) are new provisions. Subsection (e) specifies the review and analysis required by each facility of the data required in subsection (b)(2). Subsection (f) requires the facility to use the data analysis to continually to improve its practices to minimize the use of restraint and seclusion and to ensure the safety of individuals and staff members. These two new subsections require that the facility review and analyze, at least quarterly, the data that is required by subsection (b)(2), and that the facility use this data continuously to ensure a positive environment, the safety of individuals and staff members, the use of restraint and seclusion is done in accordance with the requirements of this subchapter, reduction of the risks of injury and other negative effects to individuals and staff members, and that policies and training curriculum incorporate the requirements of this subchapter.

Subsections (g) and (h), relating to reporting requirements, are also new and implement the reporting requirements of SB 325 and SB 1842. Subsection (g) requires a facility that is a Medicare or Medicaid provider to submit, on or before November 1, 2014, and quarterly thereafter, the data required by Centers for Medicare and Medicaid Services for hospital-based inpatient psychiatric service measures related to the use of restraint or seclusion. Subsection (h) requires a facility to prepare and submit to DSHS, consistent with the *Department of State Health Services Behavioral Interventions Reporting Guidelines*, certain data related to emergency interventions that occurred during the previous period, including data regarding emergency seclusions; personal restraints; mechanical restraints; and involuntary medication orders; as well as a description of the types of de-escalation techniques commonly used by that facility in connection with any of the emergency interventions used.

Implementation of these reporting requirements allows data regarding the use of restraint and seclusion to be collected and analyzed at the state level, in order to identify trends and any systemic issues that may be impeding the reduction of these interventions within the facilities subject to this subchapter, as recognized by the statement of intent within the Senate Research Center's bill analysis for SB 325. The reporting requirement of SB 1842 also recognizes the value in collecting this data at the state level, and the need to reduce the number of restraints and

seclusions occurring within these facilities, in that the Senate Research Center's bill analysis for SB 1842 acknowledges that use of these interventions jeopardizes the immediate physical safety of individuals, staff members, and others. While SB 1842 focuses specifically on reporting requirements for facilities that are Medicare or Medicaid providers, the additional reporting requirements of proposed new subsection (h) allow data to be reported and analyzed at the state level for all facilities subject to this subchapter, regardless of whether the facility is a Medicare or Medicaid provider.

Section 415.273, consistent with 42 CFR §483.13, describes the use of restraint for the management of non-violent, non-self-destructive behavior. This new rule replaces §415.285. This terminology replaces, at various places within this section, as the terminology, "during medical, dental, diagnostic, or surgical procedures," to make the provisions more inclusive of situations that do not constitute a behavioral emergency, not just those involving a medical, dental, diagnostic, or surgical procedure. This section also makes clear that a restraint used during a medical, dental, diagnostic, or surgical procedure may be required to follow the requirements of restraint in a behavioral emergency described in proposed new §415.266, rather than those described in this section, if the reason for the restraint is to manage an individual's violent, self-destructive behavior. Thus, in determining whether to follow the observation, monitoring, and care requirements of §415.266, the analysis should focus on whether or not the restraint is being used to manage violent or self-destructive behavior, when warranted, due to a behavioral emergency, not strictly on whether or not it is being used during a medical, dental, diagnostic, or surgical procedure.

The addition of language in paragraph (4) of subsection (a) also broadens this section to include situations in which a less restrictive intervention has been attempted and determined ineffective; this change is consistent with other similar changes made throughout this new subchapter. A new subsection (d) of this section addresses the physician's renewal of an order for restraint, which may be done as frequently as determined by facility policy, but requires that the time period covered by an order be no longer than 24 hours.

Subsection (f), which replaces subsection (e) of the current rule, includes among the criteria to be assessed in a facility's policies and procedures an additional physical status (cardiac function) that must be assessed in an individual who is being restrained.

Subsection (g) replaces subsection (f) of the current rule, and adds clarifying language to indicate that it applies to any contractor providing dental services on the facility premises. In addition, it requires that the dentist maintain a copy of the order in the individual's medical record and shall ensure compliance with the requirements of the order.

Section 415.274 describes permitted practices that may occur and that are not considered restraint (i.e., escort or brief physical prompt; activities of daily living; immobilization during medical, dental, diagnostic, or surgical procedures). This rule replaces §415.290. Subsection (c) is added to allow a staff member to escort, prompt, or move an individual who is unable to respond in the affirmative or negative or is unable to move due to his or her psychiatric or medical condition if there is an imminent danger of harm to the individual because of a circumstance in the individual's immediate environment. This new language ensures an

individual's safety and well-being while balancing the individual's independence with their right to be reasonably protected from harm.

Language is added to subsection (d) to require the individual's consent for use of any positioning or securing device used during medical, dental, diagnostic, or surgical procedures that are not a standard part of the procedure. Section 415.290(d) of the current rule, relating to the administration of psychoactive medication under court order or in an emergency, is deleted. This change brings the rule into conformity with the CMS Conditions of Participation, which explicitly define a "personal restraint" to not include a "brief physical hold."

Section 415.275 establishes criteria for the use of clinical timeout and requires that the facility develop and implement policies and procedures that are consistent with the criteria. This rule replaces §415.291. Language is added to subsection (b)(2)(A) and (B), providing that when a staff member requires an individual to remain in quiet time after the individual has indicated a desire to terminate any self-initiated quiet time, the situation becomes a restraint and/or seclusion, as applicable, and becomes subject to the requirements for restraint described in this subchapter. Paragraph (2)(B) of the subsection is further modified by the addition of language explicitly stating that under no circumstances, except for clinical reasons, may a facility staff member coerce or force a client out of quiet time. These changes make it clearer that quiet time is a voluntary step taken by an individual, and that any so-called quiet time that is imposed by a staff member is not voluntary, and therefore constitutes a restraint and/or seclusion. The changes also bring the language of paragraph (2), concerning quiet time, into conformity with the language of paragraph (1), concerning clinical timeout.

Section 415.276 describes the proper use of protective and supportive devices. Changes in the language of this section, which is currently found in §415.292 are proposed for better readability and clarification purposes.

FISCAL NOTE

Mike Maples, Assistant Commissioner for Mental Health and Substance Abuse Services, and Kathryn C. Perkins, R.N., M.B.A., Assistant Commissioner for Regulatory Services, have determined that for each year of the first five years that the proposed new subchapter will be in effect, there are no foreseeable costs or revenues to state or local governments as a result of enforcing and administering the sections as proposed.

PUBLIC BENEFITS AND COSTS

In addition, Mr. Maples and Ms. Perkins have determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the proposed new sections. The public benefit anticipated as a result of the new sections will be the expansion of the number and types of health care professionals authorized to perform face-to-face evaluations, to include an appropriately trained and licensed registered nurse, thus bringing the standard in Texas into conformity with the CMS standard for identify those who are authorized to perform such evaluations of an individual to assess his or her medical and psychiatric stability within one hour of the initiation of the restraint or seclusion. The public will also benefit from a reduction in the

use of restraint and seclusion in facilities where mental health services are provided and, therefore, the reduction in the number of potential injuries sustained by individual and staff members involved in a restraint, or by others who are in close proximity to a restraint, whose physical safety may be jeopardized by the restraint. The public will also benefit by the fact that, to the extent that a restraint or seclusion is used within a facility subject to these new rules, the least restrictive methods of intervention will be used and, wherever possible, alternatives will first be attempted or determined to be ineffective. Finally, the public will benefit from the new reporting requirements, which will allow data regarding the use of restraint and seclusion to be collected and analyzed at the state level, in order to identify trends and any systemic issues that may be impede the reduction of such interventions within the facilities that are required to comply with the new sections as proposed.

With respect to the state hospitals, state centers, Waco Center for Youth, and TCID (the “state-operated facilities”), Mr. Maples does not anticipate any costs related to complying with the reporting requirements of the proposed new sections. These facilities are already complying with the proposed reporting requirements related to restraint and seclusion and no additional costs are anticipated to ensure continued compliance with these requirements.

To the extent that implementation of the proposed new rules results in a reduction in the number of restraints and seclusions, Mr. Maples has determined that there may be a reduction in costs to the state hospitals, the Waco Center for Youth, the Texas Center for Infectious Disease, and community mental health service providers. It is anticipated that these facilities will see a reduction of costs associated with workers’ compensation claims and treatment of injuries sustained by staff members, individuals, and others who may be involved in a restraint or seclusion. Until trends and systemic issues can be identified and addressed as a result of the data collected and analyzed by the department and by HHSC pursuant to §415.272(g) and (h), the cost savings to these facilities cannot be precisely determined.

Ms. Perkins anticipates that for each year of the first five years that the proposed new sections will be in effect, there are potential economic costs for some facilities required to comply with the rules (other than state operated facilities and community mental health service providers), primarily with respect to the new documentation, reporting, and analysis requirements of §415.272. These potential costs relate to facilities that are not already reporting to DSHS (psychiatric hospitals licensed pursuant to Health and Safety Code, Chapter 577; hospitals licensed pursuant to Health and Safety Code, Chapter 241, providing mental health services; and crisis stabilization units licensed pursuant to Health and Safety Code, Chapter 577); more specifically, the estimated costs relate to those facilities that are already utilizing an electronic medical record system and do not already have the capability to generate the data that the facilities will be required to report to DSHS pursuant to §415.272.

It should be noted that some of the facilities already utilizing an electronic medical record system may currently have the capability of generating and reporting the data to DSHS. However, for those facilities whose electronic medical record systems are not currently capable of generating the data, it is estimated that a one-time computer programming cost may be incurred during the first or second year the new sections are in effect, in anticipation of the dates (November 1, 2014, and November 1, 2015, respectively) on which the reporting activities will be required to

commence. For such facilities, the estimated cost per facility is estimated to be between \$4,000 and \$8,000 (based on an estimated cost of hiring a programmer at the rate of \$200 per hour, and for an estimated time frame of between 20 to 40 hours to complete the programming work). Ms. Perkins anticipates that the estimated cost per facility would be less than this estimated range, for facilities that are part of a hospital system of two or more hospitals, to the extent that such a system incurs the programming costs on behalf of multiple hospitals within that hospital system.

For those facilities that do not currently utilize an electronic medical record system, Ms. Perkins estimates that any additional costs related to complying with the new reporting requirements will be minimal and will be absorbed by those facilities through use of existing staff and development of a data collection method (e.g., a database or Excel spreadsheet) that will allow the facilities to begin reporting the required information on or before November 1, 2014, and November 1, 2015, respectively. These facilities are currently required, pursuant to §415.274(b), to maintain a central file that contains much of the information that will be required to be reported to DSHS pursuant to proposed new §415.272. Under the new reporting requirements, the facilities will be required to collect some additional types of data as well as additional detail regarding the types of data currently collected, and to report such data to DSHS. This added level of detail does not suggest a substantial use of resources beyond what is already required under the current rules.

In addition to the estimated costs associated with reporting requirements, described previously, Mr. Maples and Ms. Perkins anticipate that costs associated with development and delivery of additional training necessary to ensure compliance with the new sections may be incurred by facilities required to comply with the new sections. To the extent that any new or revised training or curriculum content will be required, Mr. Maples anticipates that the state-operated facilities will make any necessary changes to its existing courses through their usual process of updating training, thereby minimizing any costs associated with making the revisions, which are estimated to be minimal.

The state-operated facilities will incorporate the new CMS terminology concerning the use of restraint or seclusion for the management of violent, self-destructive behavior and non-violent, non-self-destructive behavior into their hospital policies as a part of their annual policy review process. The change which authorizes the face-to-face evaluation to be conducted not only by a physician, but also by a registered nurse trained to assess medical and psychiatric stability with demonstrated competence, other than the registered nurse who initiated the use of restraint or seclusion, will be accomplished with current registered nurse staff members with no anticipated need for additional registered nurse staff members. The requirement for a physician to conduct a face-to-face evaluation before issuing a renewal order will be accomplished with current physician staff members with no anticipated need for additional physician staff members.

Mr. Maples anticipates that there will be fewer costs, still, for community mental health service providers, and their subcontractors, which are subject to the requirements of Chapter 412, Subchapter G, of this title, which prohibits the use of seclusion by such providers, with the exception of partial hospitalization programs for children and adolescents. In addition, these providers generally do not utilize personal restraint in managing violent or self-destructive behavior, as law enforcement is often present during such situations, and are able to intervene and transport the individual to a facility where the individual can receive appropriate mental

health treatment. As a result of the relatively limited potential for the use of personal restraints in community settings during a behavioral emergency, or the use of mechanical restraints by community mental health service providers, Mr. Maples anticipates that the community mental health service providers will incur only nominal costs related to compliance with the new sections, including the new reporting and training requirements.

Ms. Perkins anticipates that there will, likewise, be minimal costs incurred by facilities (other than state-operated facilities or community mental health service providers) required to comply with the new sections, related to updating policies, training, and curriculum content, as well as to implementing the utilization of appropriately trained registered nurses to perform face-to-face evaluations, and requiring current physician staff members to perform face-to-face evaluations before issuing renewal orders for restraint or seclusion.

Mr. Maples and Ms. Perkins do not anticipate that the proposed new sections will affect local employment or a local economy.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Maples and Ms. Perkins have determined that the proposed rules will have no adverse economic effect on small businesses or micro-businesses, as those entities are defined by Government Code §2006.001.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Janet Fletcher, Program Services Section, Program Design Unit, Department of State Health Services, P.O. Box 149347 (Mail Code 2018), Austin, Texas 78714-9347, or by email to janet.fletcher@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The repeals and new rules are authorized by Texas Health and Safety Code, Chapter 322, governing the use of restraint and seclusion in certain health care facilities; Texas Health and Safety Code, §577.010, concerning rules and standards for the proper care and treatment of patients in private psychiatric hospitals or mental health facilities; Texas Health and Safety Code §13.004, which authorizes the department to transfer to the Texas Center for Infectious Disease an individual who is mentally ill and who is infected with tuberculosis; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeals and new rules affect Texas Health and Safety Code, Chapters 13, 322, 577, and 1001; and Texas Government Code, Chapter 531.

Sections for repeal.

Division 1. General Provisions.

§415.251. Purpose.

§415.252. Application.

§415.253. Definitions.

§415.254. Prohibited Practices.

§415.255. Actions to be Taken in an Emergency While an Individual is in Restraint or Seclusion.

§415.256. Mechanical Restraint Devices.

§415.257. Staff Training.

Division 2. Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

§415.261. General Principles for the Use of Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

§415.262. Initiating Restraint or Seclusion in a Behavioral Emergency.

§415.263. Time Limitation on an Order for Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

§415.264. Family Notification.

§415.265. Disposition of Personal Possessions During Mechanical Restraint or Seclusion.

§415.266. Restraint in Response to a Behavioral Emergency Occurring Off Facility Premises or During Transportation.

§415.267. Communicating Criteria for Release and Releasing the Individual from Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

§415.268. Observation, Monitoring, and Care of the Individual in Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

§415.269. Safe and Appropriate Techniques for Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

§415.270. Actions to be Taken When an Individual Falls Asleep in Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

§415.271. Transfer or Primary Responsibility for Patient in Restraint or Seclusion.

§415.272. Release of an Individual from Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

§415.273. Actions to be Taken Following Release of an Individual from Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

§415.274. Documenting and Reporting Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

Division 3. Restraint During Certain Procedures.

§415.285. Restraint as Part of Medical, Dental, Diagnostic, or Surgical Procedures.

Division 4. Procedures that are Not Restraint or Seclusion.

§415.290. Permitted Practices.

§415.291. Clinical Timeout and Quiet Time.

§415.292. Protective and Supportive Devices.

Division 5. References and Distribution.

§415.299. References.

§415.300. Distribution.

Legend: (Proposed New Rules)
Regular Print = Proposed New Language

§415.251. Purpose.

The purpose of this subchapter is to reduce the use of restraint and seclusion as much as possible and to ensure that:

(1) the least restrictive methods of intervention are used and that, wherever possible, alternatives are first attempted and determined ineffective; and

(2) the rights and well-being of individuals are protected during the use of restraint or seclusion for:

(A) a behavioral emergency; or

(B) non-violent, non-self-destructive behavior.

§415.252. Application.

This subchapter applies to the following types of facilities:

(1) a state hospital or a state center operated by the Department of State Health Services;

(2) a psychiatric hospital licensed under Texas Health and Safety Code, Chapter 577 (relating to Private Mental Hospitals and Other Mental Health Facilities) to the extent and as provided by Chapter 134 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units);

(3) a hospital providing mental health services that is licensed under Texas Health and Safety Code, Chapter 241 (relating to Hospitals) to the extent and as provided by Chapter 133 of this title (relating to Hospital Licensing);

(4) a crisis stabilization unit licensed under Texas Health and Safety Code, Chapter 577 and Chapter 134 of this title;

(5) the Waco Center for Youth;

(6) a community mental health service provider governed by Chapter 412, Subchapter G, of this title (relating to Mental Health Community Services Standards); and

(7) the Texas Center for Infectious Disease, to the extent that mental health services are provided by that facility pursuant to its authority, under Texas Health and Safety Code, §13.004, to receive an individual who is mentally ill and who is infected with tuberculosis.

§415.253. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Advanced practice registered nurse or APRN--A registered nurse authorized by the Texas Board of Nursing to practice as an advanced practice registered nurse.

(2) Behavioral emergency--A situation involving an individual who is behaving in a violent or self-destructive manner and in which preventive, de-escalative, or verbal techniques have been attempted and determined to be ineffective or clearly would be ineffective and it is immediately necessary to restrain or seclude the individual to prevent:

(A) imminent probable death or substantial bodily harm to the individual because the individual is attempting to commit suicide or inflict serious bodily harm; or

(B) imminent physical harm to others because of acts the individual commits.

(3) Chemical restraint--The use of any chemical, including pharmaceuticals, through topical application, oral administration, injection, or other means, for purposes of restraining an individual and which is not a standard treatment for the individual's medical or psychiatric condition.

(4) Chief executive officer (CEO)--The highest ranking administrator of a facility or such person's designee.

(5) Clinical timeout--A procedure in which an individual, in response to verbal suggestion from a staff member, voluntarily enters and remains for a period of time in a designated area from which the individual is not prevented from leaving.

(6) Competence--Demonstrated knowledge, skill, and ability.

(7) Continuous face-to-face observation--An in-person line of sight that is maintained in an uninterrupted manner and is free of distraction.

(8) Declaration for mental health treatment--A document making a statement of preferences or instructions for mental health treatment as set forth in Texas Civil Practice and Remedies Code, Chapter 137.

(9) DSHS--The Department of State Health Services.

(10) Emergency medical condition--A non-psychiatric medical condition manifesting itself by acute symptoms, including severe pain, of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily functions, serious dysfunction of any bodily organ or part, or a threat to the health or safety of a pregnant woman or her unborn child.

(11) Episode--The time period from the initiation of restraint or seclusion until the release of the individual.

(12) Face-to-face--Describes a contact with an individual that occurs in person. Face-to-face does not include a contact made through the use of video or telecommunication conferencing or technologies, including telemedicine.

(13) Facility--An entity to which this subchapter applies as identified in §415.252 of this title (relating to Application).

(14) Individual--Any person receiving mental health services from a facility.

(15) Initiate--The first overt act to restrain or seclude an individual.

(16) Legally authorized representative (LAR)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and who may include a parent, guardian, managing conservator of a minor individual, guardian of an adult individual, or person with activated power of attorney for health care decisions.

(17) Mechanical restraint--Any device, material, or equipment that immobilizes or reduces the ability of the individual to move his or her arms, legs, body, or head freely.

(18) Personal restraint--Any manual method by which a person holds or otherwise bodily applies physical pressure that immobilizes or reduces the ability of the individual to move his or her arms, legs, body, or head freely.

(19) Physician assistant--A person who is licensed under Texas Occupations Code, Chapter 204.

(20) PRN--As needed (pro re nata).

(21) Protective device--Device used to prevent injury or to permit wounds to heal.

(22) Quiet time--A procedure in which an individual, on the individual's own initiative, enters and remains for a period of time in a designated area from which the individual is not prevented from leaving.

(23) Registered nurse--A person who is licensed under Texas Occupations Code, Chapter 301, and who has demonstrated the clinical competencies required by this subchapter.

(24) Restraint--The use of any personal restraint or a mechanical device that immobilizes or reduces the ability of the individual to move his or her arms, legs, body, or head freely.

(25) Seclusion--The involuntary separation of an individual from other individuals for any period of time and the placement of the individual alone in an area from which the individual is prevented from leaving.

(26) Seclusion room--A hazard-free room or other area in which direct observation of an individual can be maintained and from which the individual is prevented from leaving.

(27) Staff member--A person directly involved in an individual's care, including professionals granted privileges by the facility, full-time and part-time employees, and contractors.

(28) Supportive device--A device voluntarily used by an individual to posturally support the individual or to assist the individual who cannot obtain or maintain normal bodily functioning.

(29) Treating physician--The physician assigned by the facility and designated in the individual's medical record as the physician responsible for the coordination and oversight of the implementation of an individual's comprehensive treatment plan and who is:

(A) licensed as a physician by the Texas Medical Board in accordance with Texas Occupations Code, Chapter 155; or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.

(30) Treatment team--A group of staff members, the individual, and LAR who work together in a coordinated manner for the purpose of providing comprehensive mental health services to an individual.

§415.254. General Requirements for Use of Restraint or Seclusion.

(a) Prohibition. Except as provided by this subchapter, the use of restraint or seclusion is prohibited.

(b) Use of personal or mechanical restraint or seclusion. The use of personal or mechanical restraint or seclusion is permissible on the facility's premises or for transportation of an individual only if implemented:

(1) in accordance with this subchapter;

(2) in accordance with, and using only those safe and appropriate techniques as determined by the facility's written policies or procedures and training program as specified in subsection (e) of this section;

(3) by staff who have been trained in accordance with the applicable requirements specified in §415.257 of this title (relating to Staff Training);

(4) in connection with the applicable evaluation and monitoring requirements specified in §415.266 of this title (relating to Observation, Monitoring, and Care of the Individual in Restraint or Seclusion Initiated in Response to a Behavioral Emergency);

(5) in accordance with the applicable initiation and physician order requirements specified in §415.260 of this title (relating to Initiation of Restraint or Seclusion in a Behavioral Emergency);

(6) in accordance with §415.259(c) of this title (relating to Special Considerations, Responsibilities, and Alternative Strategies) the alternative strategies to using restraint and seclusion documented in the treatment plan;

(7) when less restrictive interventions (such as those listed in the safety plan if there is one) are determined ineffective to protect other individuals, the individual, staff, or others from harm;

(8) when the type or technique of restraint or seclusion used is the least restrictive intervention that will be effective to protect the other individuals, the individual, staff, or others from harm; and

(9) is discontinued at the earliest possible time, regardless of the length of time identified in a physician's order.

(c) Facility requirements. A facility's use of restraint and seclusion is prohibited unless:

(1) the facility adopts, implements, and enforces written policies and procedures, in accordance with this subchapter, governing the use of restraint and seclusion;

(2) the facility adopts, implements, and enforces a staff training program that meets the requirements of §415.257 of this title; and

(3) staff members of the facility are trained and have demonstrated competence in the use of restraint and seclusion in accordance with the facility's written policies and procedures and training program before assuming direct care duties and before performing restraint and seclusion on the individual.

(d) Policy notification. Upon admission of an individual, or as soon as possible thereafter, the facility shall notify each individual and each individual's legally authorized representative (LAR) of the facility's policies related to the use of restraint and seclusion.

(e) This subchapter represents minimum standards. The facility may, through its written policies and procedures, adopt more stringent standards that are consistent with this subchapter and do not conflict with:

- (1) DSHS rules;
- (2) state or federal laws; and
- (3) applicable accreditation standards.

§415.255. Prohibited and Restricted Practices.

(a) The following practices are prohibited:

(1) a personal or mechanical restraint shall not be used that:

(A) obstructs the individual's airway, including a procedure that places anything in, on, or over the individual's mouth or nose;

(B) impairs the individual's breathing, including applying pressure to the individual's torso or neck;

(C) restricts circulation;

(D) secures an individual to a stationary object while the individual is in a standing position;

(E) causes pain to restrict an individual's movement (pressure points or joint locks); and

(F) inhibits, reduces, or hinders the individual's ability to communicate; and

(2) a chemical restraint.

(b) A prone or supine hold shall not be used during a restraint. Should an individual become prone or supine during a restraint, then any staff member involved in administering the restraint shall immediately transition the individual to a side lying or other appropriate position.

(c) Neither restraint nor seclusion shall be used:

(1) as a means of discipline, retaliation, punishment, or coercion;

(2) for the purpose of convenience of staff or other individuals; or

(3) as a substitute for effective treatment or habilitation.

(d) Seclusion shall not be used for the management of non-violent, non-self-destructive behavior.

§415.256. Mechanical Restraint Devices.

(a) If a facility's policies and procedures permit the use of mechanical restraint, only commercially available or DSHS approved devices specifically designed for the safe and comfortable restraint of humans shall be used. Any alteration of commercially available devices or independent development of devices must:

(1) be based on the individual's special physical needs, if any (e.g., obesity or physical impairment);

(2) take into consideration any potential medical (including psychiatric) contraindications, including, without exception, any history of physical or sexual abuse;

(3) be approved by a committee whose membership and functions are specified in the bylaws of the medical staff of the facility; and

(4) be described fully in writing, with a copy of the description forwarded to the DSHS medical director for behavioral health for review. Such altered or independently developed device may not be used by the facility unless and until its use is approved, in writing, by the DSHS medical director for behavioral health.

(b) A staff member shall inspect a device before and after each use to ensure that it is clean, in good repair, and is free from tears or protrusions that may cause injury. Damaged devices shall not be used to restrain an individual and shall be repaired or discarded.

(c) Regardless of their commercial availability, the following types of devices shall not be used to implement restraint:

(1) those with metal wrist or ankle cuffs;

(2) those with rubber bands, rope, cord, or padlocks or key locks as fastening devices;

(3) long ties (e.g., leashes);

(4) bed sheets;

(5) gags; and

(6) spit hoods, or anything that obstructs an individual's airway, including a device that places anything in, on, or over the individual's mouth or nose.

(d) Except as otherwise permitted in this subsection, all forms of restraint, as well as a form of restraint in conjunction with seclusion, are intended to be used independently of one another. The physician shall document the clinical justification in the individual's medical record

for the simultaneous use of more than one mechanical device, a mechanical device and personal restraint, a mechanical device and seclusion, or personal restraint and seclusion.

(e) The following are approved mechanical devices.

(1) Anklets--Padded bands of cloth or leather that are secured around the individual's ankles or legs using hook-and-loop (e.g., Velcro®) or buckle fasteners and attached to a stationary object (e.g., bed or chair frame). The device shall not be secured so tightly as to interfere with circulation, or so loosely as to permit chafing of the skin.

(2) Arm splints or elbow immobilizers--Strips of any material with padding that extend from below to above the elbow and which are secured around the arm with ties or hook-and-loop (e.g., Velcro®) tabs. If appropriate under the circumstances, they shall be secured so that the individual has full use of the hands. The device shall not be secured so tightly as to interfere with circulation, or so loosely as to permit chafing of the skin.

(3) Belts--A cloth or leather band that is fastened around the waist and secured to a stationary object (e.g., chair frame) or used for securing the arms to the sides of the body. The device shall not be secured so tightly as to interfere with breathing or circulation.

(4) Camisole--A sleeveless cloth jacket that covers the arms and upper trunk and is secured behind the individual's back. The device shall not be secured so tightly as to interfere with breathing or circulation or to cause muscle strain. Staff shall exercise caution when using this device, if at all, because it may impair balance and the individual's ability to break a fall.

(5) Chair restraint--A padded stabilized chair that supports all body parts and prevents the individual's voluntary egress from the chair without assistance (e.g., tabletop chair, Geri-chair). When wristlets or anklets are used to restrict movement from the chair, the devices must not be secured so tightly as to interfere with breathing or circulation.

(6) Enclosed bed--A bed with high side rails or another type of side enclosure and, in some cases, an enclosure (e.g., mesh or rails) over the bed that prevents the individual's voluntary egress from the bed without assistance.

(7) Helmet--A plastic, foam rubber, or leather head covering, such as a sports helmet, that may include an attached face guard. The device shall be the proper size and the chinstrap shall not be so tight as to interfere with breathing or circulation.

(8) Mittens--A cloth, plastic, foam rubber, or leather hand covering such as boxing and other types of sport gloves that are secured around the wrist or lower arm with elastic, hook-and-loop (e.g., Velcro®) tabs, ties, paper tape, pull strings, buttons, or snaps. The device shall not be secured so tightly as to interfere with circulation.

(9) Restraining net--Mesh fabric that is placed over an individual's upper and lower trunk with the head, arms, and lower legs exposed; the net shall be secured over a mattress to a bed frame and shall never be placed over the individual's head. The restraining net shall be

loose enough to allow some movement. The device shall not be secured so tightly as to interfere with breathing or circulation.

(10) Restraint bed--A stretcher of steel frame construction with a fabric cover. The restraint bed shall have an adjustable backrest and a padded mat which shall be used under the individual's head and upper body to prevent injury. Approved wristlets, anklets, and belts shall be used to safely and securely limit the individual's physical activity.

(11) Restraint board--A padded, rigid board to which an individual is secured face-up, unless that position is clinically contraindicated for that individual, in which case a clinically indicated position will be used and documented. This device shall not be used to restrain an individual in a behavioral emergency except when necessary to promptly transport an individual to another location.

(12) Restraint chair or gurney--A chair or gurney manufactured for the purpose of transporting or restraining an individual who must remain restrained during transport.

(13) Ties--A length of cloth or leather used to secure approved mechanical restraints (e.g., mittens, wristlets, arm splints, belts, anklets, vests) to a stationary object (e.g., bed or wheelchair frame) or to another approved mechanical restraint. Ties shall not be secured so tightly as to interfere with breathing or circulation.

(14) Transport jacket--A heavy canvas sleeveless jacket that encases the arms and upper trunk, fastens with hook-and-loop (e.g., Velcro®) tabs and roller buckles, and is held in place with a strap between the legs. The device shall be used only as a temporary measure during transport.

(15) Vest--A sleeveless cloth jacket that covers the upper trunk and is fastened in the back or front with ties or hook-and-loop tabs (e.g., Velcro®). The vest may be secured to a stationary object (e.g., bed or chair frame). The vest and ties shall not be secured so tightly as to interfere with breathing or circulation.

(16) Wristlets--Padded cloth or leather bands that are secured around the individual's wrists or arms using hook-and-loop (e.g., Velcro®) or buckle fasteners and attached to a stationary object (e.g., bed frame, chair frame, or waist belt). The device shall not be secured so tightly as to interfere with circulation or so loosely as to permit chafing of the skin.

§415.257. Staff Training.

(a) The facilities to which this subchapter applies shall ensure that all staff members are informed of their roles and responsibilities under this subchapter and are trained and demonstrate competence accordingly.

(b) The training program shall:

(1) be standardized throughout each facility;

(2) emphasize the importance of reducing and preventing the unnecessary use of restraint and seclusion;

(3) be evaluated annually, which shall include evaluation to ensure that the training program, as planned and as implemented, complies with the requirement of this section;

(4) incorporate evidence-based best practices;

(5) provide information about declarations for mental health treatment, including:

(A) the right of individuals to execute declarations for mental health treatment; and

(B) the duty of staff members and other health care providers to act in accordance with declarations for mental health treatment to the fullest extent possible.

(c) Before assuming job duties involving direct care responsibilities, and at least annually thereafter, all staff members must receive training and demonstrate competence in at least the following knowledge and applied skills that shall be specific and appropriate to the population(s) the facility serves:

(1) using team work, including team roles and techniques for facilitating team communication and cohesion;

(2) identifying the causes of aggressive or threatening behaviors of individuals who need mental health services, including behavior that may be related to an individual's non-psychiatric medical condition;

(3) identifying underlying medical, physical, and emotional conditions;

(4) identifying medications and their potential effects;

(5) identifying how age, weight, developmental level or functioning, gender, culture, ethnicity, and elements of trauma-informed care, including history of abuse or trauma and prior experience with restraint or seclusion, may influence behavioral emergencies and affect the individual's response to physical contact and behavioral interventions;

(6) explaining how the behavior of staff members can affect an individual's behavior and how the behavior of individuals can affect a staff member;

(7) applying knowledge and effective use of a range of early intervention, de-escalation, mediation, problem-solving, and other non-physical interventions, such as clinical timeout and quiet time; and

(8) recognizing and appropriately responding to signs of physical distress in individuals who are restrained or secluded, including the risks of asphyxiation, aspiration, and trauma.

(d) Before any staff member may initiate any restraint or seclusion the staff person shall receive training and demonstrate ongoing competence in:

(1) safe, appropriate, and effective methods, initiation, and use of seclusion as a last resort in a behavioral emergency;

(2) safe, appropriate, and effective methods, initiation and application, and use of personal restraint as a last resort in a behavioral emergency;

(3) safe, appropriate, and effective methods, initiation and application, and use of mechanical restraint devices as a last resort in a behavioral emergency or as a protective or supportive device, and knowledge of the mechanical restraint devices permitted under §415.256 of this title (relating to Mechanical Restraint Devices) and approved by the facility; and

(4) management of emergency medical conditions in accordance with the facility's policies and procedures and other applicable requirements for:

(A) obtaining emergency medical assistance; and

(B) obtaining training in and using techniques for cardiopulmonary respiration and removal of airway obstructions.

(e) Before assuming job duties, and at least annually thereafter, a registered nurse who is authorized to perform assessments of individuals who are in restraint or seclusion shall receive training, which shall include a demonstration of competence, or demonstrate ongoing competence in:

(1) monitoring cardiac and respiratory status and interpreting their relevance to the physical safety of the individual in restraint or seclusion;

(2) recognizing and responding to nutritional and hydration needs;

(3) checking circulation in, and range of motion of, the extremities;

(4) providing for hygiene and elimination;

(5) addressing physical and psychological status and comfort, including signs of distress;

(6) assisting individuals in de-escalating, including through identification and removal of stimuli, if known;

(7) recognizing when continuation of restraint or seclusion is no longer justified by a behavioral emergency; and

(8) recognizing when to contact emergency medical services to evaluate and/or treat an individual for an emergency medical condition.

(f) Before assuming job duties, and at least annually thereafter, staff members who are authorized to monitor, under the supervision of a registered nurse, individuals during restraint or seclusion shall receive training that shall include a demonstration of competence, or shall demonstrate ongoing competence in:

(1) monitoring respiratory status;

(2) recognizing nutritional and hydration needs;

(3) checking circulation in, and range of motion of, the extremities;

(4) providing for hygiene and elimination;

(5) addressing physical and psychological status and comfort, including signs of distress;

(6) assisting individuals in de-escalating, including through identification and removal of stimuli, if known.

(7) recognizing when continuation of restraint or seclusion is no longer justified by a behavioral emergency; and

(8) recognizing when to contact a registered nurse.

(g) Physicians, and physician assistants, and registered nurses who are authorized to perform evaluations of individuals who are restrained or secluded shall receive training that shall include a demonstration of competence, or demonstrate the competencies described in subsections (e) and (f) of this section, and shall receive training that shall include a demonstration of competence, or demonstrate competence, in:

(1) identifying restraints that are permitted by the facility, by this subchapter, and by other applicable law;

(2) identifying stimuli that trigger behaviors that meet the criteria for a behavioral emergency;

(3) identifying medical contraindications to restraint and seclusion; and

(4) recognizing psychological contraindications to restraint and seclusion, such as sexual abuse, physical abuse, neglect, and trauma.

(h) When a staff member's duties change, the facility shall reassess the staff member's training and competence and require and ensure the staff member's retraining, as required under this subchapter, based upon the facility's reassessment and the staff member's new duties.

(i) The facility shall maintain documentation of training for each staff member. Documentation shall include the date that training was completed, the name of the instructor, a list of successfully demonstrated competencies, the date competencies were assessed, and the name of the person who assessed competence.

§415.258. Actions to be Taken to Release from Restraint or Seclusion in a Medical or Environmental Emergency.

(a) Emergency medical condition. If an individual experiences an emergency medical condition while in restraint or seclusion, the staff member providing continuous face-to-face observation of the individual or other staff member must release the individual from restraint or seclusion as soon as possible, as indicated by the emergency medical condition.

(1) The facility shall ensure that the individual's emergency medical condition is promptly addressed and that aid is rendered to the extent possible in accordance with the facility's policies and procedures for management of emergency medical conditions.

(2) Unlocking the seclusion room door or fully releasing the restraints ends the episode.

(3) If the situation continues to meet the criteria for a behavioral emergency after the individual's emergency medical condition is addressed, a staff member must obtain a new order for restraint or seclusion.

(b) Emergency evacuation. If an emergency evacuation or evacuation drill occurs while an individual is in restraint or seclusion, staff members shall implement the facility's established procedures to ensure the individual's safety.

§415.259. Special Considerations, Responsibilities, and Alternative Strategies.

(a) Special considerations. Before ordering restraint or seclusion, the physician shall take the following into consideration:

(1) information about the individual that could contraindicate or otherwise affect the use of restraint or seclusion;

(2) information obtained during the initial assessment of each individual at the time of admission or intake, including, but not limited to:

(A) pre-existing medical conditions or any physical disabilities and limitations, including, without limitation, substance use disorders, obesity, or pregnancy, that would place the individual at greater risk during restraint or seclusion;

(B) any history of sexual abuse, physical abuse, neglect, or trauma that would place the individual at greater psychological risk during restraint or seclusion;

(C) any history or trauma that would contraindicate seclusion, the type of restraint (personal or mechanical), or a particular type of restraint device for the individual;

(D) cultural factors; and

(E) information contained in an advance directive for mental health treatment, if there is one.

(b) Staff member responsibilities. Staff members shall:

(1) respect and preserve the rights of an individual during restraint or seclusion. Rights of individuals are described in Chapter 404, Subchapter E, of this title (relating to Rights of Persons Receiving Mental Health Services);

(2) provide an environment that is protected and private from other individuals and that safeguards the personal dignity and well-being of an individual placed in restraint or seclusion;

(3) ensure that undue physical discomfort, harm or pain to the individual does not occur when initiating or using restraint or seclusion;

(4) use only the amount of physical force that is reasonable and necessary to implement a particular restraint or seclusion; and

(5) use psychoactive medication in an emergency only in accordance with Chapter 414, Subchapter I of this title (relating to Consent to Treatment with Psychoactive Medication). Physically holding an individual during a forced administration of a psychoactive medication, including for court-ordered medication, constitutes personal restraint.

(c) Alternative strategies. The treatment team shall review and, when appropriate, implement and document alternative strategies for dealing with behaviors in each of the following circumstances:

(1) in any case in which behaviors have necessitated the use of restraint or seclusion for the same individual more than two times during the individual's facility or program admission, or within any 30-day period, whichever period is shorter;

(2) when two or more separate episodes of restraint or seclusion of any duration have occurred within the same 12 hour period; and

(3) when an episode of restraint or seclusion has continued for more than the maximum time permitted under §415.261(b) of this title (relating to Time Limitation on an Order for Restraint or Seclusion Initiated in Response to a Behavioral Emergency).

(d) Treatment plan modification. If the circumstances described in subsection (c)(1) - (3) of this section recur or continue after treatment team review of alternative strategies under subsection (c) of this section, the treatment team shall consult with the facility's medical director or designee to explore alternative treatment strategies and a written modification of the individual's treatment plan.

§415.260. Initiation of Restraint or Seclusion in a Behavioral Emergency.

(a) Initiation.

(1) Only staff authorized by the facility's policies and procedures and who have met the training requirements of §415.257 of this title (relating to Staff Training) and demonstrated competency in the facility's restraint and seclusion training program, may initiate personal restraint in a behavioral emergency.

(2) Only a physician or registered nurse may initiate mechanical restraint or seclusion.

(b) Physician's order. Only a physician member of the facility's medical staff may order restraint or seclusion.

(1) The physician's order for restraint or seclusion shall:

(A) designate the specific intervention and procedures authorized, including any specific measures for ensuring the individual's safety, health, and well-being;

(B) specify the date, time of day, and maximum length of time the intervention and procedures may be used, consistent with the time limitations provided for under §415.261 of this title (relating to Time Limitation on an Order for Restraint or Seclusion Initiated in Response to a Behavioral Emergency);

(C) describe the specific behaviors which constituted the behavioral emergency which resulted in the need for restraint or seclusion;

(D) describe the less restrictive interventions attempted and the reasons they were determined to be ineffective and/or unlikely to protect the individual or others from harm; and

(E) be signed and dated, including the time of the order, by the physician or the registered nurse who accepted the prescribing physician's telephone order.

(2) If restraint or seclusion was ordered by telephone, the ordering physician shall personally sign and date the telephone order, including the time of the order, within 24 hours of the time the order was originally issued.

(3) If the physician who ordered the intervention is not the treating physician, the physician ordering the intervention shall consult with the treating physician or physician designee as soon as possible. The physician who ordered the intervention shall document the consultation in the individual's medical record.

(c) Face-to-face evaluation.

(1) Except as authorized by paragraph (4) of this subsection, a physician or a registered nurse, who is trained to assess medical and psychiatric stability with demonstrated competence, other than the registered nurse who initiated the use of restraint or seclusion, shall conduct a face-to-face evaluation of the individual within one hour following the initiation of restraint or seclusion to personally verify the need for restraint or seclusion.

(2) At a facility accredited as a residential treatment program, such as Waco Center for Youth, a physician or a registered nurse who is trained to assess medical and psychiatric stability with demonstrated competence, other than the registered nurse who initiated the use of restraint or seclusion shall conduct the face-to-face evaluation within two hours following the initiation of restraint or seclusion unless the individual is released prior to the expiration of the original order. If the individual is released prior to the expiration of the original order, the physician or registered nurse, shall conduct the face-to-face evaluation within 24 hours.

(3) The face-to-face evaluation includes, but is not limited to, an assessment of the:

- (A) individual's immediate situation;
- (B) individual's reaction to the restraint or seclusion;
- (C) individual's medical and behavioral condition; and
- (D) need to continue or terminate the restraint or seclusion.

(4) A physician may delegate the face-to-face evaluation to a physician assistant who is:

(A) privileged to practice in the facility or that portion of the facility to which this subchapter applies; and

(B) under the clinical supervision of a physician appointed by the facility's medical staff and privileged to practice in the facility or that portion of the facility.

(5) If a physician assistant to whom the physician has delegated the face-to-face evaluation or a registered nurse who has conducted the face-to-face evaluation, in his or her professional judgment determines that the physician should evaluate the individual due to circumstances that are outside the physician assistant's or registered nurse's scope of practice or expertise, the physician assistant or registered nurse shall contact a physician and request that the physician perform a face-to-face evaluation of the individual. The physician assistant or registered nurse shall document the determination in the individual's medical record.

(6) If the face-to-face evaluation is conducted by a registered nurse or physician assistant, the registered nurse or physician assistant shall consult the physician who is responsible for the care of the individual as soon as possible after the completion of the one hour face-to-face evaluation and document the consultation in the individual's medical record.

§415.261. Time Limitation on an Order for Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

(a) Original order. A physician may order restraint or seclusion for a period of time not to exceed:

- (1) 15 minutes for personal restraint;
- (2) one hour for mechanical restraint or seclusion for individuals under the age of 9;
- (3) two hours for mechanical restraint or seclusion for individuals ages 9 - 17; and
- (4) four hours for mechanical restraint or seclusion for individuals age 18 and older.

(b) Renewed order. If the original order has not yet expired and the registered nurse has evaluated the individual face-to-face and determined the continuing existence of a behavioral emergency, the registered nurse must contact the physician. The physician shall conduct a face-to-face evaluation before issuing or renewing an order that continues the use of the restraint or seclusion. A physician may renew the original order provided it would not result in the use of:

- (1) personal restraint beyond 15 minutes total;
- (2) mechanical restraint or seclusion beyond two hours total for individuals under age 9;
- (3) mechanical restraint or seclusion beyond four hours total for individuals ages 9 - 17; or
- (4) mechanical restraint or seclusion beyond eight hours total for individuals age 18 and older.

(c) Renewal documentation. The physician shall document the clinical justification for continuing the restraint or seclusion before issuing or renewing an order that continues the use of restraint or seclusion.

§415.262. Family Notification.

(a) The CEO or CEO's designee shall notify the individual's legally authorized representative if any, or authorized family member of each episode of restraint or seclusion initiated for the management of a behavioral emergency as follows:

(1) except as provided by 42 Code of Federal Regulations, Part 2, and subsection (c) of this section, a staff member shall notify as soon as possible, but no later than 12 hours following the initiation of the restraint or seclusion, the legally authorized representative of a minor under age 18 who is not or has not been married.

(2) except as provided by subsection (c) of this section, in cases in which the adult individual has consented to have one or more specified family members informed regarding the individual's care, and the family member or members have agreed to be informed, a staff member will inform the family member or members of the restraint or seclusion episode within the time frame determined by prior agreement between the individual and specified family member(s).

(b) The date and time of notification and the name of the staff member providing the notification must be documented in the individual's medical record. The documentation shall include any unsuccessful attempts, the phone number called, and the name(s) of person(s) with whom the staff member spoke.

(c) As permitted by Texas Health and Safety Code, §611.0045(b), a professional may deny an individual's legally authorized representative access to any portion of an individual's record if the facility determines that the disclosure of such portion would be harmful to the individual's physical, mental, or emotional health.

§415.263. Safekeeping of Personal Possessions During Mechanical Restraint or Seclusion.

(a) The individual's right to retain personal possessions and personal articles of clothing may be suspended during mechanical restraint or seclusion when necessary to ensure the safety of the individual or others as described in Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services).

(b) An inventory of any personal possessions or personal articles of clothing temporarily taken from the individual shall be listed in the individual's medical record. The inventory shall be witnessed by two staff members who shall sign or authenticate this list in individual's medical record. If personal articles of clothing are taken from the individual, appropriate other clothing shall be issued.

(c) The items shall be kept in a locked place.

(d) Upon release of the individual from a restraint, seclusion, or combination of the two, the individual, if willing, and two staff members shall be asked to sign documentation in the individual's medical record indicating the status of items returned and the date and time the items were returned.

(e) If the individual is unwilling to sign the documentation, a staff member shall document the refusal in the individual's medical record and list the items that were returned to the individual, the time they were returned, and the staff member who returned the items.

§415.264. Restraint Off Facility Premises or for Transportation.

(a) All off-premises transport. A registered nurse or physician assistant, as appropriate to the individual's clinical condition and the requirements of this subchapter, shall accompany the staff member(s) transporting an individual off premises when there is reason to believe that during the time away from the facility the individual may require:

- (1) medical attention;
- (2) administration of medication; or
- (3) restraint.

(b) Excursion off facility premises. A staff member may not restrain an individual being transported off facility premises unless the individual meets the criteria for a behavioral emergency, a physician orders the restraint, and transport is medically necessary with documented clinical justification.

(1) If restraint is required while an individual is on an excursion off facility premises, the staff member initiating the restraint shall contact a registered nurse to assist in obtaining a physician's order for the restraint as soon as feasible within the applicable timeframes prescribed in this subchapter.

(2) The staff members on the excursion shall implement, monitor, document, and report, in accordance with the requirements of this subchapter, any episode of restraint that occurs off premises.

(c) Restraint initiated prior to transportation. A staff member may not restrain an individual being transported prior to departure unless the situation meets the criteria for a behavioral emergency or the individual has been determined and documented manifestly dangerous according to Subchapter G of this Chapter (relating to Determination of Manifest Dangerousness) within one month prior to transportation, a physician orders the restraint, and transport is medically necessary with documented clinical justification.

(1) If a behavioral emergency exists and a physician orders restraint prior to departure, at least one of the staff members accompanying the individual to the destination facility shall be a registered nurse.

(2) A female staff member shall accompany a female individual.

(3) If the duration of transport exceeds the maximum allowable duration of restraint on the original order, and a behavioral emergency continues to exist, or the person has been determined manifestly dangerous within one month prior to transportation, the registered nurse may either obtain a physician's telephone order to renew the restraint or obtain a new order for restraint, and renewal, as soon as feasible but within the applicable timeframes prescribed in this subchapter.

(4) Staff members accompanying the individual from the originating facility shall implement, monitor, document, and report, in accordance with the requirements of this subchapter, a restraint that is ordered and implemented prior to transportation. If transportation is for the purposes of transfer to another facility, staff at the originating facility must fax the required documentation to the destination facility on the day of transport. Staff members at the destination facility are responsible for filing the documentation in the individual's medical record at the destination facility.

(d) Restraint initiated during transportation. If restraint is required following departure, a registered nurse shall obtain a physician's order from the originating facility for any restraint as soon as feasible within the applicable timeframes prescribed in this subchapter. If a registered nurse is not present during transportation, the staff member initiating any restraint shall contact a registered nurse to obtain a physician's order for the restraint as soon as possible within the applicable timeframes prescribed in this subchapter.

(1) If an individual is restrained during transportation, the staff member accompanying the individual shall implement, monitor, document, and report the episode of restraint in accordance with the requirements of this subchapter, and shall ensure that all documentation required under this subchapter relating to the restraint, including the physician's order, is transmitted to the destination facility within 24 hours following the time the individual is delivered to the destination facility.

(2) Staff members at the originating facility shall document and report restraint that is ordered and implemented during transportation. Staff members at the destination facility shall maintain documentation of the restraint at the destination facility.

(e) Comfort during transportation. The staff members shall provide an individual in restraint during transport the care required under §415.266(c) of this title (relating to Observation, Monitoring, and Care of the Individual in Restraint or Seclusion Initiated in Response to a Behavioral Emergency).

§415.265. Communicating with the Individual During Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

(a) As soon as feasible after restraint or seclusion has been implemented in response to a behavioral emergency, the staff member shall refer to the individual's declaration for mental health treatment, if any, as a reference in determining and implementing an individual's preferences. The staff person shall communicate reassurance and commitment to the individual's safety on an ongoing basis, including inquiring as to how the staff member can assist the individual to de-escalate.

(b) Communication with the individual shall be conducted in a language or by a method that is understandable to the individual (e.g., American Sign Language, Spanish, Vietnamese) and that accommodates the individual's method of communication (e.g., releasing a hand of an individual who communicates using American Sign Language).

(c) A staff member shall document in the individual's medical record all attempts to communicate with the individual and the individual's response to these attempts.

§415.266. Observation, Monitoring, and Care of the Individual in Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

(a) Observation.

(1) A staff member of the same gender as the individual shall maintain continuous face-to-face observation of an individual in mechanical restraint, unless the individual's history or other factors indicate this would be contraindicated (e.g., sexual or physical abuse perpetrated by someone of the same gender, in which case a staff member of the opposite gender may be used).

(2) A staff member who is not physically applying personal restraint shall maintain continuous face-to-face observation of an individual in personal restraint.

(3) A staff member shall maintain continuous face-to-face observation of an individual in seclusion for at least one hour. After one hour, the staff member may monitor the individual continuously using simultaneous video and audio equipment in close proximity to the individual.

(b) Monitoring. Staff shall ensure adequate respiration and circulation of the individual in restraint at all times.

(1) Respiratory status, circulation, and skin integrity must be monitored continuously and documented every 15 minutes (or more often if deemed necessary by the ordering physician). Cardiac status must be monitored and documented hourly (or more often if deemed necessary by the ordering physician).

(2) An assigned staff member must perform range of motion exercises for each extremity, one extremity at a time, for at least five minutes no less frequently than every 60 minutes that an individual is in mechanical restraint.

(c) Care. Staff must provide for the hygiene, hydration, nutrition, elimination needs, and safety of an individual in restraint or seclusion. The individual in restraint or seclusion shall be provided:

(1) bathroom privileges at least once every two hours (or more frequently, if requested and not contraindicated, or otherwise required by the individual's circumstances and physical or medical needs);

(2) an opportunity to drink water or other appropriate liquids every two hours (or more frequently, if requested and not contraindicated, or otherwise required by the individual's circumstances and physical or medical needs);

(3) a bath at least once daily (or more frequently, if clinically indicated or in the presence of incontinence);

(4) medications and medical equipment as ordered;

(5) regularly scheduled meals and snacks served on dishes that are appropriate for safety; and

(6) an environment that is free of safety hazards, adequately ventilated during warm weather, adequately heated during cold weather, and appropriately lighted.

§415.267. Safe and Appropriate Techniques for Restraint or Seclusion.

(a) A facility shall ensure that:

(1) when personal restraint is used, staff members act to protect the individual's privacy as much as possible without compromising the safety of individuals or staff members during the episode;

(2) if the individual does not calm and mechanical restraint is required, the individual is moved to a protected environment observable by other staff members and away from other individuals as soon as possible;

(3) when a mechanical restraint is used, the individual has a protected environment that is observable by other staff members and is away from other individuals that safeguards the individual's personal dignity and well-being;

(4) the individual is protected (e.g., from assault by others) while in restraint or seclusion; and

(5) the facility uses a seclusion room, as defined in §415.253 of this title (relating to Definitions), for any individual placed in seclusion.

(b) A facility shall develop and implement policies and procedures to ensure that it is in compliance with the requirements of this section.

§415.268. Actions to be Taken when an Individual Falls Asleep in Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

(a) If the individual appears to fall asleep while in mechanical restraint or seclusion, the registered nurse shall assess the individual to determine if the individual is asleep.

(b) If the individual is determined to be asleep, the registered nurse shall instruct authorized staff to immediately release the individual from restraint or unlock the seclusion room door. Authorized staff shall maintain continuous face-to-face observation until the individual is awake and re-evaluated by the registered nurse.

(c) The registered nurse shall assess the individual upon awakening.

(d) If the individual exhibits behaviors requiring restraint or seclusion upon awakening, the registered nurse shall obtain a new physician's order for any new initiation of restraint or seclusion.

§415.269. Transfer of Primary Responsibility for Individual in Restraint or Seclusion.

(a) At the time of transfer of primary responsibility between staff members for the individual in restraint or seclusion, including transfer of responsibility at the change of shift, the staff member with primary responsibility must meet with the staff member who will assume primary responsibility to review the individual's status. A staff member shall monitor the individual during the transfer process.

(b) The review shall be documented and shall include:

- (1) information regarding the time a restraint or seclusion was initiated;
- (2) the nature of the circumstances requiring restraint or seclusion;
- (3) the current status of the individual's physical, emotional, and behavioral condition;
- (4) any medication administered; and
- (5) the type of care needed.

§415.270. Release of an Individual from Restraint or Seclusion.

(a) Personal restraint. When a personal restraint has been initiated by a staff member, but the individual has not yet been evaluated by a physician, a physician's assistant, or a registered nurse, and the staff member determines that the individual's behavior has changed sufficiently to no longer require the personal restraint, the staff member must immediately release the individual from the restraint but shall remain with the individual until a physician, physician's assistant, or registered nurse has evaluated the individual for release based on a determination that the individual no longer requires the restraint or seclusion.

(b) Mechanical restraint or seclusion. When a mechanical restraint or seclusion has been initiated by a staff member, and the unsafe situation ends, a staff member shall contact a physician, a physician's assistant, or a registered nurse. The physician, physician's assistant, or registered nurse must evaluate the individual for release based on a determination as to whether the unsafe situation continues. Staff must immediately release an individual whose behavior has been evaluated by a physician, physician's assistant, or registered nurse and determined to no longer require the restraint or seclusion.

§415.271. Actions to be Taken Following Release of an Individual from Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

(a) Immediately following the release of an individual from restraint or seclusion, a staff member shall:

(1) take appropriate action to facilitate the individual's reentry into the social milieu by providing the individual with transition activities and an opportunity to return to ongoing activities;

(2) observe the individual for at least 15 minutes; and

(3) document in the individual's medical record the steps taken and observations made of the individual's behavior during this transition period.

(b) The facility shall conduct or attempt to conduct the debriefings described under subsection (c) of this section. Based on those debriefings, the facility shall:

(1) identify what led to the episode and what could have been handled differently;

(2) identify strategies to prevent future restraint or seclusion of the individual, taking into consideration suggestions from the individual and the individual's declaration for mental health treatment, if any;

(3) ascertain whether the individual's physical well-being, psychological comfort, including trauma, and right to privacy were protected or otherwise addressed, as applicable;

(4) counsel the individual(s) in relation to any trauma that may have resulted from the episode; and

(5) when indicated, make appropriate modifications to the individual's treatment plan and/or the treatment plans of other individuals.

(c) Following an episode of restraint or seclusion, the facility shall conduct, or attempt to conduct, the following debriefings.

(1) Within 24-72 hours after the episode's end, staff members who were involved in the episode, other staff, and supervisors shall debrief together as a support mechanism and to identify successes, problems, or necessary modifications.

(2) Within 24-48 hours after the episode's end, a staff member or members with whom the individual feels comfortable shall conduct a private discussion with the individual, the individual's LAR, and family members with the consent of the individual.

(3) Within 24-48 hours after the episode's end, and when clinically indicated or upon request of individuals who witnessed the restraint, a staff member or members with whom they feel comfortable shall have a private discussion with individuals who witnessed the restraint.

(d) The debriefings, and/or attempts, shall be documented in the individual's medical record within 24 hours after the debriefing is conducted or attempted, as applicable. If debriefing is not conducted, the reasons for not completing the debriefing shall be documented. If a debriefing is attempted as required by this section, but cannot be conducted within the specified timeframes, a timeline for completing the debriefing shall be documented, the debriefing shall be held and documented within the timeline documented, and the reasons for not completing the debriefing within the timeframes specified in this section shall be documented.

§415.272. Documenting, Reporting, and Analyzing Restraint or Seclusion.

(a) Facility documentation. The facility shall document the assessment, monitoring, and evaluation of an individual in restraint or seclusion on a facility approved form. Documentation in an individual's medical record shall include:

(1) the date and time the intervention began and ended;

(2) the name, title, credentials, and signatures of any staff members present at the initiation of the intervention, with identification of the staff member's role in the intervention, including as an observer, or status as an uninvolved witness, as applicable;

(3) the name of the individual restrained or secluded and the type of restraint or seclusion used;

(4) the time and results of any assessments, observation, monitoring, and evaluations, including those required under this subchapter, and attention given to personal needs;

(5) the physician's documentation of the order authorizing restraint or seclusion in accordance with the requirements of §415.260 of this title (relating to Initiation of Restraint or Seclusion in a Behavioral Emergency);

(6) any specific alternatives and less restrictive interventions, including preventive or de-escalatory interventions that were attempted by any staff member prior to the initiation of restraint or seclusion, and the individual's response to any such intervention;

(7) the individual's response to the use of restraint or seclusion; and

(8) other documentation relating to an episode of restraint or seclusion otherwise required under this subchapter.

(b) Report to CEO. Staff members shall report daily to the facility CEO or designee any use of a restraint or seclusion.

(1) The CEO or designee shall take appropriate action to identify and correct unusual or unwarranted utilization patterns on a systemic basis, and shall address each specific use of restraint or seclusion that is determined or suspected of being improper at the time it occurs.

(2) The CEO or designee shall maintain a central file containing the following information:

(A) age, gender, and race of the individual;

(B) deaths or injuries to the individual or staff members;

(C) length of time the restraint or seclusion was used;

(D) types and dosage of emergency medications administered during the restraint or seclusion, if any;

(E) type of intervention, including each type of restraint used;

(F) name of staff members who were present for the initiation of the restraint or seclusion; and

(G) date, day of the week, and time the intervention was initiated.

(c) Additional reporting in the case of death or serious injury. By the next business day following an individual's death or serious injury, facilities shall report the following information to the appropriate entity designated in subsection (d) of this section.

(1) Each death or serious injury that occurs while an individual is in restraint or seclusion;

(2) Each death that occurs within 24 hours after the individual has been removed from restraint or seclusion; and

(3) Each death known to the facility that occurs within one week after restraint or seclusion where it is reasonable to assume that use of restraint or placement in seclusion contributed directly or indirectly to a individual's death. "Reasonable to assume" in this context includes, but is not limited to, deaths related to restrictions of movement for prolonged periods of time, or death related to chest compression, restriction of breathing, or asphyxiation.

(d) Reporting deaths or serious injury. Facilities shall report the deaths or serious injuries of individuals in restraint or seclusion as follows.

(1) Medicare- or Medicaid-certified facilities shall report a death to the appropriate office for the Center for Medicare and Medicaid Services in accordance with the federal death reporting requirements relating to restraint and seclusion.

(2) Facilities that are neither Medicare- nor Medicaid-certified shall report a death or serious injury to DSHS's medical director for behavioral health.

(3) In addition to reporting in accordance with paragraphs (1) and (2) of this subsection, all facilities licensed under Chapter 133 (relating to Hospital Licensing) or Chapter 134 (relating to Private Psychiatric Hospitals and Crisis Stabilization Units) of this title shall report a death or serious injury to the Patient Quality Care Unit of DSHS's Division for Regulatory Services.

(4) Facilities shall comply with any additional reporting requirements relating to restraint or seclusion to which they are subject, including any applicable reporting requirements under The Children's Health Act of 2000 and federal regulations promulgated pursuant to the Act.

(e) Facility review of data. The facility shall review and analyze, at least quarterly, the data that is required by subsection (b)(2) of this section to identify and correct trends and patterns that may contribute to the use of restraint or seclusion (e.g., disproportionate use of restraint or seclusion with specific populations or shifts).

(f) Continuous improvement. The facility shall use the data continuously to improve and ensure:

(1) a positive environment that minimizes the use of an involuntary intervention;

(2) the safety of every individual and staff member;

(3) the use of restraint and seclusion is implemented in accordance with the requirements of this subchapter;

(4) that the risks of injury and other negative effects to individuals and staff members are reduced; and

(5) that policies and training curriculum incorporate the requirements of this subchapter.

(g) On or before November 1, 2014, and quarterly thereafter, any facility that is a Medicare or Medicaid provider shall submit to DSHS the data required by Centers for Medicare and Medicaid Services for hospital-based inpatient psychiatric service measures related to the use of restraint or seclusion.

(h) On or before November 1, 2015, and quarterly thereafter, a facility to which this subchapter applies shall prepare and submit to DSHS a report, consistent with the *Department of State Health Services Behavioral Interventions Reporting Guidelines* (guidelines) available at: <http://www.dshs.state.tx.us/Licensing-Facilities.shtm>, of the following data from the previous period:

(1) emergency interventions, including:

(A) emergency seclusions:

(i) number of seclusions;

(ii) rate of seclusions (per 1,000 bed days);

(iii) number of seclusions resulting in serious injury; and

(iv) number of seclusions resulting in death; and

(B) emergency personal restraints:

(i) number of personal restraints;

(ii) rate of personal restraints (per 1,000 bed days);

(iii) number of personal restraints resulting in serious injury; and

(iv) number of personal restraints resulting in death; and

(C) emergency mechanical restraints:

- (i) number of mechanical restraints;
- (ii) rate of mechanical restraints (per 1,000 bed days);
- (iii) number of mechanical restraints resulting in serious injury;

and

- (iv) number of mechanical restraints resulting in death; and

(D) involuntary emergency medication orders:

- (i) number of involuntary medication orders;
- (ii) rate of involuntary medication orders (per 1,000 bed days);
- (iii) number of involuntary medication orders resulting in serious

injury; and

- (iv) number of involuntary medication orders resulting in death;

and

(2) de-escalation techniques--description of all de-escalation techniques commonly used by the facility in connection with any of the emergency interventions described in paragraph (1) of this subsection.

§415.273. Restraint for the Management of Non-violent, Non-self-destructive Behavior.

(a) If an assessment reveals a non-psychiatric medical condition or symptom that indicates the need for an intervention to protect the individual from harm, the facility shall use the least restrictive intervention that effectively protects the individual from harm. If the intervention is a restraint as defined in this subchapter, it shall only be used in the follow circumstances:

- (1) medically necessary;
- (2) ordered by a physician;
- (3) needed to ensure the individual's safety; and

(4) used only after less restrictive interventions have been considered, or attempted and determined to be ineffective, or are judged to be unlikely to protect the individual or others from harm.

(b) Prior to the application of a restraint for the management of non-violent, non-self-destructive behavior, an assessment of the individual shall be done to determine that the risks associated with the use of the restraint are outweighed by the risks of not using it.

(c) The physician's order for the restraint shall specify:

- (1) a time limit on the use of the restraint;
- (2) any special considerations for the use of restraint;
- (3) the specific type of restraint to be used;
- (4) who is responsible for implementing the restraint; and
- (5) instructions for monitoring the individual.

(d) The physician shall renew the order as frequently as determined by facility policy, but the time period covered by the order shall not be longer than 24 hours.

(e) The order for the restraint shall be followed by consultation with the individual's treating physician if the restraint was not ordered by the individual's treating physician. The consultation shall be documented in the individual's medical record no later than the next business day, except that it shall be done sooner, when an earlier consultation is clinically indicated.

(f) The care of the individual shall be based on a rationale that reflects consideration of the individual's medical needs and health status.

(1) If the facility has made a clinical determination that its use of restraint for the management of non-violent, non-self-destructive behavior requires a frequency of assessment or an aspect of care or treatment that differs from the provisions of this subchapter governing restraint in a behavioral emergency, facility policies and procedures on the use of restraint for the management of non-violent, non-self-destructive behavior shall address:

(A) the facility's required frequency of assessment of the individual during restraint; and

(B) how the individual's circulation, hydration, elimination, level of distress and agitation, mental status, cognitive functioning, cardiac functioning, skin integrity, nutrition, exercise, and range of motion of extremities are to be assessed and addressed during restraint.

(2) The plan for monitoring the individual and the rationale for the frequency of monitoring shall be documented in the individual's medical record.

(g) A dentist at a facility, including any contractor providing dental services on the facility premises shall not restrain an individual for dental care or rehabilitation unless the restraint is ordered by the individual's physician. The dentist shall maintain a copy of the order in the individual's medical record and shall ensure compliance with the requirements of the order.

(h) Whenever a restraint is ordered by a physician, the ordering physician shall prescribe the frequency of assessment required for the individual during restraint and how the individual's circulation, hydration, elimination needs, level of distress and agitation, mental status, cognitive functioning, cardiac functioning, skin integrity, nutrition, exercise, and range of motion of extremities are to be assessed and addressed during restraint.

§415.274. Permitted Practices.

(a) Escort or brief physical prompt. An individual may be assisted to move from one location to another when guidance is needed if the individual agrees verbally or with gestures and is able to cooperate with the staff member who is attempting to assist the individual to move.

(b) Activities of daily living. A staff member may assist an individual who is willing and able to cooperate with toileting, bathing, dressing, eating, or other personal hygiene activities that normally involve the use of touch.

(c) Immediate danger of harm. A staff member may escort, prompt, or move an individual who is unable to respond in the affirmative or negative or is unable to move due to his or her psychiatric or medical condition if there is an imminent danger of harm to the individual because of a circumstance in the individual's immediate environment.

(d) Immobilization during medical, dental, diagnostic, or surgical procedure. A positioning or securing device used to maintain the position of, limit mobility of, or temporarily immobilize an individual, with the individual's consent, during medical, dental, diagnostic, or surgical procedures and that is a standard part of the procedure is not considered a restraint. The care of the individual shall be based on a rationale that reflects consideration of the individual's medical needs and health status.

(1) Facility policies and procedures on the use of immobilization during medical, dental, diagnostic and surgical procedures shall address:

(A) the frequency of assessment of the individual during immobilization;
and

(B) how the individual's circulation, hydration, elimination needs, level of distress and agitation, mental status, cognitive functioning, cardiac functioning, skin integrity, nutrition, exercise, and range of motion of extremities are to be assessed during immobilization.

(2) The plan for monitoring the individual and the rationale for the frequency of monitoring shall be documented in the individual's medical record.

§415.275. Clinical Timeout and Quiet Time.

(a) The facility shall develop, implement, and enforce policies and procedures that address the use of clinical timeout and quiet time as preventive and de-escalating interventions to prevent a behavioral emergency from occurring and to alleviate or otherwise reduce the necessity for any use of restraint or seclusion.

(b) The policies and procedures shall include the following requirements.

(1) Clinical timeout. A staff member may suggest that an individual initiate clinical timeout.

(A) Prior to clinical timeout, the staff member suggesting that an individual initiate clinical timeout shall explain to the individual that clinical timeout is voluntary.

(B) Each time an individual uses clinical timeout, a staff member shall document that use in the individual's medical record.

(C) The facility's documentation of any use of clinical timeout shall include a description of the conditions under which the clinical timeout was suggested and the individual's response to the suggestion.

(D) A decision by the individual to decline to begin, or remain in, clinical timeout or similar interventions may not result in the staff member's use of restraint or seclusion of the individual, unless the initiation and use of the restraint or seclusion is permitted under, and otherwise meets the requirements of, this subchapter. To physically force or use personal restraint or coercion to direct the individual to a clinical timeout areas or to prevent an individual from leaving an area separated from other individuals receiving services, constitutes a restraint and/or seclusion and renders the procedure subject to the requirements for restraint or seclusion, as applicable, described in this subchapter.

(2) Quiet time. An individual may request the use of quiet time and, unless clinically contraindicated, be granted quiet time.

(A) Under no circumstances may a staff member mandate quiet time for an individual. If a staff member does so, or if the individual wishes to terminate any self-initiated use of quiet time, and a staff member requires the individual to remain, the situation becomes a restraint and/or seclusion, as applicable, and becomes subject to the requirements for restraint or seclusion, as applicable, described in this subchapter.

(B) Unless a staff member terminates quiet time for clinical reasons, the individual may terminate quiet time at any time. Under no circumstances, except for clinical reasons, may a staff member coerce or force a client out of quiet time. If a staff member does so,

the situation becomes a restraint and/or seclusion, and becomes subject to the requirements for restraint or seclusion, as applicable, described in this subchapter.

(C) On every occasion that quiet time is denied or terminated for clinical reasons, a staff member shall document in the medical record the conditions under which the quiet time was denied or terminated.

§415.276. Protective and Supportive Devices.

(a) Voluntary use of protective and supportive devices. A protective or supportive device that is easily removable by the individual without a staff member's assistance is not restraint.

(1) A protective or supportive device may only be used with the consent of the individual.

(2) A supportive device must allow greater freedom of mobility than would be possible without the use of the device.

(3) Use of a protective or supportive device shall be based upon a prior order of a physician, physician's assistant, or advanced practice registered nurse. If the order is given by physician's assistant or advanced practice registered nurse, the use of the protective or supportive device must have been anticipated in the individual's treatment plan and the physician must countersign the order within 24 hours.

(4) If an individual uses a protective or supportive device, the individual's treatment team shall include an occupational or physical therapist and the individualized treatment plan shall specify that a protective or supportive device is to be used and shall:

(A) include any special considerations for the use of the device based on the findings of the comprehensive initial assessment performed at admission or intake;

(B) include an outcome oriented goal;

(C) describe the specific type of device to be used;

(D) specify who is responsible for applying the device;

(E) describe the plan for monitoring the individual; and

(F) reflect periodic assessment, intervention, and evaluation by the treatment team, including the physical therapist, on an ongoing basis.

(5) The facility shall have written policies and procedures that address the proper implementation of this subsection and monitoring requirements with reference to individuals with particular types of protective and supportive devices.

(b) Involuntary use of protective and supportive devices. A protective or supportive device that is not easily removable by the individual without a staff member's assistance constitutes a restraint, and becomes subject to the requirements for restraint or seclusion, as applicable, described in this subchapter.

(c) Protective devices for wound healing. After a wound has healed, the continued use of a protective device constitutes a mechanical restraint and becomes subject to the requirements for restraint or seclusion, as applicable, described in this subchapter.

Proposed Repealed Language
~~Strikethrough—Repealed Text~~

~~DIVISION 1. GENERAL PROVISIONS~~

~~§415.251. Purpose.~~

~~—The purpose of this subchapter is to ensure protection of the rights and well-being of individuals during the use of voluntary and involuntary interventions.~~

~~§415.252. Application.~~

~~—This subchapter applies to the following types of facilities providing mental health services:~~

~~——(1) a state hospital or a state center operated by the Texas Department of Mental~~

~~Health and Mental Retardation (TDMHMR);~~

~~——(2) a psychiatric hospital licensed under Texas Health and Safety Code, Chapter 577, and Chapter 134 of this title;~~

~~——(3) an identifiable mental health service unit of a hospital licensed under Texas Health and Safety Code, Chapter 241, and Chapter 133, Subchapter A, of this title;~~

~~——(4) a crisis stabilization unit (CSU) licensed under Texas Health and Safety Code, Chapter 577, and Chapter 134 of this title;~~

~~——(5) the Waco Center for Youth; and~~

~~——(6) providers, as defined in §412.303(30) of this title (relating to Definitions) of TDMHMR rules governing mental health community services standards (Chapter 412, Subchapter G), to the extent applicable as described in §412.308(e) of this title (relating to Environment of Care and Safety).~~

~~§415.253. Definitions.~~

~~—The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.~~

~~——(1) Advanced practice nurse—A registered nurse approved by the Texas Board of Nurse Examiners to practice as an advanced practice nurse.~~

~~——(2) Behavioral emergency—A situation in which preventive, de-escalative, or verbal techniques have been considered and determined to be ineffective and it is immediately necessary to restrain or seclude an individual to prevent:~~

~~——(A) imminent probable death or substantial bodily harm to the individual because the individual is attempting to commit suicide or serious bodily harm; or~~

~~——(B) imminent physical harm to others because of acts the individual commits.~~

~~——(3) Chemical restraint—The use of any chemical, including pharmaceuticals, through topical application, oral administration, injection, or other means, for purposes of restraining an individual and which is not a standard treatment for the individual's medical or psychiatric condition.~~

~~——(4) Chief executive officer (CEO)—The highest ranking administrator of a facility or the administrator's designee.~~

- (5) ~~Clinical timeout~~—A procedure in which an individual, in response to verbal suggestion from a staff member, voluntarily enters and remains for a period of time in a designated area from which egress is not prevented.
- (6) ~~Clinically competent registered nurse~~—A registered nurse who has demonstrated the competencies required by this subchapter.
- (7) ~~Competence~~—Demonstrated knowledge, skill, and ability.
- (8) ~~Continuous face-to-face observation~~—Maintaining an in-person line of sight that is uninterrupted and free of distraction.
- (9) ~~Department~~—The Texas Department of Mental Health and Mental Retardation (TDMHMR).
- (10) ~~Emergency medical condition~~—A non-psychiatric medical condition manifesting itself by acute symptoms, including severe pain, of sufficient severity such that the absence of immediate attention could reasonably be expected to result in serious impairment to bodily functions, serious dysfunction of any bodily organ or part, or a threat to the health or safety of the woman or the unborn child.
- (11) ~~Episode~~—The time period from the initiation of restraint or seclusion until the release of the individual.
- (12) ~~Facility~~—An entity to which the subchapter applies, as identified in §415.252 of this title (relating to Application).
- (13) ~~Individual~~—Any person receiving mental health services from a facility.
- (14) ~~Initiation~~—The time at which a personal or mechanical restraint is applied to an individual or an individual is placed in seclusion.
- (15) ~~Legally authorized representative (LAR)~~—A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and who may include a parent, guardian, managing conservator of a minor individual, guardian of an adult individual, or person with activated power of attorney for health care decisions.
- (16) ~~Mechanical restraint~~—The application of a device restricting the movement of the whole or a portion of an individual's body to control physical activity, as described in §415.256 of this title (relating to Mechanical Restraint Devices).
- (17) ~~Personal restraint~~—The application of physical force alone restricting the free movement of the whole or a portion of an individual's body to control physical activity.
- (18) ~~Physical force~~—Pressure applied to an individual's body.
- (19) ~~Physician assistant~~—A physician assistant licensed under Chapter 155 of the Texas Occupations Code.
- (20) ~~Protective device~~—Device used voluntarily to prevent injury or to permit wounds to heal.
- (21) ~~Quiet time~~—A procedure in which an individual, on the individual's own initiative, enters and remains for a period of time in a designated area from which egress is not prevented.
- (22) ~~Restraint~~—The use of personal restraint or a mechanical device to involuntarily restrict the free movement of the whole or a portion of an individual's body in order to control physical activity.
- (23) ~~Seclusion~~—The involuntary confinement of an individual away from other individuals for any period of time in a hazard-free room or other area in which direct observation can be maintained and from which egress is prevented.
- (24) ~~Staff member~~—A person with direct care responsibilities, including full-time and part-time employees, contractors, and professionals granted privileges by the hospital.

~~— (25) Substance use disorders—The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning and which meets criteria described in the current *Diagnostic and Statistical Manual* for substance abuse or substance dependence.~~

~~— (26) Supportive device—A device voluntarily used by an individual to posturally support the individual or to assist the individual who cannot obtain or maintain normal bodily functioning.~~

~~— (27) Treating physician—The physician assigned by the facility and designated in the individual's medical record as the physician responsible for the coordination and oversight of the implementation of an individual's comprehensive treatment plan.~~

§415.254. Prohibited Practices.

~~— (a) No intervention, voluntary or involuntary, shall be used:~~

~~— (1) as a means of discipline, retaliation, punishment, or coercion;~~

~~— (2) for the purpose of convenience of staff members or other individuals; or~~

~~— (3) as a substitute for effective treatment or habilitation.~~

~~— (b) Clinical timeout and quiet time shall not be used:~~

~~— (1) in a behavioral emergency; or~~

~~— (2) without the individual's consent.~~

~~— (c) Supportive or protective devices shall not be used:~~

~~— (1) in a behavioral emergency; or~~

~~— (2) without the individual's consent.~~

~~— (d) A restraint shall not be used that:~~

~~— (1) secures an individual to a stationary object while the individual is in a standing position;~~

~~— (2) causes pain to restrict an individual's movement (pressure points or joint locks);~~

~~— (3) restricts circulation;~~

~~— (4) obstructs an individual's airway or puts pressure on the torso;~~

~~— (5) impairs an individual's breathing; or~~

~~— (6) interferes with an individual's ability to communicate.~~

~~— (e) Use of chemical restraint is prohibited.~~

~~— (f) Orders for the use of restraint or seclusion shall never be written as a standing order or on an as needed (PRN) basis.~~

~~— (g) Use of restraint or seclusion solely as a behavior therapy program or as part of a behavior therapy program is prohibited.~~

~~— (h) Use of a restraint board in a behavioral emergency is prohibited except when necessary to promptly transport an individual to another location. A restraint board may be used during medical and dental care, if necessary, and approval as required under §415.285(f) of this title (relating to Restraint as Part of Medical, Dental, Diagnostic, or Surgical Procedures) has been obtained, and as a regular and customary part of care and treatment or transportation.~~

~~— (i) A prone or supine hold shall not be used except to transition an individual into another position and shall not exceed one minute in duration.~~

~~§415.255. Actions To Be Taken in an Emergency While an Individual is in Restraint or Seclusion.~~

~~—(a) Emergency medical condition. If an individual experiences an emergency medical condition while in restraint or seclusion, the staff member providing continuous face to face observation of the individual or other staff must release the individual from restraint or seclusion as soon as possible as indicated by the emergency medical condition.~~

~~—(1) The facility shall ensure that the individual's emergency medical condition is promptly addressed and that aid is rendered to the extent possible in accordance with required policies and procedures for management of emergency medical conditions.~~

~~—(2) Unlocking the seclusion room door or fully releasing the restraints ends the episode.~~

~~—(3) If the situation continues to meet the criteria for a behavioral emergency after the individual's emergency medical condition is addressed, a staff member must obtain a new order for restraint or seclusion.~~

~~—(b) Emergency evacuation. If an emergency evacuation or evacuation drill occurs while an individual is in restraint or seclusion, staff members shall implement established procedures to ensure the individual's safety.~~

~~§415.256. Mechanical Restraint Devices.~~

~~—(a) Only commercially available or departmentally approved devices specifically designed for the safe and comfortable restraint of humans shall be used. The alteration of commercially available devices or independent development of devices must:~~

~~—(1) be based on the individual's special physical needs (e.g., obesity or physical impairment);~~

~~—(2) take into consideration any potential medical (including psychiatric) contraindications, e.g., history of physical or sexual abuse;~~

~~—(3) be approved by a committee whose membership and functions are specified in the bylaws of the medical staff of the facility; and~~

~~—(4) be described fully in writing, with a copy of the description forwarded to the TDMHMR medical director for review. Approval of the device by the TDMHMR medical director is required before the device is used.~~

~~—(b) A staff member must inspect a device before and after each use to ensure that it is in good repair and is free from tears or protrusions that may cause injury. Damaged devices shall not be used to restrain an individual.~~

~~—(c) Despite their commercial availability, the following types of devices shall not be used to implement restraint:~~

~~—(1) those with metal wrist or ankle cuffs;~~

~~—(2) those with rubber bands, rope, cord, or padlocks or key locks as fastening devices;~~

~~—(3) long ties (e.g., leashes);~~

~~—(4) bed sheets; or~~

~~—(5) gags.~~

~~—(d) In a behavioral emergency, restraints are intended to be used independently of each other. The simultaneous use of more than one mechanical device, a mechanical device and personal restraint, or a mechanical device and seclusion requires the physician's clinical justification documented in the individual's medical record.~~

~~—(e) The following are approved mechanical devices.~~

——— (1) Anklets — Padded bands of cloth or leather that are secured around the individual's ankles or legs using hook and loop (e.g., Velcro) or buckle fasteners and attached to a stationary object (e.g., bed or chair frame). The device must not be secured so tightly as to interfere with circulation, nor so loose as to permit chafing of the skin.

——— (2) Arm splints or elbow immobilizers — Strips of any material with padding that extends from below to above the elbow and which are secured around the arm with ties or hook and loop (e.g., Velcro) tabs. If appropriate, they should be secured so that the individual has full use of the hands. The device must not be secured so tightly as to interfere with circulation, nor so loose as to permit chafing of the skin.

——— (3) Belts — A cloth or leather band that is fastened around the waist and secured to a stationary object (e.g., chair frame) or used for securing the arms to the sides of the body. The device must not be secured so tightly as to interfere with breathing and circulation.

——— (4) Camisole — A sleeveless cloth jacket that covers the arms and upper trunk and is secured behind the individual's back. The device must not be secured so tightly as to interfere with breathing and circulation or cause muscle strain. Caution should be exercised when using this device because it may impair balance and the individual's ability to break a fall.

——— (5) Chair restraint — A padded stabilized chair that supports all body parts and prevents the individual's voluntary egress from the chair without assistance (e.g., tabletop chair, Geri-chair). Mechanical restraint devices (e.g., wristlets, anklets) are attached or may be easily attached to restrict movement. The devices must not be secured so tightly as to interfere with breathing and circulation.

——— (6) Enclosed bed — A bed with high side rails or other type of side enclosure and, in some cases, an enclosure (e.g., mesh, rails, etc.) on the top of the bed that prevents the individual's voluntary egress from the bed.

——— (7) Helmet — A plastic, foam rubber, or leather head covering, such as a sports helmet, that may include an attached face guard. The device must be the proper size and the chinstrap should not be so tight as to interfere with breathing and circulation.

——— (8) Mittens — A cloth, plastic, foam rubber, or leather hand covering such as boxing and other types of sport gloves that are secured around the wrist or lower arm with elastic, hook and loop (e.g., Velcro) tabs, ties, paper tape, pull strings, buttons, or snaps. The device must not be secured so tightly as to interfere with circulation.

——— (9) Restraining net — Mesh fabric that is placed over an individual's upper and lower trunk with the head, arms, and lower legs exposed; the net is secured over a mattress to a bed frame and is never placed over the individual's head. The restraining net must be loose enough to allow some movement. The device must not be secured so tightly as to interfere with breathing and circulation.

——— (10) — Restraint bed — A collapsible stretcher of steel frame construction with a fabric cover. The restraint bed has an adjustable backrest and a padded mat to be used under the individual's head and upper body to prevent injury. Approved wristlets, anklets, and belts are used to safely and securely limit the individual's physical activity.

——— (11) — Restraint board — A padded, rigid board to which an individual is secured face up, unless that position is clinically contraindicated for that individual. This device will not be used to restrain an individual in a behavioral emergency except when necessary to promptly transport an individual to another location.

——— (12) — Restraint chair or gurney — A chair or gurney manufactured for the purpose of transporting or restraining an individual who must remain restrained during transport.

~~—— (13) — Straight jacket — A heavy canvas jacket that is open in the back and has sleeves that are stitched closed. The individual's arms are crossed in front; the sleeves secured with ties behind the individual's back. The device must not be secured so tightly as to interfere with breathing and circulation or cause muscle strain. Caution should be exercised when using this device because it may impair the individual's balance and ability to break a fall.~~

~~—— (14) — Ties — A length of cloth or leather used to secure approved mechanical restraints (i.e., mittens, wristlets, arm splints, belts, anklets, vests, etc.) to a stationary object (i.e., bed or wheelchair frame) or to other approved mechanical restraints. Ties must not be secured so tightly as to interfere with breathing and circulation.~~

~~—— (15) — Transport jacket — A heavy canvas sleeveless jacket that encases the arms and upper trunk, fastens with hook and loop (e.g., Velcro) tabs and roller buckles, and is held in place with a strap between the legs. The device is used only as a temporary measure during transport.~~

~~—— (16) — Vest — A sleeveless cloth jacket that covers the upper trunk and is fastened in the back or front with ties or hook and loop tabs (e.g., Velcro). The vest may be secured to a stationary object (e.g., bed or chair frame). The vest and ties must not be secured so tightly as to interfere with breathing and circulation.~~

~~—— (17) — Wristlets — Padded cloth or leather bands that are secured around the individual's wrists or arms using hook and loop (e.g., Velcro) or buckle fasteners and attached to a stationary object (e.g., bed or chair frame, waist belt). The device must not be secured so tightly as to interfere with circulation nor so loose as to permit chafing of the skin.~~

~~§415.257. Staff Training.~~

~~—— (a) The entities to which this subchapter applies as identified in §415.252 of this title (relating to Application) must ensure that all staff members are informed of their roles and responsibilities under this subchapter.~~

~~—— (b) Before assuming job duties involving direct care responsibilities, and at least annually, all staff members must receive training and demonstrate competence in:~~

~~—— (1) identifying the underlying causes of threatening behaviors exhibited by the individuals receiving mental health services;~~

~~—— (2) identifying aggressive or threatening behavior that may be related to an individual's non-psychiatric medical condition;~~

~~—— (3) explaining how the behavior of staff members can affect the behaviors of individuals;~~

~~—— (4) using de-escalation, mediation, self protection, and other techniques, such as clinical timeout and quiet time; and~~

~~—— (5) recognizing and responding to signs of physical distress in individuals who are being restrained or secluded.~~

~~—— (c) Staff members who initiate involuntary interventions must receive training and demonstrate ongoing competence in:~~

~~—— (1) the initiation of seclusion;~~

~~—— (2) the application of personal restraint;~~

~~—— (3) the application of approved restraint devices; and~~

~~—— (4) management of emergency medical conditions following the facility's emergency plans for:~~

~~—— (A) obtaining emergency medical assistance; and~~

~~————— (B) obtaining certification and using techniques of the American Red Cross or American Heart Association for cardiopulmonary respiration (CPR) and relief of foreign-body airway obstruction in the responsive and unresponsive victim of any age.~~

~~— (d) Clinically competent registered nurses authorized to perform assessments of individuals who are in restraint or seclusion must receive training and demonstrate ongoing competence, or be retrained, in:~~

~~————— (1) monitoring cardiac and respiratory status and interpreting their relevance to the physical safety of the individual in restraint or seclusion;~~

~~————— (2) recognizing and responding to nutritional and hydration needs;~~

~~————— (3) checking circulation in, and range of motion of, the extremities;~~

~~————— (4) providing for hygiene and elimination;~~

~~————— (5) addressing physical and psychological status and comfort, including signs of distress;~~

~~————— (6) assisting individuals in meeting behavioral criteria for the discontinuation of restraint or seclusion;~~

~~————— (7) recognizing readiness for the discontinuation of restraint or seclusion; and~~

~~————— (8) recognizing when to contact emergency medical services to evaluate and/or treat an individual for an emergency medical condition.~~

~~— (e) Staff authorized to monitor, under the supervision of clinically competent registered nurses, individuals who are in restraint or seclusion must receive training and demonstrate ongoing competence, or be retrained, in:~~

~~————— (1) monitoring respiratory status;~~

~~————— (2) recognizing nutritional and hydration needs;~~

~~————— (3) checking circulation in, and range of motion of, the extremities;~~

~~————— (4) providing for hygiene and elimination;~~

~~————— (5) addressing physical and psychological status and comfort, including signs of distress;~~

~~————— (6) assisting individuals in meeting behavioral criteria for the discontinuation of restraint or seclusion;~~

~~————— (7) recognizing readiness for the discontinuation of restraint or seclusion; and~~

~~————— (8) recognizing when to contact a registered nurse or emergency medical services to evaluate and/or treat an individual for an emergency medical condition.~~

~~— (f) Registered nurses authorized to receive orders for restraint or seclusion, physicians authorized to give orders for restraint or seclusion, and physicians, physician assistants, and advanced practice nurses who are authorized to perform evaluations of individuals who are restrained or secluded must receive training and demonstrate the competencies described in paragraph (d) of this section, and must receive training and demonstrate competence in:~~

~~————— (1) identifying facility-approved restraints;~~

~~————— (2) recognizing how age, weight, level of development or functioning, gender issues, ethnicity, and history of sexual or physical abuse may affect the way in which an individual reacts to physical contact;~~

~~————— (3) using behavioral criteria for the discontinuation of restraint or seclusion and assisting individuals in meeting these criteria; and~~

~~————— (4) identifying medical and psychological contraindications including physical abuse, sexual abuse, and substance abuse.~~

~~— (g) When a staff member's duties change the staff member shall be assessed for competence and trained as necessary.~~

~~— (h) The facility shall maintain documentation of training for each staff member.~~

~~Documentation shall include the date of training, the name of the instructor, a list of successfully~~

demonstrated competencies, the date competencies were assessed, and the name of the person who assessed competence.

~~DIVISION 2. RESTRAINT OR SECLUSION INITIATED IN RESPONSE TO A BEHAVIORAL EMERGENCY~~

~~§415.261. General Principles for the Use of Restraint or Seclusion Initiated in Response to a Behavioral Emergency.~~

~~— (a) Each facility must develop and implement written policies and procedures consistent with this subchapter and the following general principles concerning the use of restraint or seclusion.~~

~~— (1) It is the department's intent to reduce the use of restraint and seclusion as much as possible and to ensure other less restrictive alternatives are first attempted, when appropriate.~~

~~— (2) Restraint or seclusion should only be used as an intervention of last resort after less restrictive measures have been found to be ineffective or are judged unlikely to protect the individual or others from harm.~~

~~— (3) Before ordering restraint or seclusion, the physician must take into consideration information that could contraindicate or otherwise affect the use of restraint or seclusion, including information obtained during the initial assessment of each individual at the time of admission or intake. This information includes, but is not limited to:~~

~~— (A) techniques, methods, or tools that would help the individual effectively cope with his or her environment;~~

~~— (B) pre-existing medical conditions or any physical disabilities and limitations, including substance use disorders, that would place the individual at greater risk during restraint or seclusion;~~

~~— (C) any history of sexual or physical abuse that would place the individual at greater psychological risk during restraint or seclusion;~~

~~— (D) any history that would contraindicate seclusion, the type of restraint (personal or mechanical), or a particular type of restraint device; and~~

~~— (E) an advance directive for mental health treatment, if there is one.~~

~~— (4) When restraint or seclusion is the appropriate intervention, staff members should use it for the shortest period necessary and should terminate it as soon as the individual demonstrates the release behaviors specified by the physician.~~

~~— (5) A physician must order each use of restraint or seclusion.~~

~~— (6) Staff members must respect and preserve the rights of an individual during restraint or seclusion. Rights of individuals are described in Chapter 404, Subchapter E, of this title (governing Rights of Persons Receiving Mental Health Services).~~

~~— (7) Staff members must provide a protected, private, and observable environment that safeguards the personal dignity and well-being of an individual placed in restraint or seclusion.~~

~~— (8) Staff members must avoid causing undue physical discomfort and must not cause harm or pain to the individual when initiating or using restraint or seclusion.~~

~~— (9) Staff members may use only the minimal amount of physical force that is reasonable and necessary to implement restraint or seclusion.~~

~~— (10) Staff members may use psychoactive medication in an emergency only in accordance with Chapter 405, Subchapter FF of this title, relating to Consent to Treatment with Psychoactive Medication.~~

~~— (11) The treatment team reviews alternative strategies for dealing with behaviors necessitating the use of restraint or seclusion more often than twice in a hospital admission or 30~~

days, whichever is shorter. If the frequency of incidents of restraint or seclusion continues, the treatment team will consult with the medical director or designee to explore alternative treatment strategies.

~~_____ (12) An involuntary intervention is used in accordance with a written modification of the individual's plan of care. The treatment team must explore whether alternative treatment strategies for the future should be considered for an individual when restraint or seclusion is used:~~

~~_____ (A) more often than twice in any 30-day period;~~

~~_____ (B) in two or more separate episodes of any duration within 12 hours; or~~

~~_____ (C) for more than 12 continuous hours.~~

~~_____ (b) This subchapter represents minimum standards. The facility CEO may, through written policies and procedures, promulgate additional guidelines if they are consistent with this subchapter and do not conflict with:~~

~~_____ (1) departmental rules;~~

~~_____ (2) state or federal laws;~~

~~_____ (3) the current version of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) *Comprehensive Accreditation Manual for Hospitals*; or~~

~~_____ (4) other applicable accreditation standards.~~

~~§415.262. Initiating Restraint or Seclusion in a Behavioral Emergency.~~

~~_____ (a) Initiation:~~

~~_____ (1) Only authorized staff who have demonstrated competency in the facility's restraint and seclusion training program may initiate personal restraint in a behavioral emergency.~~

~~_____ (2) Only a physician or clinically competent registered nurse may initiate mechanical restraint or seclusion.~~

~~_____ (b) Physician's order. Only a physician member of the facility's medical staff may order restraint or seclusion.~~

~~_____ (1) The physician's order for restraint or seclusion must:~~

~~_____ (A) designate the specific intervention and procedures authorized, including any specific measures for ensuring the individual's safety, health, and well-being;~~

~~_____ (B) specify the date, time of day, and maximum length of time the intervention and procedures may be used;~~

~~_____ (C) describe the specific behaviors which constituted the emergency which resulted in the need for restraint or seclusion;~~

~~_____ (D) describe the specific release behaviors that the individual must demonstrate before the restraint or seclusion will be discontinued; and~~

~~_____ (E) be signed, timed, and dated by the physician or the registered nurse who accepted the prescribing physician's telephone order.~~

~~_____ (2) If restraint or seclusion was ordered by telephone, the ordering physician must personally sign, time, and date the telephone order within 24 hours of the time the order was originally issued.~~

~~_____ (3) If the physician who ordered the intervention is not the treating physician, the physician ordering the intervention must consult with the treating physician or physician designee as soon as possible. The physician who ordered the intervention must document the consultation in the individual's medical record.~~

~~_____ (c) Face-to-face evaluation.~~

~~—— (1) A physician must conduct a face-to-face evaluation of the individual following the initiation of restraint or seclusion to personally verify the need for restraint or seclusion and to approve its continuation, if indicated.~~

~~—— (A) The face-to-face evaluation must be conducted within one hour following the initiation of restraint or seclusion in a facility other than Waco Center for Youth.~~

~~—— (B) The face-to-face evaluation must be conducted within two hours following the initiation of restraint or seclusion at Waco Center for Youth unless the individual is released prior to the expiration of the original order. If the individual is released prior to the expiration of the original order, the physician must conduct the face-to-face evaluation within 24 hours.~~

~~—— (2) A physician may delegate the face-to-face evaluation to a staff person:~~

~~—— (A) who is under the clinical supervision of a physician appointed to the medical staff and who is privileged to practice in the facility or that portion of the facility to which this subchapter applies; and~~

~~—— (B) who is a physician assistant or an advanced practice nurse appointed to the medical staff and privileged to practice in the facility or that portion of the facility to which this subchapter applies.~~

~~—— (3) A physician who delegates the face-to-face evaluation following the initiation of restraint or seclusion must ensure that the follow-up face-to-face evaluation of the individual is conducted by either the delegating physician or by another physician appointed to the facility medical staff as soon as possible and not later than 24 hours following the initiation of the restraint or seclusion.~~

~~§415.263. Time Limitation on an Order for Restraint or Seclusion Initiated in Response to a Behavioral Emergency.~~

~~—— (a) Original order. A physician may order restraint or seclusion for a period of time not to exceed:~~

~~—— (1) 15 minutes for personal restraint;~~

~~—— (2) one hour for mechanical restraint or seclusion for individuals under the age of 9;~~

~~—— (3) two hours for mechanical restraint or seclusion for individuals ages 9-17; and~~

~~—— (4) four hours for mechanical restraint or seclusion for individuals age 18 and older.~~

~~—— (b) Renewed order. If the original order is about to expire and the clinically competent registered nurse has evaluated the individual face-to-face and determined the continuing existence of an emergency, the clinically competent registered nurse must contact the physician. A physician may renew the original order provided it would not result in the use of:~~

~~—— (1) personal restraint beyond 15 minutes total;~~

~~—— (2) mechanical restraint or seclusion beyond two hours total for individuals under age 9;~~

~~—— (3) mechanical restraint or seclusion beyond four hours total for individuals ages 9-17; or~~

~~—— (4) mechanical restraint or seclusion beyond eight hours total for individuals age 18 and older.~~

~~—— (c) New order. The physician must issue a new order to continue restraint or seclusion beyond the time limits described in subsection (b) of this section. Prior to issuing a new order, the physician, the physician assistant, or advanced practice nurse to whom the physician delegates the authority to evaluate an individual in restraint or seclusion, must perform a face-to-face evaluation of the individual. The new order is subject to the time limitations described in subsections (a) and (b) of this section.~~

~~§415.264. Family Notification.~~

~~—(a) The CEO or CEO's designee must notify the individual's legally authorized representative, or family member of each episode of restraint or seclusion initiated in response to a behavioral emergency as follows:~~

~~——(1) Except as provided by 42 CFR Part 2 and subsection (c) of this section, a staff member must notify as soon as possible the legally authorized representative of a minor under age 18 who is not or has not been married.~~

~~——(2) Except as provided by subsection (c) of this section, in cases in which the adult individual has consented to have one or more specified family members informed regarding the individual's care, and the family member or members have agreed to be informed, a staff member will inform the family member or members of the restraint or seclusion episode within the time frame determined by prior agreement between the individual and specified family member(s).~~

~~—(b) The date and time of notification and the name of the staff member providing the notification must be documented in the individual's medical record.~~

~~—(c) As permitted by the Texas Health and Safety Code, §611.0045(b), a hospital may deny an individual's legally authorized representative access to any portion of a patient's record if the facility determines that the disclosure of such portion would be harmful to the patient's physical, mental, or emotional health.~~

~~§415.265. Disposition of Personal Possessions During Mechanical Restraint or Seclusion.~~

~~—(a) The individual's right to retain personal possessions and personal articles of clothing may be suspended during mechanical restraint or seclusion when necessary to ensure the safety of the individual or others as described in Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services).~~

~~—(b) An inventory of any personal possessions or personal articles of clothing taken from the individual must be listed in the individual's medical record. The inventory must be witnessed by two staff members who must sign the individual's medical record. If personal articles of clothing are taken from the individual, appropriate other clothing will be issued.~~

~~—(c) The items must be kept in a locked place.~~

~~—(d) Upon release, the individual and two staff members must be asked to sign the individual's medical record to indicate the status of items returned.~~

~~§415.266. Restraint in Response to a Behavioral Emergency Occurring Off Facility Premises or During Transportation.~~

~~—(a) All off premises transport. A registered nurse or physician assistant, as appropriate to the individual's clinical condition and the requirements of this subchapter, shall accompany the staff person(s) transporting an individual off premises when there is reason to believe that during the time away from the facility the individual may require:~~

~~——(1) medical attention;~~

~~——(2) administration of medication; or~~

~~——(3) restraint.~~

~~—(b) Excursion off facility premises. A staff member may not restrain an individual transported off facility premises unless the individual meets the criteria for a behavioral emergency, a physician orders the restraint, and transport is medically necessary with documented clinical justification.~~

~~—(1) If restraint is required while an individual is on an excursion off facility premises, the staff member initiating the restraint shall contact a registered nurse to assist in obtaining a physician's order for the restraint as soon as feasible but not later than the timeframes prescribed in this subchapter.~~

~~—(2) The staff members on the excursion must implement, monitor, document, and report restraint in keeping with the requirements of this subchapter when restraint off premises is required.~~

~~—(c) Restraint initiated prior to transportation to another facility. A staff member may not restrain an individual prior to departure unless the situation meets the criteria for a behavioral emergency, a physician orders the restraint, and transport is medically necessary with documented clinical justification.~~

~~—(1) If a behavioral emergency exists and a physician orders restraint prior to departure, at least one of the staff members accompanying the individual to the destination facility must be a registered nurse.~~

~~—(2) A female staff member must accompany a female individual.~~

~~—(3) If the duration of transport exceeds the maximum allowable duration of restraint on the original order, and a behavioral emergency continues to exist, the registered nurse must obtain a physician's telephone order to renew the restraint or obtain a new order for restraint, and renewal, as soon as possible but not later than the timeframes prescribed in this subchapter.~~

~~—(4) Staff members accompanying the individual from the originating facility are responsible for monitoring, documenting, and reporting restraint that is ordered and implemented prior to transportation. If transportation is for the purposes of transfer to another facility, staff at the originating facility must fax the required documentation to the destination facility on the day of transport. Staff at the destination facility are responsible for filing the documentation in the individual's medical record at the destination facility.~~

~~—(d) Restraint initiated during transportation. If restraint is required following departure, a registered nurse must obtain a physician's order from the sending facility for the restraint as soon as feasible but not later than the timeframes prescribed in this subchapter. If a registered nurse is not present during transportation, the staff member initiating restraint must contact a registered nurse to obtain a physician's order as soon as possible but not later than the timeframes prescribed in this subchapter.~~

~~—(1) If an individual is restrained during transportation, the staff member accompanying the individual shall ensure that required monitoring occurs and that documentation, including the physician's order, is faxed to the destination facility before or at the time the individual is delivered to the destination facility.~~

~~—(2) Staff at the originating facility are responsible for documenting and reporting restraint that is ordered and implemented during transportation. Staff at the destination facility are responsible for filing the documentation in the individual's medical record at the destination facility.~~

~~—(e) Comfort during transportation. The staff members shall give an individual reasonable opportunities for food and water and to use the bathroom.~~

~~§415.267. Communicating Criteria for Release and Releasing the Individual from Restraint or Seclusion Initiated in Response to a Behavioral Emergency.~~

~~—(a) As soon as feasible after restraint or seclusion has been implemented in response to a behavioral emergency, the staff member specified in the facility's policies and procedures must discuss with the individual:~~

~~——(1) the specific behaviors that necessitated the intervention;~~

~~——(2) the reasons the individual's behavior continues to necessitate the intervention; and~~

~~——(3) the behaviors that the individual must demonstrate to be released from the intervention.~~

~~—(b) Communication with the individual must be conducted in a language or method that is understandable to the individual (e.g., American Sign Language, Vietnamese) and that accommodates the individual's method of communication (e.g., releasing a hand of an individual who communicates using American Sign Language).~~

~~—(c) A staff member must document in the individual's medical record all attempts to communicate with the individual and the individual's response to these attempts.~~

~~§415.268. Observation, Monitoring, and Care of the Individual in Restraint or Seclusion Initiated in Response to a Behavioral Emergency.~~

~~—(a) Observation.~~

~~——(1) A staff member of the same gender as the individual must maintain continuous face-to-face observation of an individual in mechanical restraint, unless the individual's history or other factors indicate this would be contraindicated, e.g., sexual or physical abuse perpetrated by someone of the same gender, in which case a staff member of the opposite gender may be used.~~

~~——(2) A staff member who is not physically applying personal restraint must maintain continuous face-to-face observation of an individual in personal restraint.~~

~~——(3) A staff member must maintain continuous face-to-face observation of an individual in seclusion for at least one hour. After one hour, the staff member may monitor the individual continuously using simultaneous video and audio equipment in close proximity to the individual.~~

~~—(b) Monitoring. Staff must ensure adequate respiration and circulation of the individual in restraint at all times.~~

~~——(1) Respiratory status, circulation, and skin integrity must be monitored continuously and documented at least every 15 minutes (or more often if deemed necessary by the ordering physician). Cardiac status must be monitored and documented hourly (or more often if deemed necessary by the ordering physician).~~

~~——(2) An assigned staff member must perform range of motion exercises for each extremity, one extremity at a time, for at least five minutes during every hour that an individual is in mechanical restraint.~~

~~—(c) Care. Staff must provide for the hygiene, hydration, nutrition, elimination, and safety of an individual in emergency restraint or seclusion. The individual in restraint or seclusion must be provided:~~

~~——(1) bathroom privileges at least once every two hours (or more frequently, if requested and not contraindicated);~~

~~——(2) an opportunity to drink water or other appropriate liquids every two hours (or more frequently, if requested and not contraindicated);~~

~~——(3) a bath at least once daily (or more frequently, if clinically indicated);~~

- ~~—— (4) medications as ordered;~~
- ~~—— (5) regularly scheduled meals and snacks served on dishes that are appropriate for safety; and~~
- ~~—— (6) an environment that is free of safety hazards, adequately ventilated during warm weather, adequately heated during cold weather, and appropriately lighted.~~

~~§415.269. Safe and Appropriate Techniques for Restraint or Seclusion Initiated in Response to a Behavioral Emergency.~~

- ~~—— (a) When a personal restraint is used, staff members will act to protect the individual's privacy as much as possible without compromising the safety of individuals or staff during the episode.~~
- ~~—— (b) If the individual does not calm and mechanical restraint is required, the individual will be moved to a protected, private, observable environment as soon as possible.~~
- ~~—— (c) When a mechanical restraint is used, the individual must have a protected, private observable environment that safeguards the individual's personal dignity and well-being.~~
- ~~—— (d) The individual must be protected (e.g., from assault by others) while in restraint or seclusion.~~
- ~~—— (e) The place used for seclusion must be a hazard free room or other area in which direct observation can be maintained and from which egress is prevented.~~

~~§415.270. Actions To Be Taken when an Individual Falls Asleep in Restraint or Seclusion Initiated in Response to a Behavioral Emergency.~~

- ~~—— (a) If the individual appears to fall asleep while in mechanical restraint or seclusion, the clinically competent registered nurse will assess the individual and determine if the individual is asleep.~~
- ~~—— (b) If the individual is determined to be asleep, the clinically competent registered nurse will instruct authorized staff to immediately release the individual from restraint or unlock the seclusion room door. Authorized staff will maintain continuous face to face observation until the individual is awake and re-evaluated by the clinically competent registered nurse.~~
- ~~—— (c) The clinically competent registered nurse will assess the individual upon awakening for evidence of behaviors requiring restraint or seclusion.~~
- ~~—— (d) If the individual exhibits behaviors requiring restraint or seclusion upon awakening, the clinically competent registered nurse must obtain a new physician's order.~~

~~§415.271. Transfer of Primary Responsibility for Patient in Restraint or Seclusion.~~

- ~~—— (a) At the time of transfer of primary responsibility for the patient in restraint or seclusion, including transfer of responsibility at the change of shift, the staff member with primary responsibility must meet with the staff member who will assume primary responsibility to review the patient's status.~~
- ~~—— (b) The review must be documented and include:~~
 - ~~—— (1) information regarding the time an involuntary intervention was initiated;~~
 - ~~—— (2) the current status of the individual's physical, emotional, and behavioral condition;~~
 - ~~—— (3) any medication administered; and~~
 - ~~—— (4) type of care needed.~~

~~§415.272. Release of an Individual from Restraint or Seclusion Initiated in Response to a Behavioral Emergency.~~

- ~~—(a) When the individual has exhibited the release behaviors described in the physician's order, the staff member must contact the physician, a physician's assistant, or a registered nurse.~~
- ~~—(b) The physician, physician's assistant, or registered nurse must evaluate the individual for release based on the individual's current behavior.~~
- ~~—(c) Staff must immediately release an individual who has been evaluated and determined to have met the release criteria.~~

~~§415.273. Actions To Be Taken Following Release of an Individual from Restraint or Seclusion Initiated in Response to a Behavioral Emergency.~~

- ~~—(a) Immediately following the release of an individual from restraint or seclusion, a staff member must:
 - ~~—(1) take appropriate action to facilitate the individual's reentry into the social milieu by providing the individual with transition activities and an opportunity to return to ongoing activities;~~
 - ~~—(2) observe the individual for at least 15 minutes; and~~
 - ~~—(3) document observations of the individual's behavior during this transition period in the individual's medical record.~~~~
- ~~—(b) As soon as possible after an episode of restraint or seclusion, available staff members involved in the episode, supervisory staff, the individual, the LAR, and, (with the consent of the individual) family members must meet to discuss the episode. The purpose of the debriefing is to:
 - ~~—(1) identify what led to the episode and what could have been handled differently;~~
 - ~~—(2) identify strategies to prevent future restraint or seclusion, taking into consideration suggestions from the individual and the individual's advanced directive, if any;~~
 - ~~—(3) ascertain whether the individual's physical well-being, psychological comfort, and right to privacy were addressed;~~
 - ~~—(4) counsel the individual in relation to any trauma that may have resulted from the episode;~~
 - ~~—(5) when indicated, identify appropriate modifications to the individual's treatment plan; and~~
 - ~~—(6) when clinically indicated or upon request of individuals who witnessed the restraint debrief persons who witnessed the restraint.~~~~

~~§415.274. Documenting and Reporting Restraint or Seclusion Initiated in Response to a Behavioral Emergency.~~

- ~~—(a) The facility must document the assessment, monitoring, and evaluation of an individual in restraint or seclusion on a facility approved form. Documentation in an individual's medical record must include:
 - ~~—(1) the time the intervention began and ended;~~
 - ~~—(2) the name, title, and credentials of any staff members present at the initiation of the intervention;~~~~

- ~~_____ (3) the time and results of any assessments or evaluations;~~
- ~~_____ (4) the physician's documentation in specific medical or behavioral terms of:

 - ~~_____ (A) the necessity of the order, and~~
 - ~~_____ (B) other generally accepted, less intrusive forms of intervention, if any, that the physician evaluated but rejected, and the reasons those interventions were rejected;~~~~
- ~~_____ (5) the use of specific alternatives and less restrictive interventions, including preventive or de-escalative interventions, which were attempted before the initiation of restraint or seclusion, and the individual's response to these interventions; and~~
- ~~_____ (6) the individual's response to the use of restraint or seclusion.~~
- ~~_____ (b) Staff members must report daily to the CEO or designee each use of an involuntary intervention.~~
- ~~_____ (1) The CEO or designee must take appropriate action to identify and correct unusual or unwarranted utilization patterns.~~
- ~~_____ (2) The CEO or designee shall maintain a central file containing the following information:

 - ~~_____ (A) age, gender, and race of the individual;~~
 - ~~_____ (B) deaths or injuries to the individual or staff members;~~
 - ~~_____ (C) length of time the intervention was used;~~
 - ~~_____ (D) type of intervention, including each type of restraint used;~~
 - ~~_____ (E) name of staff members who were present for the initiation of the intervention; and~~
 - ~~_____ (F) date, day of the week, and time the intervention was initiated.~~~~
- ~~_____ (c) The facility must report any death that occurs while an individual is restrained or secluded for a behavioral emergency or when it is reasonable to assume that an individual's death is the result of restraint or seclusion.~~
- ~~_____ (1) Medicare or Medicaid certified facilities must report the death to the Center for Medicare and Medicaid Services regional office by the next business day following the individual's death.~~
- ~~_____ (2) Facilities that are neither Medicare nor Medicaid certified must report the death to the Office of the Medical Director, Texas Department of Mental Health and Mental Retardation, by the next business day following the individual's death.~~
- ~~_____ (3) The Children's Health Act of 2000 and federal regulations promulgated pursuant to the Act contain additional reporting requirements for facilities that are subject to its requirements.~~

~~DIVISION 3. RESTRAINT DURING CERTAIN PROCEDURES~~

~~§415.285. Restraint as Part of Medical, Dental, Diagnostic, or Surgical Procedures.~~

- ~~_____ (a) If restraint is not part of the usual and customary procedure, it shall be used only if it is:

 - ~~_____ (1) medically necessary;~~
 - ~~_____ (2) ordered by a physician;~~
 - ~~_____ (3) needed to ensure the individual's safety; and~~
 - ~~_____ (4) used only after less restrictive interventions have been considered and determined to be ineffective or are judged unlikely to protect the individual or others from harm.~~~~
- ~~_____ (b) Prior to the application of a restraint during a medical, dental, diagnostic, or surgical procedure, an assessment of the individual must be done to determine that the risks associated with the use of the restraint are outweighed by the risks of not using it.~~
- ~~_____ (c) The physician's order for the restraint must specify:~~

- ~~—— (1) a time limit on the use of the restraint;~~
- ~~—— (2) any special considerations for the use of restraint;~~
- ~~—— (3) the specific type of restraint that is used;~~
- ~~—— (4) who is responsible for implementing the restraint; and~~
- ~~—— (5) instructions for monitoring the individual.~~
- ~~—— (d) The order for the restraint must be followed by consultation with the individual's treating physician if the restraint was not ordered by the individual's treating physician. The consultation must be documented in the individual's medical record no later than the next business day, unless it is clinically indicated to be done sooner.~~
- ~~—— (e) The care of the individual must be based on a rationale that reflects a consideration of the individual's medical needs and health status.~~
- ~~—— (1) If frequency of assessment or other aspects of care and treatment differ from the provisions of this subchapter governing restraint in a behavioral emergency, facility policies and procedures on the use of restraint during medical, dental, diagnostic and surgical procedures must address:~~
 - ~~—— (A) the frequency of assessment of the individual during restraint; and~~
 - ~~—— (B) how the individual's circulation, hydration, elimination, level of distress and agitation, mental status, cognitive functioning, skin integrity, nutrition, exercise, and range of motion of extremities are assessed during restraint.~~
- ~~—— (2) The plan for monitoring the individual and the rationale for the frequency of monitoring must be documented in the individual's medical record.~~
- ~~—— (f) A dentist may not restrain an individual for dental care or rehabilitation unless the restraint is ordered by the individual's physician.~~

~~DIVISION 4. PROCEDURES THAT ARE NOT RESTRAINT OR SECLUSION~~

~~§415.290. Permitted Practices.~~

- ~~—— (a) Escort or brief physical prompt. An individual may be assisted to move from one location to another when guidance is needed. The individual must agree verbally or with gestures and be able to cooperate with the staff member who is attempting to assist the individual to move.~~
- ~~—— (b) Activities of daily living. A staff member may assist an individual who is willing and able to cooperate with toileting, bathing, dressing, eating, or other personal hygiene activities that normally involve the use of touch.~~
- ~~—— (c) Immobilization during medical, dental, diagnostic, or surgical procedure. A positioning or securing device used to maintain the position of, limit mobility of, or temporarily immobilize an individual during medical, dental, diagnostic, or surgical procedures and that is a standard part of the procedure is not considered a restraint. The care of the individual must be based on a rationale that reflects a consideration of the individual's medical needs and health status.~~
 - ~~—— (1) Facility policies and procedures on the use of immobilization during medical, dental, diagnostic and surgical procedures must address:~~
 - ~~—— (A) the frequency of assessment of the individual during immobilization; and~~
 - ~~—— (B) how the individual's circulation, hydration, elimination, level of distress and agitation, mental status, cognitive functioning, skin integrity, nutrition, exercise, and range of motion of extremities are assessed during immobilization.~~
 - ~~—— (2) The plan for monitoring the individual and the rationale for the frequency of monitoring must be documented in the individual's medical record.~~

~~—(d) Administration of psychoactive medication under court order or in an emergency. A brief physical hold is not considered restraint for purposes of this subchapter provided that:~~

~~——(1) the individual currently exhibits behavior that meets the definition of psychiatric emergency as defined in Chapter 405, Subchapter FF of this title, governing Consent to Treatment with Psychoactive Medication, or the individual is currently under a court order allowing the facility to administer medication without consent of the individual and the medication ordered is permitted by the court order;~~

~~——(2) the purpose of administering medication is active treatment to reduce symptoms of a diagnosed mental illness;~~

~~——(3) using medication to reduce specified symptoms of a diagnosed mental illness is standard clinical practice;~~

~~——(4) the specific medication and dosage ordered can be clinically justified as in keeping with standard clinical practice and are appropriate for reduction of specified target symptoms; and~~

~~——(5) the physical hold is terminated as soon as the medication is administered.~~

~~§415.291. Clinical Timeout and Quiet Time.~~

~~—(a) The facility must develop and implement policies and procedures that address the use of clinical timeout and quiet time as preventive and de-escalating interventions to preclude the necessity for the emergency use of restraint or seclusion.~~

~~—(b) The policies and procedures must include the following requirements.~~

~~——(1) Clinical timeout. A staff member may suggest that an individual initiate clinical timeout.~~

~~——(A) Prior to clinical timeout, the staff member suggesting that an individual initiate clinical timeout shall explain to the individual that clinical timeout is voluntary.~~

~~——(B) Each time an individual uses clinical timeout, a staff member must document that use in the individual's medical record.~~

~~——(C) Documentation of the use of clinical timeout must include a description of the conditions under which the clinical timeout was suggested and the individual's response to it.~~

~~——(D) A decision by the individual to decline to begin, or remain in, clinical timeout or similar interventions may not result in staff's use of restraint or the seclusion of the individual, unless the behavior justifies those interventions. To force or coerce the individual constitutes restraint and/or seclusion and renders the procedure subject to the requirements for restraint or seclusion described in this subchapter.~~

~~——(E) Staff may not use physical force or personal restraint to direct the individual to a clinical timeout area. To force or coerce the individual constitutes restraint and/or seclusion and renders the procedure subject to the requirements for restraint or seclusion described in this subchapter.~~

~~——(2) Quiet time. An individual may request the use of quiet time and, unless clinically contraindicated, be granted quiet time.~~

~~——(A) Under no circumstances may quiet time be enforced. If the individual wishes to terminate self-initiated use of quiet time and staff requests that the individual remain, the procedure becomes subject to the requirements outlined in paragraph (1) of this subsection concerning clinical timeout.~~

~~——(B) Unless a staff member terminates quiet time for clinical reasons, the individual may terminate quiet time at any time.~~

~~—————(C) Each time quiet time is denied or terminated for clinical reasons, there must be documentation in the medical record of the conditions under which the quiet time was denied or terminated.~~

~~§415.292. Protective and Supportive Devices.~~

~~——(a) Voluntary use of protective and supportive devices. A protective or supportive device that is easily removable by the individual without staff assistance is not restraint.~~

~~————(1) A protective or supportive device is used with the consent of the individual.~~

~~————(2) A supportive device must allow greater freedom of mobility than would be possible without the use of the device.~~

~~————(3) A physician, physician's assistant, or advanced practice nurse must order the use of a protective or supportive device prior to its use. If the order is given by physician's assistant or advanced practice nurse, the use of the protective or supportive device must have been anticipated in the individual's treatment plan and the physician must countersign the order within 24 hours.~~

~~————(4) The individual's treatment team must include an occupational or physical therapist and the individualized treatment plan must specify that a protective or supportive device is to be used and must:~~

~~————(A) include any special considerations for the use of the device based on the findings of the comprehensive initial assessment performed at admission or intake;~~

~~————(B) include an outcome-oriented goal;~~

~~————(C) describe the specific type of device that is used;~~

~~————(D) specify who is responsible for applying the device;~~

~~————(E) describe the plan for monitoring the individual; and~~

~~————(F) reflect assessment, intervention, and evaluation on an ongoing basis.~~

~~————(5) The facility must have written policies and procedures that address the proper implementation and monitoring of protective and supportive devices in accordance with this subchapter.~~

~~——(b) Involuntary use of protective and supportive devices. A protective or supportive device that is not easily removable by the individual without staff assistance is restraint, and the provisions of this subchapter relating to mechanical restraint apply and must be followed.~~

~~——(c) Protective devices for wound healing. After a wound has healed, the continued use of a protective device is considered a mechanical restraint and the provisions of this subchapter relating to mechanical restraint apply and must be followed.~~

~~DIVISION 5. REFERENCES AND DISTRIBUTION~~

~~§415.299. References.~~

~~—— Reference is made to the following federal and state statutes, rules of the department, and standards:~~

~~————(1) Texas Health and Safety Code, §576.024;~~

~~————(2) Joint Commission on Accreditation of Health Care Organizations (JCAHO) *Comprehensive Accreditation Manual for Hospitals*;~~

~~————(3) Texas Health and Safety Code, Chapters 241 and 577;~~

~~————(4) Texas Occupations Code, Chapter 155;~~

- ~~—— (5) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);~~
- ~~—— (6) Chapter 405, Subchapter FF of this title (relating to Consent to Treatment with Psychoactive Medication);~~
- ~~—— (7) Chapter 412, Subchapter G of this title (relating to Mental Health Community Standards); and~~
- ~~—— (8) Condition of Participation on Patients' Rights, Code of Federal Regulations, §482.13.~~

~~§415.300. Distribution.~~

- ~~—— (a) This subchapter will be distributed to:~~
 - ~~—— (1) members of the Texas Mental Health and Mental Retardation Board;~~
 - ~~—— (2) management and program staff in the department's Central Office;~~
 - ~~—— (3) CEOs of all state hospitals and state centers;~~
 - ~~—— (4) CEOs of all psychiatric hospitals, crisis stabilization units, and other entities licensed under Texas Health and Safety Code Chapter 577;~~
 - ~~—— (5) CEOs of state-operated residential treatment facilities providing mental health services;~~
 - ~~—— (6) providers, as defined in §412.303(30) of this title (relating to Definitions) of TDMHMR rules governing mental health community services standards (Chapter 412, Subchapter G), to the extent applicable as described in §412.308(e) of this title (relating to Environment of Care and Safety); and~~
 - ~~—— (7) advocacy, consumer, family, and provider organizations.~~
- ~~—— (b) CEOs are responsible for distributing this subchapter to appropriate staff members.~~
- ~~—— (c) Upon request, this subchapter will be made available to any staff member, individual, family member of an individual, counsel of record of an individual, or any other interested party~~