



127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1368

H.P. 929

House of Representatives, April 28, 2015

**An Act To Require the Documentation of the Use of Seclusion and
Restraint at Mental Health Institutions in the State**

Reference to the Committee on Health and Human Services suggested and ordered printed.

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative SIROCKI of Scarborough.

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 34-B MRSA c. 1, sub-c. 8 is enacted to read:

3 **SUBCHAPTER 8**

4 **REPORTING AND DOCUMENTATION OF INCIDENTS OF USE OF**
5 **SECLUSION AND RESTRAINT**

6 **§1951. Definitions**

7 As used in this subchapter, unless the context otherwise indicates, the following
8 terms have the following meanings.

9 **1. Hospital program.** "Hospital program" includes recreation, education and other
10 treatment programs offered in an institution.

11 **2. Incident.** "Incident" means an incidence of the use of restraint or seclusion of a
12 client, beginning at the time when the client begins to create a risk of harm and ending at
13 the time when the client ceases to pose a risk of harm and returns to the client's normal
14 activities.

15 **3. Institution.** "Institution" means a state institution or any other public or private
16 institution that provides services that fall under the jurisdiction of the department.

17 **4. Restraint.** "Restraint" means a mechanism or action that limits or controls a
18 client's voluntary movement, deprives a client of the use of all or part of the client's body
19 or maintains a client in an area against the client's will by another person's physical
20 presence or coercion. "Restraint" does not include a prescribed therapeutic device or a
21 safety device.

22 **5. Seclusion.** "Seclusion" means the solitary, involuntary confinement for any
23 period of time of a client in a room or specific area from which egress is denied by a
24 locking mechanism or barrier.

25 **§1952. Reporting of an incident of restraint or seclusion**

26 **1. Reporting to administrator and others.** After each incident:

27 A. A staff member involved shall report the incident to the chief administrative
28 officer of the institution by oral notification immediately; and

29 B. If the client is under 21 years of age or is an incapacitated person, the chief
30 administrative officer of the institution involved shall notify the parent or guardian of
31 the client that an incident has occurred and of any related treatment administered as
32 soon as practicable on the day of the incident. If the parent or guardian is unavailable,
33 a telephone message must be left informing the parent or guardian to contact the
34 institution as soon as possible. If a parent or guardian does not have access to a
35 telephone, the chief administrative officer shall use whatever contact information is

1 available for emergencies. The parent or guardian must be informed that written
2 documentation of the incident that includes a report of all injuries associated with the
3 incident will be provided to the parent or guardian within 7 calendar days.

4 **2. Reporting of serious bodily injury or death.** If serious bodily injury or death of
5 a client occurs during an incident, in addition to the requirements of subsection 1, the
6 chief administrative officer of the institution involved shall notify the commissioner of
7 the incident within 24 hours or on the next business day after the incident.

8 **§1953. Documentation in incident reports**

9 **1. Incident report.** Each incident that occurs in an institution or in the course of a
10 hospital program must be documented in an incident report. The incident report must be
11 completed and provided to the chief administrative officer of the institution involved as
12 soon as practicable after the incident and in all cases within 2 business days. At a
13 minimum, the incident report must include:

14 A. The name of the client;

15 B. The age and gender of the client;

16 C. The location of the incident;

17 D. The date of the incident;

18 E. The date of the incident report;

19 F. The name of the person completing the report;

20 G. The beginning and ending times of the incident;

21 H. The duration of the use of restraint or seclusion;

22 I. A description of the events and circumstances immediately preceding the incident;

23 J. Any less restrictive interventions attempted prior to the incident. If a less
24 restrictive intervention was not attempted, a detailed explanation as to why it was not
25 attempted;

26 K. The behavior of the client that justified the use of restraint or seclusion;

27 L. A detailed description of the incident, including the specific restraint or seclusion
28 used and the resolution of the incident;

29 M. The name of every staff person involved or present and the role in the incident of
30 each staff person involved or present;

31 N. The name of every person other than a staff person present or involved and the
32 role of every other person present or involved in the incident;

33 O. If the client, a staff person or other person sustained bodily injury during the
34 incident, a description of the bodily injury, the name of the injured person and the
35 date and time of nurse or response personnel notification and treatment administered,
36 if any;

37 P. The date, time and method of notification under section 1952, subsection 1,
38 paragraph B; and

1 Q. The date and time of staff debriefing under section 1954, subsection 1, paragraph
2 A.

3 **2. Incident report provided to parent or guardian.** If the client who is the subject
4 of an incident report under subsection 1 is under 18 years of age or is an incapacitated
5 person, the incident report must be provided to the parent or guardian of the client within
6 24 hours.

7 **3. Other rules and policies.** This section does not replace but is in addition to any
8 other incident reporting requirements in the rules or policies of the department or
9 institution.

10 **§1954. Response to the use of restraint or seclusion**

11 **1. Debriefing.** Following an incident, within 2 business days a supervisor of every
12 staff person present at or involved in the incident, and, if possible, the client and the
13 client's parent or guardian, shall review the incident:

14 A. With every staff person who was present at or involved in the incident to discuss:

15 (1) Whether the use of restraint or seclusion was implemented in compliance
16 with this subchapter and department and institution rules; and

17 (2) How to prevent or reduce the future need for restraint or seclusion of the
18 client by the staff persons present; and

19 B. With the client who was the subject of the incident and, if the client is under 18
20 years of age or is an incapacitated person, the parent or guardian of the client to
21 discuss:

22 (1) What triggered the client's escalation; and

23 (2) What the client and staff can do to reduce the future need for restraint or
24 seclusion.

25 **2. Serious bodily injury.** When restraint or seclusion has resulted in serious bodily
26 injury to a client, a staff member or other person requiring emergency medical treatment,
27 the debriefing under subsection 1 must take place as soon as possible but no later than the
28 next business day after the incident.

29 **3. Written response plan.** Following a debriefing under subsection 1, the staff
30 responsible for the client must develop and implement a written plan for response and for
31 prevention of incidents for the client that includes specific alternatives to avoid restraint
32 and seclusion, or, if a written plan already exists, the staff must review and, if
33 appropriate, revise the written plan. The written plan must be provided to the client's
34 parent or guardian within 7 calendar days of the incident.

35 **4. Multiple incidents of restraint or seclusion.** After a client's 3rd incident within
36 a one-year period, within 10 business days of the 3rd incident, the staff responsible for
37 that client shall meet to discuss all the incidents and to evaluate the client's treatment plan
38 to determine modifications of the treatment plan to prevent further occurrences requiring
39 restraint or seclusion. After the client's 6th incident within a one-year period, the

1 institution shall furnish to the department within 10 business days following the 6th
2 incident copies of the incident reports concerning that client during that one-year period
3 and copies of that client's treatment plan or plans.

4 **5. Parent or guardian participation.** If a client under subsection 4 is under 18
5 years of age or is an incapacitated person, a parent or guardian of the client must be
6 encouraged to participate in a meeting under subsection 4, and the meeting must be
7 scheduled, if possible, at a time convenient for the parent or guardian to attend. A client
8 or parent or guardian of a client may not give permission for the future use of restraint or
9 seclusion.

10 **§1955. Reporting**

11 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
12 following terms have the following meanings.

13 A. "Unit" means the area or department of an institution that provides specialized
14 patient care, including but not limited to a unit providing specialized care to children,
15 adolescents or individuals with developmental disabilities.

16 **2. Reporting by the chief administrative officer.** By January 1st of each year, the
17 chief administrative officer shall submit a report to the commissioner detailing for the
18 prior calendar year, by quarter, for that institution:

19 A. The aggregate number of uses of restraint, categorized by the type of restraint
20 used and by the specific unit of the institution in which the use of restraint occurred;

21 B. The aggregate number of uses of seclusion, categorized by the specific unit of the
22 institution in which the seclusion occurred;

23 C. The minimum, maximum, median and mean duration of incidents of restraint,
24 categorized by the type of restraint used and by the specific unit of the institution in
25 which the restraint occurred;

26 D. The minimum, maximum, median and mean duration of incidents of seclusion,
27 categorized by the specific unit of the institution in which the seclusion occurred;

28 E. The number of incidents for which the institution determined that the use of
29 restraint or seclusion was consistent with institution policies and procedures and with
30 the requirements of the federal Department of Health and Human Services, Centers
31 for Medicare and Medicaid Services;

32 F. The number of clients who sustained bodily injury related to the use of restraint or
33 seclusion of those clients;

34 G. The number of staff persons who sustained bodily injury related to the use of
35 restraint or seclusion of a client;

36 H. The number of persons other than clients or staff who sustained bodily injury
37 related to the use of restraint or seclusion of a client; and

38 I. The number of clients who were secluded after the use of restraint.

1 The report must also include documentation summarizing the reasons for the use of
2 restraint or seclusion and the process used to decide that other less restrictive measures
3 would not be effective. The chief administrative officer shall review the report under this
4 subsection and identify areas that may be addressed to reduce the future use of restraint or
5 seclusion for that institution.

6 **3. Reporting by the commissioner.** By February 1st of each year, the
7 commissioner shall submit a report to the joint standing committee of the Legislature
8 having jurisdiction over health and human services matters detailing for the prior calendar
9 year for all institutions:

10 A. The aggregate number of uses of restraint, categorized by the type of restraint
11 used and by the type of unit in which the use of restraint occurred;

12 B. The aggregate number of uses of seclusion, categorized by the type of unit in
13 which the seclusion occurred;

14 C. The minimum, maximum, median and mean duration of incidents of restraint,
15 categorized by the type of restraint used and by the type of unit in which the restraint
16 occurred;

17 D. The minimum, maximum, median and mean duration of incidents of seclusion,
18 categorized by the type of unit in which the seclusion occurred;

19 E. The number of incidents for which the institution determined that the use of
20 restraint or seclusion was consistent with institution policies and procedures and with
21 the requirements of the federal Department of Health and Human Services, Centers
22 for Medicare and Medicaid Services;

23 F. The number of clients who sustained bodily injury related to the use of restraint or
24 seclusion of those clients;

25 G. The number of staff persons who sustained bodily injury related to the use of
26 restraint or seclusion of a client;

27 H. The number of persons other than clients or staff who sustained bodily injury
28 related to the use of restraint or seclusion of a client; and

29 I. The number of clients who were secluded after the use of restraint.

30 The commissioner shall include in the report any corrective action taken or planned to be
31 taken to reduce the future use of restraint or seclusion at all institutions. Following receipt
32 and review of the annual report required pursuant to this subsection, the joint standing
33 committee of the Legislature having jurisdiction over health and human services matters
34 is authorized to report out legislation regarding the use of restraint or seclusion.

35 **§1956. Complaint process**

36 **1. Institution complaint process.** A client or parent or guardian of a client may file
37 a complaint with the chief administrative officer of the institution serving the client of the
38 use of restraint or seclusion of the client at any time after an incident. The chief
39 administrative officer shall issue to the complainant a written report with specific findings
40 regarding the use of restraint or seclusion within 30 days of receiving the complaint. If a
41 violation of law or of a policy of the institution is found in connection with the complaint

1 regarding the use of restraint or seclusion, the chief administrative officer shall develop a
2 corrective action plan by which the institution will achieve compliance.

3 **2. Department complaint process.** Any complainant who is dissatisfied with the
4 result of a complaint filed under subsection 1 may file a complaint with the department,
5 and the complaint is not considered an appeal of the process under subsection 1. The
6 department shall review the results of the process under subsection 1 and may initiate a
7 department investigation of the complaint. The department shall issue to the complainant
8 and the chief administrative officer a written report with specific findings within 60 days
9 of receiving the complaint. If a violation of law or of a policy of the institution is found,
10 the department shall develop a corrective action plan by which the institution will achieve
11 compliance.

12 **Sec. 2. 34-B MRSA §3003, sub-§2, ¶E,** as enacted by PL 1983, c. 459, §7, is
13 amended to read:

14 E. Standards pertaining to the use of seclusion and restraint that comply with chapter
15 1, subchapter 8;

16 **Sec. 3. 34-B MRSA §3803, sub-§3, ¶A,** as amended by PL 2007, c. 319, §5, is
17 further amended to read:

18 A. The chief administrative officer of the psychiatric hospital or facility shall record
19 and make available for inspection every use of mechanical restraint or seclusion and
20 the reasons for its use pursuant to chapter 1, subchapter 8.

21 **Sec. 4. 34-B MRSA §5604-A, sub-§1,** as enacted by PL 2007, c. 356, §24 and
22 affected by §31, is amended to read:

23 **1. Report incident.** A person with knowledge about an incident related to client
24 care, including client-to-client assault, staff-to-client assault, use of seclusion or excessive
25 use of mechanical or chemical restraint, incidents stemming from questionable
26 psychiatric and medical practice or any other alleged abuse or neglect, shall immediately
27 report the details of that incident pursuant to policies and procedures established by the
28 department in rules and in chapter 1, subchapter 8.

29 **Sec. 5. 34-B MRSA §5604-A, sub-§2,** as amended by PL 2011, c. 542, Pt. A,
30 §128, is further amended to read:

31 **2. Maintain reporting system.** The department shall maintain a reportable event
32 and adult protective services system that provides for receiving reports of alleged
33 incidents, prioritizing such reports, assigning reports for investigation by qualified
34 investigators, reviewing the adequacy of the investigations, making recommendations for
35 preventive and corrective actions as appropriate and substantiating allegations against
36 individuals who have been found under the Adult Protective Services Act to have abused,
37 neglected or exploited persons with intellectual disabilities or autism. The department
38 shall fully establish the reportable event and adult protective services system through
39 rulemaking and section 1953.

