

14 NYCRR Parts 524, 550, 580, 584, 590
Express Terms

1. Statutory Authority of 14 NYCRR Part 524 is amended to read as follows:

(Statutory authority: Mental Hygiene Law §§7.07, 7.09, 7.21, 29.29, 31.11, 31.16, 33.23, 33.25, [45.07, 45.19] Executive Law §§556, 557; Social Services Law §§490, 491, 492)

2. Subdivisions (i) and (j) of Section 524.2 of Title 14 NYCRR are amended to read as follows:

(i) Section [45.07 of the Mental Hygiene Law] 556 of the Executive Law provides the Justice Center the authority to make recommendations of preventive and remedial actions to the Office of Mental Health in response to investigations of allegations of abuse or neglect involving patients.

(j) Section [45.19 of the Mental Hygiene Law] 557 of the Executive Law requires that directors of State-operated facilities and directors of licensed programs report deaths of individuals in their care and any allegations of abuse or neglect to the Justice Center.

3. Subdivision (a) of Section 550.1 of Title 14 NYCRR is amended to read as follows:

(a) Section [31.15] 31.35 of the Mental Hygiene Law imposes the requirement of criminal history record checks on each prospective operator, employee, or volunteer of certain mental health treatment providers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such providers.

4. Section 580.3 of Title 14 NYCRR is amended to read as follows:

For purposes of this Part:

(a) [*Abused child in residential care* means a child in residential care who:

(1) is subjected to any of the following acts, regardless of whether such act results in injury, when such act results in injury, when such act is committed by a custodian of the child, is not accidental and does not constitute emergency physical intervention necessary to protect the safety of any person:

(i) being thrown, shoved, kicked, burned, stricken, choked, smothered, pinched, punched, shaken, cut or bitten;

(ii) the display of a weapon, or other object that could reasonably be perceived by the child as a means for the infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury;

(iii) the use of corporal punishment;

(iv) the withholding of nutrition or hydration as punishment; or

(v) the unlawful administration of any controlled substance as defined by article 33 of the Public Health Law, or any alcoholic beverage, as defined by section 3 of the Alcoholic Beverage Control Law, to the child; or

(2) is inflicted, by other than accidental means, with a reasonably foreseeable injury that causes death or creates a substantial risk of death, serious or protracted disfigurement, serious or protracted impairment of his or her physical, mental or emotional condition, or serious or protracted loss or impairment of the function of any organ; or

(3) is subjected to a reasonably foreseeable and substantial risk of injury, by other than accidental means, which would be likely to cause death, serious or protracted disfigurement, serious or protracted impairment of his or her physical, mental or emotional condition, or serious or protracted loss or impairment of the function of any organ; or

(4) is the victim of any sexual offense, as described in the Penal Law.

(b)] *Behavioral Health Organization* or *BHO* shall mean an entity selected by the Commissioner of the Office of Mental Health and the Commissioner of the Office of Alcoholism and Substance Abuse Services pursuant to Section 365-m of the New York State Social Services Law to provide administrative and management services for the purposes of conducting concurrent review of Behavioral Health admissions to inpatient treatment settings, assisting in the coordination of Behavioral Health Services, and facilitating the integration of such services with physical health care.

[(c)](b) *Child*, for purposes of this Part, means an individual under eighteen year of age.

[(d)](c) *Commissioner* means the Commissioner of Mental Health.

[(e)](d) *Concurrent Review* shall mean the review of the clinical necessity for continued inpatient Behavioral Health Services, resulting in a non-binding recommendation regarding the need for such continued inpatient services.

(f) *Custodian* means the director, operator, employee or volunteer of a residential care facility or program; or a consultant of an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a residential care facility pursuant to a contract or other arrangement that permits such person to have regular and substantial contact with children in residential care, as such term is defined in Section 412-a of the Social Services Law.

(g) *Maltreated child* means a child under the age of 18 years who is in residential care and identified as a neglected child.

(h) *Mental or emotional injury or impairment and impairment of mental or emotional condition*, mean a substantial diminution of a child's psychological or intellectual functioning which is determined by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker, or licensed mental health counselor.

(i) *Neglected child in residential care* means a child who:

(1) experiences an impairment to his or her physical, mental or emotional condition or is subjected to a substantial risk of such impairment because he or she has not received:

(i) adequate food, clothing, shelter, medical, dental, optometric or surgical care, consistent with the rules or regulations of the Office, provided that the facility has reasonable access to the provision of such services and that necessary consents to any such medical, dental, optometric or surgical treatment have been sought and obtained from the appropriate individuals;

(ii) access to educational instruction in accordance with the provisions of Article 65 of the Education Law; or

(iii) proper supervision or guardianship, consistent with the rules or regulations of the Office; or

(2) is inflicted with a physical, mental or emotional injury, excluding a minor injury, by other than accidental means, or is subjected to the risk of a physical, mental or

emotional injury, excluding minor injury, by other than accidental means, where such injury or risk of injury was reasonably foreseeable; or

(3) is inflicted with a physical, mental or emotional injury, excluding minor injury, by other than accidental means, or is subjected to the substantial risk of a physical, mental or emotional injury, excluding minor injury, by other than accidental means, as a result of a failure to implement an agreed upon plan of prevention and remediation; or

(4) is subjected to the intentional administration of any prescription or non-prescription drug other than in substantial compliance with a prescription or order issued for the child by a licensed, qualified health care practitioner.

(j)](e) *Office* means the New York State Office of Mental Health.

[(k) *Physical injury or impairment and impairment of physical condition*, means any confirmed harm, hurt, or damage resulting in a significant worsening or diminution of the child's condition.

(l)](f) *Psychiatric inpatient unit of a general hospital or unit* means any part of a hospital, as defined in article 28 of the Public Health Law, operated for the purpose of providing a program of 24-hour professional care and treatment to persons with mental illness.

[(m) *Residential care* means care provided to a child in a psychiatric inpatient unit of a general hospital, as such term is defined in this section.]

5. Paragraph (6) of Subdivision (b) of Section 580.5 of Title 14 NYCRR is amended to read as follows:

(6) The governing body shall provide for the following in those hospitals which provide services to children:

(i) procedures for notification of the child's parent or guardian of [alleged child abuse or maltreatment or other] incidents as required by law, including but not limited to Mental Hygiene Law section 33.23; and

(ii) procedures for the proper reporting to the Statewide Central Register of Child Abuse and Maltreatment of [all incidents of alleged] suspected child abuse or maltreatment by a guardian, caretaker, or other person over the age of 18 who is responsible for the care of the child [as follows, in accordance with the Mental

Hygiene Law and Part 524 of this Title:

(a) to the Statewide Central Register of Child Abuse and Maltreatment immediately;

(b) to the appropriate Office of Mental Health field office, within two weeks, using forms designated by the Office of Mental Health;

(c) to the Commission on Quality of Care and Advocacy for Persons with Disabilities within 72 hours; and

(d) to the Mental Hygiene Legal Service within the next working day].

6. Subdivision (a) of Section 584.4 of Title 14 NYCRR is amended to read as follows:

(a) *General.*

(1) [*Abused child in residential care* means:

(i) a child whose custodian inflicts or allows to be inflicted upon such child physical injury by other than accidental means, which causes or creates a substantial risk of death, serious protracted disfigurement, protracted impairment of physical or emotional health or protracted loss or impairment of the function of any organ;

(ii) a child whose custodian creates or allows to be created a substantial risk of physical injury to such child, by other than accidental means, which would be likely to cause death or serious or protracted disfigurement, protracted impairment of physical or emotional health or protracted loss or impairment of the function of any organ; or

(iii) a child whose custodian commits or allows to be committed a sexual offense against such a child, as described in the Penal Law.

(2) *Admission criteria* are those factors of psychopathology, activities of daily living skills, age and intelligence quotient which are identified for use in determining a child's eligibility for admission or transfer to a residential treatment facility.

[(3)](2) *Alternate care determination* is a utilization review committee decision that

another specifically identified method of care or no care is more appropriate than the method being provided. This decision is the result of a utilization review committee evaluation of a resident, in person or through review of the resident's case record, against criteria for continued stay in the residential treatment facility program.

[(4)](3) *Case records* are those reports which contain information on all matters relating to the admission, legal status, assessment, treatment planning, treatment and discharge of the resident, and shall include all pertinent documents relating to the resident.

[(5)](4) *Child* is an individual who has passed at least his/her 5th birthday, and who has not yet reached his/her 22nd birthday.

[(6)](5) *Clinical staff* are all staff members who provide services directly to residents and their families or legal guardian. *Clinical staff* shall include professional staff, paraprofessional staff and other nonprofessional staff.

[(7)](6) *Continued stay criteria* are those factors of psychopathology, activities of daily living skills and age which are identified for use in determining the necessity and appropriateness of the resident's continued placement in the residential treatment facility. These factors shall provide the basis for determining that the resident continues to meet the admission criteria of the residential treatment facility. Such evidence shall be directly observed and documented by staff of the residential treatment facility or be documented in reports of trial visits to the home or to less restrictive settings.

[(8) *Custodian* means the director, operator, employee or volunteer of a residential care facility or program.

[(9)](7) *Education records* means those reports which contain information on all matters relating to the education of the resident, and shall include all pertinent documents. For children determined to have a handicapping condition by a committee on the handicapped, the education record shall contain the individualized education program. Education records shall be separate and distinct from the case record.

[(10) *Likelihood of serious harm* is a substantial risk of physical harm to other persons as manifested by recent homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.

(11) *Maltreated child* means a child under the age of 18 years who is in residential

care and identified as a neglected child.

(12)](8) *Mental illness* means an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking or judgment to such an extent that the person afflicted requires care, treatment and rehabilitation.

[(13) *Neglected child in residential care* means a child whose custodian impairs, or places in imminent danger of becoming impaired, the child's physical, mental or emotional condition:

(i) by intentionally administering to the child any prescription drug other than in accordance with a physician's or physician's assistant's prescription;

(ii) by failing to adhere to standards for the provision of food, clothing, shelter, education, medical, dental, optometrical or surgical care, or for the use of restraint or seclusion;

(iii) by failing to adhere to standards for the supervision of children by inflicting or allowing to be inflicted physical harm, or a substantial risk thereof; or

(iv) by failing to conform to applicable State regulations for appropriate custodial conduct.

(14)](9) *Preadmission certification committee* is a committee, established and operated pursuant to the provisions of Part 583 of this Title, whose purpose is to determine the eligibility of children for placement in a residential treatment facility and to certify children as priority for admission to a residential treatment facility.

[(15)](10) *Provider of services* means the organization which is legally responsible for the operation of a program. The organization may be an individual, partnership, association, corporation, public agency, or a psychiatric center or institute operated by the Office of Mental Health.

[(18)](11) *Residential treatment facility* is an inpatient psychiatric facility which provides active treatment under the direction of a physician for children who are under 21 years of age and is issued an operating certificate pursuant to this Part.

[(16)](12) *Restraint* [is the use of an apparatus, except for a mechanical support such as a splint, that interferes with the free movement of the resident's arms and/or

legs, or which immobilizes a resident and which the resident is unable to remove easily] means “restraint” as such term is defined in Section 526.4(a) of this Title.

~~[(17)]~~(13) *Seclusion* [is the placement of a resident alone in a room with a closed door which the resident cannot open from the inside] means “seclusion” as such term is defined in Section 526.4(a) of this Title.

~~[(19)]~~(14) *Time-out* [is the placement of a child alone in an unlocked room in which the child is expected to remain for a period of time which is dependent upon specified changes in the child’s problem behavior] means “time out” as such term is defined in Section 526.4(a) of this Title.

7. Paragraph (6) of Subdivision (i) of Section 584.5 of Title 14 NYCRR is amended to read as follows:

(6) obtain prior approval of the Office of Mental Health in accordance with the procedures specified in Part [51] 551 of this Title, to:

(i) change the physical location of the residential treatment facility or utilize additional physical locations;

(ii) initiate major changes in the program;

(iii) terminate the program or services in the program; or

(iv) change the powers or purposes set forth in the certificate of incorporation;

8. Paragraphs (2) and (4) of Subdivision (e) of Section 584.6 of Title 14 NYCRR are amended to read as follows:

(2) The governing body shall develop, and revise as necessary, written policies for the quantity, quality, scope, goals, objectives and evaluation of all programs, policies for the accomplishment of stated purposes, and personnel policies. Personnel policies shall prohibit discrimination on the basis of race, color, creed, disability, sex, marital status, age or national origin. Personnel policies and procedures shall provide for verification of employment history, personal references, work record and qualifications[. Such policies shall also provide for securing a signed sworn statement whether, to the best of his/her knowledge, the applicant has ever been convicted of a crime in this State or any other jurisdiction], as well as requesting the Justice Center for the Protection of Persons with Special Needs to

perform criminal history record checks in accordance with Part 550 of this Title.

(4) The governing body shall establish written volunteer policies and procedures. Such policies and procedures shall provide for screening of volunteers and verification of employment history, personal references and work history; supervision of volunteers; training in accordance with paragraph (3) of this subdivision. Such policies shall also provide for [securing a signed sworn statement whether, to the best of his/her knowledge, the volunteer has been convicted of a crime in this State or any other jurisdiction] requesting the Justice Center for the Protection of Persons with Special Needs to perform criminal history record checks in accordance with Part 550 of this Title.

9. Paragraph (2) of Subdivision (d) of Section 584.10 of Title 14 NYCRR is amended to read as follows:

(2) Other professional disciplines may be included as professional staff, provided that the discipline is acceptable to the Office of Mental Health and is approved as part of the staffing plan by the Office of Mental Health. The discipline shall [either] be from a field related to the treatment of mental illness. The individual shall be licensed in such discipline by the New York State Education Department, or have a master's degree in such discipline from a program approved by the New York State Education Department, and shall have specialized training or experience in treating [the mentally ill] persons with mental illness.

10. Subdivision (a) of Section 584.13 of Title 14 NYCRR is amended to read as follows:

(a) There shall be a written plan for the use of restraint and seclusion, as defined in section 584.4 of this Part, that is in accordance with [Part 27] Section 526.4 of this Title.

11. Subdivisions (b) and (c) of Section 584.16 of Title 14 NYCRR are amended to read as follows:

(b) The case record shall be confidential and access shall be governed by the requirements of section 33.13 of the Mental Hygiene Law and 45 C.F.R. Parts 160 and 164. [Case records shall not be released to any person or agency except as follows:

(1) pursuant to an order of a court of record;

(2) to the mental health information service;

(3) to attorneys representing the child in proceedings in which the resident's involuntary admission to a residential treatment facility is at issue;

(4) with the consent of the child or of someone legally authorized to act on the child's behalf, to physicians and providers of health, mental health, and social or welfare services involved in caring for, treating or rehabilitating the child, such information to be kept confidential and used solely for the benefit of the child; or

(5) to agencies requiring information to make payments to or on behalf of residents; such information shall be kept confidential and limited to the information required.]

(c) The case record shall be available to all clinical staff involved in the care and treatment of the resident, consistent with the provisions of 45 C.F.R. Parts 160 and 164.

12. Subdivision (c) of Section 584.17 of Title 14 NYCRR is amended to read as follows:

(c) As a component of the quality assurance program, each residential treatment facility shall establish a written plan for reviewing untoward incidents in accordance with Part 524 of this Title. [*Untoward incidents* include, but are not limited to, serious drug reactions, suicide attempts, suicides and sudden deaths, assaults, alleged abuse and maltreatment of residents, accidents, and terminations of service against professional advice when such termination presents a risk of hospitalization or danger to the resident or others. This plan shall be subject to approval by the Office of Mental Health. The written plan for reviewing untoward incidents shall address, at a minimum:

(1) the establishment of a special review committee that shall include at least three members of the clinical staff who meet the qualifications provided in section 584.10(d) of this Part. The special review committee shall include a physician on a regular membership basis or by special arrangement;

(2) the review of all untoward incidents by the special review committee to determine the facts in any untoward incident reported, and to review ongoing practices and procedures in relation to such untoward incidents;

(3) the operating procedures of the special review committee, including convening meetings as often as necessary to execute its functions, but in no event less often than quarterly; maintaining written minutes of meetings; and submitting reports to the director. Special review committee members who are directly involved in the untoward incident shall be excluded from the committee's final deliberations;

(4) the establishment of procedures to assure the health and safety of the resident and of other residents in the facility and preventive and remedial actions to be taken as necessary to prevent incidents of child abuse or maltreatment;

(5) the establishment of a procedure for notification of the resident's parent or guardian of an untoward incident involving the resident;

(6) the procedures for the proper reporting of all incidents of alleged child abuse or maltreatment as follows, in accordance with the Mental Hygiene Law and Part 24 of this Title:

(i) to the New York State Central Child Abuse and Maltreatment Register immediately;

(ii) to the appropriate Office of Mental Health regional office, within two weeks, using forms designated by the Office of Mental Health;

(iii) to the Commission on Quality of Care for the Mentally Disabled within 72 hours; and

(iv) to the Mental Hygiene Legal Service within the next working day; and

(7) the integration of the plan for reviewing untoward incidents into the overall quality assurance program.]

13. Paragraphs (7) and (8) of Subdivision (b) of Section 590.4 of Title 14 NYCRR are amended to read as follows:

(7) *Restraint* means [an apparatus which interferes with the free movement of a patient's arms and/or legs, or which totally immobilizes a patient and which the patient is unable to remove easily. A *mechanical support* is a device which is part of a treatment program and is necessary to keep a patient in a safe or comfortable position, or to provide stability for therapeutic measures such immobilization of fractures, administration of intravenous solutions and other medically necessary procedures. A mechanical support shall not be considered a restraint] the term "restraint" as such term is defined in Section 526.4 of this Title.

(8) *Seclusion* means the [placement of a patient in a room or area alone from which the patient cannot leave at will] term "seclusion" as such term is defined in Section 526.4 of this Title.

14. Subdivision (b) of Section 590.5 of Title 14 NYCRR is repealed, and existing subdivisions (c) and (d) are re-lettered as (b) and (c) accordingly.

15. Subparagraph (ii) of Subdivision (c) of Section 590.6 of Title 14 NYCRR is amended to read as follows:

(ii) written policies and procedures governing patient records which ensure confidentiality consistent with the Mental Hygiene Law, sections 33.13, 33.14 and 33.16, 45 C.F.R. Parts 160 and 164 and which provide for appropriate retention of such records pursuant to section 590.12 of this Part; and

16. Subdivision (a) of Section 590.11 of Title 14 NYCRR is amended to read as follows:

(a) No comprehensive psychiatric emergency program shall use restraint or seclusion without a written plan for the use of restraint or seclusion, as defined in section 590.4 of this Part, which is in accordance with [Part 27] Section 526.4 of this Title [and section 33.04 of the Mental Hygiene Law].

17. Subdivision (b) of Section 590.12 of Title 14 NYCRR is amended to read as follows:

(b) The case record shall be available to all clinical staff of the comprehensive psychiatric emergency program who are participating in the treatment of the patient, consistent with 45 C.F.R. Parts 160 and 164.

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