

**REGULATION OF RESTRAINT, SECLUSION,
AND EMERGENCY MEDICATION**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Thomas V. Hatch

House Sponsor: _____

LONG TITLE

General Description:

This bill regulates the use of chemical and physical restraints in health care facilities licensed under the Health Care Facility Licensing and Inspection Act and in human service programs licensed by the Department of Human Services.

Highlighted Provisions:

This bill:

- ▶ gives the Departments of Health and Human Services administrative rulemaking authority to implement and enforce the Regulation of Chemical and Physical Restraints Act;
- ▶ makes compliance with the Regulation of Chemical and Physical Restraints Act a condition of licensing for human service programs and health care facilities; and
- ▶ creates the Regulation of Chemical and Physical Restraints Act which:
 - defines terms;
 - establishes standards for the use of orders for chemical or physical restraint;
 - provides for enforcement of the act through the licensing entities for health care facilities and human service programs; and
 - prohibits a private right of action for a violation of the act.

Monies Appropriated in this Bill:

None



Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-21-5, as last amended by Chapter 209, Laws of Utah 1997**26-21-13**, as last amended by Chapter 114, Laws of Utah 1990**62A-2-106**, as last amended by Chapters 188 and 212, Laws of Utah 2005**62A-2-108**, as last amended by Chapter 188, Laws of Utah 2005

ENACTS:

26-48-101, Utah Code Annotated 1953**26-48-102**, Utah Code Annotated 1953**26-48-103**, Utah Code Annotated 1953**26-48-104**, Utah Code Annotated 1953

*Be it enacted by the Legislature of the state of Utah:*Section 1. Section **26-21-5** is amended to read:**26-21-5. Duties of committee.**

The committee shall:

(1) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

(a) for the licensing of health care facilities; ~~and~~
(b) requiring the submission of architectural plans and specifications for any proposed new health care facility or renovation to the department for review; and(c) for regulation and enforcement of the provisions of Chapter 48, Regulation of Chemical and Physical Restraints Act, for health care facilities as defined in Section 26-48-102;

(2) approve the information for applications for licensure pursuant to Section 26-21-9;

(3) advise the department as requested concerning the interpretation and enforcement of the rules established under this chapter; and

(4) advise, consult, cooperate with, and provide technical assistance to other agencies of the state and federal government, and other states and affected groups or persons in carrying

out the purposes of this chapter.

Section 2. Section **26-21-13** is amended to read:

26-21-13. License issued to facility in compliance or substantial compliance with chapter and rules.

(1) The department shall issue a standard license for a health care facility which is found to be in compliance with the provisions of:

(a) this chapter and with all applicable rules adopted by the committee[-]; and

(b) Chapter 48, Regulation of Chemical and Physical Restraints Act, and all applicable rules adopted by the committee.

(2) The department may issue a provisional or conditional license for a health care facility which is in substantial compliance if the interests of the public will not be jeopardized.

Section 3. Section **26-48-101** is enacted to read:

CHAPTER 48. REGULATION OF CHEMICAL AND PHYSICAL RESTRAINTS ACT
26-48-101. Title.

This chapter is known as the "Regulation of Chemical and Physical Restraints Act."

Section 4. Section **26-48-102** is enacted to read:

26-48-102. Definitions.

As used in this chapter:

(1) "Chemical restraint":

(a) means any drug that is not a standard treatment for an individual's medical or psychiatric condition and that is used for:

(i) discipline;

(ii) coercion;

(iii) retaliation; or

(iv) convenience to control behavior; and

(b) does not include tranquilizers or other medication prescribed by a practitioner licensed to prescribe drugs under Title 58, Occupations and Professions, if the patient has consented to the medication.

(2) "Emergency" means a situation in which there is unanticipated resident or patient behavior:

(a) that places the resident, patient, or others at imminent threat of serious violence or

injury if no intervention occurs;

(b) for which preventive, verbal, nonseclusion, or other restraint methods of responding to the behavior have proven ineffective; and

(c) that calls for immediate restraint or seclusion to prevent the imminent threat of serious violence or injury.

(3) "Health care facility":

(a) includes the facilities defined in Subsection 26-21-2(13);

(b) an intermediate care facility for the mentally retarded licensed under Section 26-21-13.5; and

(c) the state hospital.

(4) "Human services program" is defined in Section 62A-2-101.

(5) "Physical restraint":

(a) means any manual method, including physical force, physical or mechanical device, material or equipment attached or adjacent to an individual's body that the individual cannot remove easily, which restricts freedom of movement or normal access to the individual's body;

(b) includes seclusion in a room in which egress is prevented; and

(c) does not include:

(i) a protective device;

(ii) a quiet room used at the individual's request or with the individual's knowing concurrence when considered in the best interest of the individual; or

(iii) escorting a person from one place to another without undue force.

(6) "Protective device" means a device used to prevent involuntary self injury, or to permit wounds to heal.

(7) "Restraint" includes both physical restraint and chemical restraint.

Section 5. Section **26-48-103** is enacted to read:

26-48-103. Regulation of chemical and physical restraints.

(1) (a) The entities that license and regulate health care facilities and human services programs shall adopt administrative rules:

(i) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

(ii) in accordance with this section.

(b) The rules adopted in accordance with this section shall be consistent with the

standards and requirements for participation in the federal Medicare program, but shall
supercede the standards required by the federal Medicare program when:

(i) the requirements of this section are more restrictive than the federal Medicare
program; and

(ii) permitted by the federal Medicare program.

(2) The rules adopted under Subsection (1) shall:

(a) identify devices and practices that constitute:

(i) a physical restraint;

(ii) a chemical restraint; and

(iii) the appropriate use of protective devices; and

(b) establish when physical restraints, chemical restraints, or protective devices may be
used.

(3) The rules adopted in accordance with this section shall at a minimum, provide that:

(a) orders for the use of physical or chemical restraint must be implemented in the least
restrictive manner possible;

(b) orders for restraint may only be selected when:

(i) less restrictive measures have been found to be ineffective; and

(ii) the behavior of the individual creates an emergency as defined in Section
26-48-102;

(c) orders for restraint may never be written as a standing order or on an as needed
basis;

(d) the treating physician must be consulted as soon as possible if the restraint is not
ordered by the individual's treating physician;

(e) a physician or independent practitioner must see and evaluate the need for the order
for restraint within one hour after the initiation of the order for restraint; and

(f) each order for restraint:

(i) is limited to:

(A) two hours for adults, and children ages 9 to 17; or

(B) one hour for children under nine years of age;

(ii) may only be renewed for up to the limits provided for in Subsection (3)(f)(i), for a
total of six hours, including the original order;

(iii) after the original order expires, may only be renewed if a physician or licensed independent practitioner sees and assesses the individual before issuing a new order;

(iv) may not include both seclusion in a room in which egress is prohibited and any other form of restraint unless:

(A) the individual is continually monitored face to face by an assigned staff member;

(B) the individual is continually monitored by staff using both video and audio equipment while the staff is in close proximity to the individual; and

(C) the individual's vital signs are recorded every 15 minutes;

(v) must include water and bathroom privileges at least every two hours; and

(vi) must include a consultation with a physician or independent practitioner who is not a part of the individual's treatment team if restraint is ordered and administered for the individual more than twice in any 30-day period.

Section 6. Section **26-48-104** is enacted to read:

26-48-104. Enforcement.

(1) (a) The provisions of this chapter as applied to health care facilities licensed under Chapter 21, Health Care Facility Licensing and Inspection Act, and human services programs licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities, shall be enforced by the applicable licensing authority for the health care facility or human services program.

(b) A violation of this act is a violation of the standards for licensing of the facility or program.

(2) This act does not create a private right of action for enforcement of the act.

Section 7. Section **62A-2-106** is amended to read:

62A-2-106. Office responsibilities.

(1) Subject to the requirements of federal and state law, the office shall:

(a) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to establish:

(i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for licensees, that shall be limited to:

(A) fire safety;

(B) food safety;

(C) sanitation;

183 (D) infectious disease control;
184 (E) safety of the:
185 (I) physical facility and grounds; and
186 (II) area and community surrounding the physical facility;
187 (F) transportation safety;
188 (G) emergency preparedness and response;
189 (H) the administration of medical standards and procedures, consistent with the related
190 provisions of this title;
191 (I) staff and client safety and protection;
192 (J) the administration and maintenance of client and service records;
193 (K) staff qualifications and training, including standards for permitting experience to
194 be substituted for education, unless prohibited by law;
195 (L) staff to client ratios; and
196 (M) access to firearms;
197 (ii) basic health and safety standards for therapeutic schools, that shall be limited to:
198 (A) fire safety, except that the standards are limited to those required by law or rule
199 under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;
200 (B) food safety;
201 (C) sanitation;
202 (D) infectious disease control, except that the standards are limited to:
203 (I) those required by law or rule under Title 26, Utah Health Code or Title 26A, Local
204 Health Authorities; and
205 (II) requiring a separate room for clients who are sick;
206 (E) safety of the physical facility and grounds, except that the standards are limited to
207 those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks
208 Act;
209 (F) transportation safety;
210 (G) emergency preparedness and response;
211 (H) access to appropriate medical care, including:
212 (I) subject to the requirements of law, designation of a person who is authorized to
213 dispense medication; and

(II) storing, tracking, and securing medication;

(I) staff and client safety and protection that permits the school to provide for the direct supervision of clients at all times;

(J) the administration and maintenance of client and service records;

(K) staff qualifications and training, including standards for permitting experience to be substituted for education, unless prohibited by law;

(L) staff to client ratios; and

(M) access to firearms;

(iii) procedures and standards for permitting a licensee to:

(A) provide in the same facility and under the same conditions as children, residential treatment services to a person 18 years old or older who:

(I) begins to reside at the licensee's residential treatment facility before the person's 18th birthday;

(II) has resided at the licensee's residential treatment facility continuously since the time described in Subsection (1)(a)(iii)(A)(I);

(III) has not completed the course of treatment for which the person began residing at the licensee's residential treatment facility; and

(IV) voluntarily consents to complete the course of treatment described in Subsection (1)(a)(iii)(A)(III); or

(B) (I) provide residential treatment services to a child who is:

(Aa) 12 years old or older; and

(Bb) under the custody of the Division of Juvenile Justice Services; and

(II) provide, in the same facility as a child described in Subsection (1)(a)(iii)(B)(I), residential treatment services to a person who is:

(Aa) at least 18 years old, but younger than 21 years old; and

(Bb) under the custody of the Division of Juvenile Justice Services;

(iv) minimum administration and financial requirements for licensees; ~~and~~

(v) guidelines for variances from rules established under this Subsection (1); and

(vi) regulation and enforcement of the use of physical and chemical restraints in human service programs that:

(A) are regulated by this chapter; and

(B) are regulated by Title 26, Chapter 48, Regulation of Chemical and Physical
Restraints Act;

(b) enforce rules approved by the licensing board;
(c) issue licenses in accordance with this chapter;
(d) if the United States Department of State executes an agreement with the office that
designates the office to act as an accrediting entity in accordance with the Intercountry
Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more agencies and persons to
provide intercountry adoption services pursuant to:

(i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and
(ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L.
No. 106-279;

(e) make rules to implement the provisions of Subsection (1)(d);
(f) conduct surveys and inspections of licensees and facilities in accordance with
Section 62A-2-118;

(g) collect licensure fees;
(h) provide necessary administrative support to the licensing board;
(i) notify licensees of the name of a person within the department to contact when
filing a complaint;

(j) investigate complaints regarding any licensee or human services program;
(k) have access to all records, correspondence, and financial data required to be
maintained by a licensee;

(l) have authority to interview any client, family member of a client, employee, or
officer of a licensee; and

(m) have authority to deny, condition, revoke, suspend, or extend any license issued by
the department under this chapter by following the procedures and requirements of Title 63,
Chapter 46b, Administrative Procedures Act.

(2) In establishing rules under Subsection (1)(a)(ii)(G), the office shall require a
licensee to establish and comply with an emergency response plan that requires clients and staff
to:

(a) immediately report to law enforcement any significant criminal activity, as defined
by rule, committed:

- 276 (i) on the premises where the licensee operates its human services program;
277 (ii) by or against its clients; or
278 (iii) by or against a staff member while the staff member is on duty;
279 (b) immediately report to emergency medical services any medical emergency, as
280 defined by rule:
281 (i) on the premises where the licensee operates its human services program;
282 (ii) involving its clients; or
283 (iii) involving a staff member while the staff member is on duty; and
284 (c) immediately report other emergencies that occur on the premises where the licensee
285 operates its human services program to the appropriate emergency services agency.

286 Section 8. Section **62A-2-108** is amended to read:

287 **62A-2-108. Licensure requirements -- Expiration -- Renewal.**

288 (1) Except as provided in Section 62A-2-110, a person, agency, firm, corporation,
289 association, or governmental unit, acting severally or jointly with any other person, agency,
290 firm, corporation, association, or governmental unit, may not establish, conduct, or maintain a
291 human services program in this state without a valid and current license issued by and under
292 the authority of the office as provided by this chapter and the rules of the licensing board.

293 (2) (a) For purposes of this Subsection (2), "member" means a person or entity that is
294 associated with another person or entity:

- 295 (i) as a member;
296 (ii) as a partner;
297 (iii) as a shareholder; or
298 (iv) as a person or entity involved in the ownership or management of a residential
299 treatment program owned or managed by the other person or entity.

300 (b) A license issued under this chapter may not be assigned or transferred.

301 (c) An application for a license under this chapter shall be treated as an application for
302 reinstatement of a revoked license if:

303 (i) (A) the person or entity applying for the license had a license revoked under this
304 chapter; and

305 (B) the revoked license described in Subsection (2)(c)(i)(A) is not reinstated before the
306 application described in this Subsection (2)(c) is made; or

(ii) a member of an entity applying for the license:

(A) (I) had a license revoked under this chapter; and

(II) the revoked license described in Subsection (2)(c)(ii)(A)(I) is not reinstated before the application described in this Subsection (2)(c) is made; or

(B) (I) was a member of an entity that had a license revoked under this chapter at any time before the license was revoked; and

(II) the revoked license described in Subsection (2)(c)(ii)(B)(I) is not reinstated before the application described in this Subsection (2)(c) is made.

(3) A current license shall at all times be posted in the facility where each human services program is operated, in a place that is visible and readily accessible to the public.

(4) (a) Each license issued under this chapter expires at midnight 12 months from the date of issuance unless it has been:

(i) previously revoked by the office; or

(ii) voluntarily returned to the office by the licensee.

(b) A license shall be renewed upon application and payment of the applicable fee, unless the office finds that the licensee:

(i) is not in compliance with the:

(A) provisions of this chapter; or

(B) rules made under this chapter;

(ii) has engaged in a pattern of noncompliance with the:

(A) provisions of this chapter; or

(B) rules made under this chapter;

(iii) has engaged in conduct that is grounds for denying a license under Section 62A-2-112; or

(iv) has engaged in conduct that poses a substantial risk of harm to any person.

(5) Any licensee that is in operation at the time rules are made in accordance with this chapter shall be given a reasonable time for compliance as determined by the rule.

(6) (a) A license for a human services program issued under this section shall apply to a specific human services program site.

(b) A human services program shall obtain a separate license for each site where the human services program is operated.

338 (7) A human services program subject to the provisions of this chapter, and to the
339 provisions of Title 26, Chapter 48, Regulation of Chemical and Physical Restraints Act, shall
340 comply with:
341 (a) the provisions of this chapter and rules made under this chapter; and
342 (b) the provisions of Title 26, Chapter 48, Regulation of Chemical and Physical
343 Restraints Act, and rules adopted by the office under the provisions of that act and Section
344 62A-2-106.

Legislative Review Note
as of 1-25-06 10:52 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0091**Regulation of Restraint, Seclusion, and Emergency
Medication***01-Feb-06
11:40 AM*

State Impact

An ongoing appropriation to the Department of Human Services of \$2,973,900 is required to implement the provisions of this bill. Of this amount, \$1,998,100 is from the General Fund, \$177,300 is from Dedicated Credit Revenue, \$16,000 is from Federal Funds and \$782,500 is from Transfers.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
General Fund	\$1,998,100	\$1,903,300	\$0	\$0
Federal Funds	\$16,000	\$12,300	\$16,000	\$12,300
Dedicated Credits	\$177,300	\$168,300	\$177,300	\$168,300
Transfers	\$782,500	\$771,500	\$782,500	\$771,500
TOTAL	\$2,973,900	\$2,855,400	\$975,800	\$952,100

Individual and Business Impact

Provisions of this bill could increase costs to both medical facilities and to patients. These costs could be up to \$200.00 per incident. Additional staff could be required at some facilities.

Office of the Legislative Fiscal Analyst