A bill to amend 1974 PA 258, entitled "Mental health code,"
by amending sections 700 and 740 (MCL 330.1700 and 330.1740), as amended by 1995 PA 290; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 700. As used in this chapter, unless the context requires otherwise:

(a) "Authorized licensed practitioner" means a physician assistant or nurse practitioner.

(b) "Chemical restraint" means a drug that is used for
discipline or convenience and is not required to treat a diagnosed medical symptom. Chemical restraint may include a drug that is administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others, a drug that has the temporary effect of restricting the resident's freedom of movement, or a drug that is not a standard treatment for the resident's medical or psychiatric condition. As used in this subdivision:

(i) "Convenience" means an action taken to control a resident's behavior with a lesser amount of effort and not in the resident's best interest.

(ii) "Discipline" means an action taken to punish or penalize a resident.

(iii) "Medical symptom" means an indication or characteristic of a physical or psychological condition.

(c) (a)—"Criminal abuse" means 1 or more of the following:

(i) An assault that is a violation or an attempt or conspiracy to commit a violation of sections 81 to 90 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.81 to 750.90 of the Michigan Compiled Laws. 1931 PA 328, MCL 750.81 to 750.90. Criminal abuse does not include an assault or an assault and battery that is a violation of section 81 of Act No. 328 of the Public Acts of 1939, being section 750.81 of the Michigan Compiled Laws, and the Michigan penal code, 1931 PA 328, MCL 750.81, that is committed by a recipient against another recipient.

(ii) A criminal homicide that is a violation or an attempt or conspiracy to commit a violation of section 316, 317, or 321 of Act No. 328 of the Public Acts of 1931, being sections 750.316, 750.317, and 750.321 of the Michigan Compiled Laws the Michigan penal code, 1931 PA 328, MCL 750.316, 750.317, and 750.321.
(iii) Criminal sexual conduct that is a violation or an attempt or conspiracy to commit a violation of sections 520b to 520e or 520g of Act No. 328 of the Public Acts of 1931, being sections 750.520b to 750.520e and 750.520g of the Michigan Compiled Laws the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.250e and 750.520g.

(iv) Vulnerable adult abuse that is a violation or an attempt or conspiracy to commit a violation of section 145n of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.145n of the Michigan Compiled Laws the Michigan penal code, 1931 PA 328, MCL 750.145n.

(v) Child abuse that is a violation or an attempt or conspiracy to commit a violation of section 136b of Act No. 328 of the Public Acts of 1931, being section 750.136b of the Michigan Compiled Laws the Michigan penal code, 1931 PA 328, MCL 750.136b.

(d) "Debrief" means a discussion of the incident specifics following a restraint or seclusion event. Debrief includes details of the pre-incident circumstances, the intervention method employed and the incident's outcome.


(f) (g) "Health care insurer" means an insurer authorized to provide health insurance in this state or a legal entity that is self-insured and provides health care benefits to its employees.

(g) (d) "Health maintenance organization" means an organization licensed under part 210 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.21001 to
433.21098 of the Michigan Compiled Laws—
that term as defined in
section 3501 of the insurance code of 1956, 1956 PA 218, MCL
500.3501.

(h) "Less restrictive therapeutic intervention" means a
professionally recognized strategy that is intended to recognize
the early sign of impending dangerous behavior, to identify and
ameliorate the cause of that behavior, and to implement a
nonaversive technique to minimize the consequence of a patient's
potentially harmful behavior.

(i) (e)—"Money" means any legal tender, note, draft,
certificate of deposit, stock, bond, check, or credit card.

(j) (f)—"Nonprofit dental care corporation" means a dental
care corporation incorporated under Act No. 125 of the Public Acts
of 1963, being sections 550.351 to 550.373 of the Michigan Compiled
Laws—1963 PA 125, MCL 550.351 to 550.373.

(k) (g)—"Person-centered planning" means a process for
planning and supporting the individual receiving services that
builds upon the individual's capacity to engage in activities that
promote community life and that honors the individual's
preferences, choices, and abilities. The person-centered planning
process involves families, friends, and professionals as the
individual desires or requires.

(l) (h)—"Privileged communication" means a communication made
to a psychiatrist or psychologist in connection with the
examination, diagnosis, or treatment of a patient, or to another
person while the other person is participating in the examination,
diagnosis, or treatment or a communication made privileged under
other applicable state or federal law.

(m) "Prone immobilization" means a manual method of restraint
of a patient in a prone position, usually on the floor, where force
is applied to the patient's body in a manner that prevents him or
her from moving out of the prone position.

(n) (i) "Restraint" means the use of a physical device to
restrict an individual's movement, a manual method, physical or
mechanical device, or equipment that immobilizes or reduces the
ability of a patient to move his or her arms, legs, body, or head
freely. Restraint includes chemical restraint. Restraint includes
physically holding a resident for forced medication, medical
treatment, or laboratory study. Restraint does not include the use
of a device primarily intended to provide anatomical support. As
used in this subdivision, "medical symptom" means an indication or
characteristic or a physical or psychological condition.

(o) (i) "Seclusion" means the temporary placement of a
recipient in a room, alone, where egress is prevented by any means.

(p) "Standard treatment or dosage for the resident's
condition" means 1 or more of the following:

(i) A medication used within the pharmaceutical parameters
approved by the United States Food and Drug Administration and the
manufacturer for the indications that it is manufactured and
labeled to address, including listed dosage parameters.

(ii) Use of the medication that follows national practice
standards established or recognized by the medical community or
professional medical associations or organizations.

(iii) Use of the medication to treat a specific resident's
clinical condition is based on that resident's symptoms, overall
clinical situation, and on the physician's or other licensed
independent practitioner's knowledge of that resident's expected
and actual response to the medication.
(q) "Support plan" means a written plan that specifies the personal support services or any other supports that are to be developed with and provided for a recipient.

(r) "Treatment plan" means a written plan that specifies the goal-oriented treatment or training services, including rehabilitation or habilitation services, that are to be developed with and provided for a recipient.

Sec. 740. (1) A resident shall not be placed in physical restraint or seclusion except in the circumstances and under the conditions set forth in this section or in other law. Restraint or seclusion must not be imposed as a means of coercion, discipline, or retaliation by staff members.

(2) Restraint or seclusion may only be imposed to ensure the immediate physical safety of the resident, staff member, or others and must be discontinued at the earliest possible time, except chemical restraint which shall continue until the intended effects are no longer observed.

(3) An order for using restraint or seclusion must not be written as a standing order or on an as needed basis.

(4) Restraint or seclusion may only be used when less restrictive intervention has been determined to be ineffective to protect the resident, staff member, or others from harm.

(5) The type or technique of restraint or seclusion used must be the least restrictive intervention that will be effective to protect the resident, staff member, or others from harm. The use of prone immobilization is prohibited unless implementation of other techniques is medically contraindicated and documented in the resident's record.

(6) Seclusion and mechanical restraint, as defined in section
2b of 1973 PA 116, MCL 722.112b, shall be used only in a hospital.

(7) An order for restraint or seclusion must be by a physician or an authorized licensed practitioner who is trained in the agency policy regarding the use of restraint and seclusion. Inpatient psychiatric services for beneficiaries under 21 years of age must be provided under the direction of a physician as required by 42 CFR 441.151, as follows:

(a) If the resident's treating physician is available, only he or she can order restraint or seclusion.

(b) The resident's treating physician must be consulted as soon as possible if the treating physician did not order the restraint or seclusion.

(8) (2) A resident may be restrained only as provided in subsection (3), (4), or (5) or secluded after less restrictive therapeutic interventions have been considered, and only if restraint is essential in order to prevent the resident from physically harming himself, herself, a staff member, or others, or in order to prevent him or her from causing substantial property damage. Consideration of less restrictive measures shall interventions must be documented in the medical record. If restraint is essential in order to prevent the resident from physically harming himself, herself, or others, the resident may be physically held with no more force than is necessary to limit the resident's movement, until a restraint may be applied. Seclusion must not be used if the intervention is essential to prevent the resident from harming himself or herself.

(9) (3) A resident may be temporarily restrained for a maximum of 30 minutes without an order or authorization in an emergency situation. Immediately after imposition of the temporary restraint,
a physician shall or authorized licensed practitioner must be contacted. If, after being contacted, the physician or authorized licensed practitioner does not order or authorize the restraint, the restraint shall must be removed.

(10) A resident may be restrained prior to or secluded before examination pursuant according to an authorization a verbal order by a physician or authorized licensed practitioner if the verbal order is received by a registered nurse. An authorized restraint may continue only until a physician can personally examine the resident or for 2 hours, whichever is less. If it is not possible for the physician to examine the resident within 2 hours, a physician may reauthorize the restraint for another 2 hours. Authorized restraint may not continue for more than 4 hours.

The resident must be personally examined within 1 hour after initiating restraint or seclusion by a physician or authorized licensed practitioner to evaluate all of the following:

(a) The resident's immediate situation.
(b) The resident's reaction to the intervention.
(c) The resident's medical and behavioral condition.
(d) The need to continue or terminate the restraint or seclusion.

(11) A resident may be restrained pursuant or secluded according to an order by a physician or authorized licensed practitioner made after personal examination of the resident. An ordered restraint shall continue only for that period of time specified in the order or for 8 hours, whichever is less. Each order for restraint or seclusion shall continue only for the period of time specified in the order or for up to the following limits, whichever is less, for up to a total of 24 hours:
(a) Four hours for an adult 18 years of age or older.
(b) Two hours for a child or an adolescent 9 to 17 years of age.
(c) One hour for a child under 9 years of age.

(12) After 24 hours, before writing a new order, a physician or authorized licensed practitioner who is responsible for the resident's care must see and assess the resident.

(13) A restrained or secluded resident shall must continue to receive food, shall must remain clothed or otherwise covered unless his or her actions make it impractical or inadvisable, must be kept in sanitary conditions, shall be clothed or otherwise covered, shall and must be given access to toilet facilities. and shall be given the opportunity to sit or lie down. A secluded resident must be provided a bed or similar piece of furniture unless his or her actions make it impractical or inadvisable.

(14) A restraint or seclusion must be discontinued whenever the circumstance that justified its use ceases to exist, regardless of the length of the order. A restraint must be removed every 2 hours for not less than 15 minutes unless medically clinically contraindicated. or whenever they are no longer essential in order to achieve the objective which justified their initial application.

(15) Each instance of restraint requires full justification for its application, and the results of each periodic examination shall must be placed promptly in the resident's record.

(16) Each instance of restraint or seclusion requires debriefing to reverse or minimize the negative effect of its use and to prevent future instances of restraint or seclusion.
(17) (9) If a resident is restrained or secluded repeatedly, the resident's individual plan of services shall must be reviewed and modified to facilitate the reduction of the use of restraints, restraint or seclusion.

Enacting section 1. Section 742 of the mental health code, 1974 PA 258, MCL 330.1742, is repealed.

Enacting section 2. This amendatory act takes effect 90 days after the date it is enacted into law.