

# SENATE BILL NO. 28

January 18, 2023, Introduced by Senators ANTHONY, WOJNO, GEISS, CAVANAGH, SINGH and CHANG and referred to the Committee on Health Policy.

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:**

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

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

5           (b) "Chemical restraint" means a drug that is used for

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

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

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

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

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

16 (i) An assault that is a violation or an attempt or conspiracy  
17 to commit a violation of sections 81 to 90 of the Michigan penal  
18 code, ~~Act No. 328 of the Public Acts of 1931, being sections 750.81~~  
19 ~~to 750.90 of the Michigan Compiled Laws. 1931 PA 328, MCL 750.81 to~~  
20 **750.90**. Criminal abuse does not include an assault or an assault  
21 and battery that is a violation of section 81 of ~~Act No. 328 of the~~  
22 ~~Public Acts of 1939, being section 750.81 of the Michigan Compiled~~  
23 ~~Laws, and the Michigan penal code, 1931 PA 328, MCL 750.81,~~ that is  
24 committed by a recipient against another recipient.

25 (ii) A criminal homicide that is a violation or an attempt or  
26 conspiracy to commit a violation of section 316, 317, or 321 of ~~Act~~  
27 ~~No. 328 of the Public Acts of 1931, being sections 750.316,~~  
28 ~~750.317, and 750.321 of the Michigan Compiled Laws the Michigan~~  
29 **penal code, 1931 PA 328, MCL 750.316, 750.317, and 750.321.**

1 (iii) Criminal sexual conduct that is a violation or an attempt  
2 or conspiracy to commit a violation of sections 520b to 520e or  
3 520g of ~~Act No. 328 of the Public Acts of 1931, being sections~~  
4 ~~750.520b to 750.520e and 750.520g of the Michigan Compiled Laws~~ **the**  
5 **Michigan penal code, 1931 PA 328, MCL 750.520b to 750.250e and**  
6 **750.520g.**

7 (iv) Vulnerable adult abuse that is a violation or an attempt  
8 or conspiracy to commit a violation of section 145n of the Michigan  
9 penal code, ~~Act No. 328 of the Public Acts of 1931, being section~~  
10 ~~750.145n of the Michigan Compiled Laws~~ **1931 PA 328, MCL 750.145n.**

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

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

19 (e) ~~(b)~~ "Health care corporation" means a nonprofit health  
20 care corporation operating under the nonprofit health care  
21 corporation reform act, ~~Act No. 350 of the Public Acts of 1980,~~  
22 ~~being sections 550.1101 to 550.1704 of the Michigan Compiled Laws~~  
23 **1980 PA 350, MCL 550.1101 to 550.1704.**

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

27 (g) ~~(d)~~ "Health maintenance organization" means ~~an~~  
28 ~~organization licensed under part 210 of the public health code, Act~~  
29 ~~No. 368 of the Public Acts of 1978, being sections 333.21001 to~~

1 ~~333.21098 of the Michigan Compiled Laws~~ that term as defined in  
2 section 3501 of the insurance code of 1956, 1956 PA 218, MCL  
3 500.3501.

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

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

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

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

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

29 (m) "Prone immobilization" means a manual method of restraint

1 of a patient in a prone position, usually on the floor, where force  
 2 is applied to the patient's body in a manner that prevents him or  
 3 her from moving out of the prone position.

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

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

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

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

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

25 (iii) Use of the medication to treat a specific resident's  
 26 clinical condition is based on that resident's symptoms, overall  
 27 clinical situation, and on the physician's or other licensed  
 28 independent practitioner's knowledge of that resident's expected  
 29 and actual response to the medication.

1           (q) ~~(k)~~—"Support plan" means a written plan that specifies the  
2 personal support services or any other supports that are to be  
3 developed with and provided for a recipient.

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

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

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

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

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

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

29           (6) Seclusion and mechanical restraint, as defined in section

1 2b of 1973 PA 116, MCL 722.112b, shall be used only in a hospital.

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

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

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

13 (8) ~~(2)~~ A resident may be restrained ~~only as provided in~~  
14 ~~subsection (3), (4), or (5)~~ **or secluded** after less restrictive  
15 **therapeutic** interventions have been considered, and only if  
16 ~~restraint~~ **it** is essential in order to prevent the resident from  
17 physically harming himself, herself, **a staff member**, or others. ~~r~~  
18 ~~or in order to prevent him or her from causing substantial property~~  
19 ~~damage.~~ Consideration of less restrictive ~~measures shall~~  
20 **interventions must** be documented in the medical record. ~~If~~  
21 ~~restraint is essential in order to prevent the resident from~~  
22 ~~physically harming himself, herself, or others, the resident may be~~  
23 ~~physically held with no more force than is necessary to limit the~~  
24 ~~resident's movement, until a restraint may be applied.~~ **Seclusion**  
25 **must not be used if the intervention is essential to prevent the**  
26 **resident from harming himself or herself.**

27 (9) ~~(3)~~ A resident may be temporarily restrained for a maximum  
28 of 30 minutes without an order ~~or authorization~~ in an emergency  
29 **situation**. Immediately after imposition of the temporary restraint,

1 a physician ~~shall~~ **or authorized licensed practitioner must** be  
 2 contacted. If, after being contacted, the physician **or authorized**  
 3 **licensed practitioner** does not order ~~or authorize~~ the restraint,  
 4 the restraint ~~shall~~ **must** be removed.

5 (10) ~~(4)~~ A resident may be restrained ~~prior to~~ **or secluded**  
 6 **before** examination ~~pursuant~~ **according** to an ~~authorization~~ **a verbal**  
 7 **order** by a physician **or authorized licensed practitioner if the**  
 8 **verbal order is received by a registered nurse.** An ~~authorized~~  
 9 ~~restraint may continue only until a physician can personally~~  
 10 ~~examine the resident or for 2 hours, whichever is less. If it is~~  
 11 ~~not possible for the physician to examine the resident within 2~~  
 12 ~~hours, a physician may reauthorize the restraint for another 2~~  
 13 ~~hours. Authorized restraint may not continue for more than 4~~  
 14 ~~hours.~~ **The resident must be personally examined within 1 hour after**  
 15 **initiating restraint or seclusion by a physician or authorized**  
 16 **licensed practitioner to evaluate all of the following:**

- 17 (a) **The resident's immediate situation.**  
 18 (b) **The resident's reaction to the intervention.**  
 19 (c) **The resident's medical and behavioral condition.**  
 20 (d) **The need to continue or terminate the restraint or**  
 21 **seclusion.**

22 (11) ~~(5)~~ A resident may be restrained ~~pursuant~~ **or secluded**  
 23 **according** to an order by a physician **or authorized licensed**  
 24 **practitioner** made after personal examination of the resident. ~~An~~  
 25 ~~ordered restraint shall continue only for that period of time~~  
 26 ~~specified in the order or for 8 hours, whichever is less.~~ **Each order**  
 27 **for restraint or seclusion shall continue only for the period of**  
 28 **time specified in the order or for up to the following limits,**  
 29 **whichever is less, for up to a total of 24 hours:**



1 (a) Four hours for an adult 18 years of age or older.

2 (b) Two hours for a child or an adolescent 9 to 17 years of  
3 age.

4 (c) One hour for a child under 9 years of age.

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

8 (13) ~~(6)~~ A restrained or secluded resident shall ~~must~~ continue  
9 to receive food, ~~shall~~ ~~must~~ remain clothed or otherwise covered  
10 unless his or her actions make it impractical or inadvisable, must  
11 be kept in sanitary conditions, ~~shall be clothed or otherwise~~  
12 ~~covered, shall and must~~ be given access to toilet facilities, ~~and~~  
13 ~~shall be given the opportunity to sit or lie down.~~ A secluded  
14 resident must be provided a bed or similar piece of furniture  
15 unless his or her actions make it impractical or inadvisable.

16 (14) ~~(7)~~ Restraints shall ~~A restraint or seclusion must be~~  
17 discontinued whenever the circumstance that justified its use  
18 ceases to exist, regardless of the length of the order. A restraint  
19 must be removed every 2 hours for not less than 15 minutes unless  
20 medically ~~clinically~~ contraindicated. ~~or whenever they are no~~  
21 ~~longer essential in order to achieve the objective which justified~~  
22 ~~their initial application.~~

23 (15) ~~(8)~~ Each instance of restraint requires full  
24 justification for its application, and the results of each periodic  
25 examination ~~shall~~ ~~must~~ be placed promptly in the resident's record.  
26 ~~of the resident.~~

27 (16) Each instance of restraint or seclusion requires  
28 debriefing to reverse or minimize the negative effect of its use  
29 and to prevent future instances of restraint or seclusion.

1           (17) ~~(9)~~—If a resident is restrained **or secluded** repeatedly,  
2 the resident's individual plan of services ~~shall~~**must** be reviewed  
3 and modified to facilitate the reduction of the use of  
4 restraints.**restraint or seclusion.**

5           Enacting section 1. Section 742 of the mental health code,  
6 1974 PA 258, MCL 330.1742, is repealed.

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