

106TH CONGRESS
1ST SESSION

H. R. 1313

To amend title XI of the Social Security Act to restrict the use of physical and chemical restraints and seclusion in certain facilities receiving Medicare or Medicaid funds, to require recording and reporting of information on that use and on sentinel events occurring in those facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1999

Ms. DEGETTE (for herself, Mr. STARK, Ms. DELAURO, Mrs. MORELLA, Mr. WAXMAN, Ms. KILPATRICK, Mr. GEORGE MILLER of California, Mr. BROWN of Ohio, Mr. SANDERS, Mr. LANTOS, Mr. MARTINEZ, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. RANGEL, Mr. CROWLEY, Mrs. CAPPS, Ms. PELOSI, Mr. FORD, Mr. MCGOVERN, Mr. WYNN, Ms. SCHAKOWSKY, Mr. CUMMINGS, and Ms. BERKLEY) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XI of the Social Security Act to restrict the use of physical and chemical restraints and seclusion in certain facilities receiving Medicare or Medicaid funds, to require recording and reporting of information on that use and on sentinel events occurring in those facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Patient Freedom from
3 Restraint Act of 1999”.

4 **SEC. 2. LIMITATION ON USE OF PHYSICAL AND CHEMICAL**
5 **RESTRAINTS AND SECLUSION IN CERTAIN**
6 **MEDICARE OR MEDICAID FUNDED TREAT-**
7 **MENT FACILITIES.**

8 (a) IN GENERAL.—Part B of title XI of the Social
9 Security Act is amended by adding at the end the fol-
10 lowing new section:

11 “LIMITATION ON USE OF RESTRAINTS AND SECLUSION IN
12 CERTAIN MEDICARE AND MEDICAID FUNDED TREAT-
13 MENT FACILITIES

14 “SEC. 1164. (a) FREEDOM FROM RESTRAINTS AND
15 SECLUSION.—As a condition of participation or receipt of
16 funds under the medicare program under title XVIII or
17 under a State medicaid program under title XIX, a cov-
18 ered facility (as defined in subsection (b)) shall—

19 “(1) protect and promote the right of each resi-
20 dent or patient to be free from physical or mental
21 abuse, corporal punishment, involuntary seclusion,
22 and any physical or chemical restraints (as defined
23 in subsection (g)) imposed for purposes of discipline
24 or convenience;

1 “(2) meet the requirements of subsection (d)
2 (relating to recording and reporting on the use of re-
3 straints and seclusion and sentinel events);

4 “(3) provide for annual training of all staff with
5 direct resident or patient care responsibility on the
6 proper use of restraints and seclusion, their alter-
7 natives, and techniques and methods to identify and
8 defuse potential emergency situations; and

9 “(4)(A) make available to each resident or pa-
10 tient, and to the guardian of each such resident or
11 patient, a statement of their rights to freedom from
12 restraints and seclusion as required by this section
13 and information on the purpose of the appropriate
14 protection and advocacy agencies (as defined in sub-
15 section (g)(4)) and their addresses and telephone
16 numbers; and

17 “(B) clearly and conspicuously post such infor-
18 mation in the facility.

19 “(b) COVERED FACILITY DEFINED.—For purposes
20 of this section, the term ‘covered facility’ means any of
21 the following:

22 “(1) A facility that provides inpatient or resi-
23 dential psychiatric treatment or treatment of mental
24 illness (including a psychiatric hospital, as defined in

1 section 1861(f), and an institution for mental dis-
2 eases, as defined in section 1905(i)).

3 “(2) An intermediate care facility for the men-
4 tally retarded (as defined in section 1905(d)).

5 “(3) A facility that provides residential treat-
6 ment for children.

7 “(c) REQUIREMENTS RELATING TO RESTRAINTS AND
8 SECLUSION.—

9 “(1) GENERAL LIMITATIONS.—

10 “(A) IN GENERAL.—A covered facility may
11 only impose restraints and seclusion—

12 “(i) to ensure the immediate physical
13 safety of the resident or patient or others;
14 and

15 “(ii) only upon the written order of a
16 physician that specifies the duration (not
17 to exceed 2 consecutive hours) and cir-
18 cumstances under which the restraints and
19 seclusion are to be used.

20 “(B) EMERGENCY EXCEPTION.—Subpara-
21 graph (A)(ii) shall not apply in emergency cir-
22 cumstances specified by the Secretary during
23 the period before a written order can reasonably
24 be obtained.

1 “(2) PROHIBITION OF USE OF STANDING OR-
2 DERS.—Written orders for such restraints or seclu-
3 sion shall never be written as a standing order.

4 “(3) USE AS LAST RESORT.—A covered facility
5 may only use restraints and seclusion as an emer-
6 gency safety measure and as a last resort and only
7 after other less restrictive approaches have failed.

8 “(4) LEAST RESTRICTIVE MANNER.—A covered
9 facility shall use restraints and seclusion only in the
10 least restrictive manner possible, to protect the resi-
11 dent or patient or others from harm, and must re-
12 move or end restraints and seclusion at the earliest
13 possible time.

14 “(5) NO SIMULTANEOUS USE.—A covered facil-
15 ity may not use restraints and seclusion simulta-
16 neously.

17 “(d) RECORDING AND REPORTING REQUIRE-
18 MENTS.—In accordance with the protocol established
19 under subsection (e)(1)—

20 “(1) RECORDING USES OF RESTRAINT AND SE-
21 CLUSION IN PATIENT RECORDS.—

22 “(A) IN GENERAL.—Each covered facility
23 shall record and maintain, as part of a resi-
24 dent’s or patient’s medical record, the following
25 information on each incident in which restraints

1 or seclusion are used with respect to a resident
2 or patient of the facility:

3 “(i) The uses of restraint and seclu-
4 sion, including the type of restraint or se-
5 clusion used and the time and duration of
6 its use.

7 “(ii) The rationale for restraint or se-
8 clusion and types of less restrictive alter-
9 natives that were tried or considered.

10 “(iii) Evidence of treatment planning
11 to reduce the probability of future inci-
12 dents that would lead to use of restraint or
13 seclusion.

14 “(B) AVAILABILITY TO P&A AGENCIES.—
15 Each covered facility shall make available the
16 information recorded under subparagraph (A)
17 for inspection by staff of the appropriate pro-
18 tection and advocacy agencies.

19 “(2) SUBMISSION OF PERIODIC REPORTS ON
20 OVERALL USE OF RESTRAINTS AND SECLUSION.—
21 Each covered facility shall submit to the Secretary
22 and to the appropriate protection and advocacy
23 agencies a report that specifies the number of times
24 restraints or seclusion were used during the report-
25 ing period. Such report shall be submitted on a peri-

1 odic basis specified by the Secretary, but in no case
2 less often than annually.

3 “(3) SUBMISSION OF REPORTS ON ALL SEN-
4 TINEL EVENTS.—

5 “(A) IN GENERAL.—Each covered facility
6 shall submit to the appropriate protection and
7 advocacy agency a report on—

8 “(i) each sentinel event (as defined in
9 subsection (g)(6)) that occurs respecting a
10 resident or patient, including only the
11 name of the resident or patient and a gen-
12 eral description of the event; and

13 “(ii) if information is available to the
14 facility, information on the death of any
15 individual who died within 14 days after
16 the date of discharge from the facility.

17 “(B) DEADLINE FOR SUBMISSION.—Each
18 report under subparagraph (A)(i) shall be sub-
19 mitted within 7 days of the date of the incident
20 involved and each report under subparagraph
21 (A)(ii) shall be submitted within 7 days of re-
22 ceipt of information concerning the death of the
23 former resident or patient.

24 “(C) ANNUAL REPORT.—Each covered fa-
25 cility shall submit on an annual basis to the

1 Secretary an annual report on sentinel events
2 for which reports were made during the pre-
3 vious year under subparagraph (A).

4 “(e) IMPLEMENTATION.—

5 “(1) IN GENERAL.—Not later than 1 year after
6 the date of the enactment of this section, the Sec-
7 retary shall establish a protocol for the recording
8 and reporting of information under subsection (d).
9 To the extent feasible, the Secretary shall establish
10 the protocol in a manner that is consistent with
11 medical records recording systems and that is co-
12 ordinated with other applicable health care informa-
13 tion reporting systems. The Secretary shall consult
14 with appropriate protection and advocacy agencies in
15 establishing and implementing the protocol.

16 “(2) PUBLICATION OF SUMMARY.—The Sec-
17 retary shall compile and publish on an annual basis
18 a comprehensive summary of the reports received
19 under subsection (d)(3).

20 “(3) ESTABLISHMENT OF GUIDELINES FOR
21 PEER REVIEW ORGANIZATIONS.—The Secretary shall
22 establish guidelines for the use of utilization and
23 quality control peer review organizations (as defined
24 in section 1152(a)) in reviewing policies and proce-

1 dures of covered facilities regarding the use of re-
2 straints and seclusion consistent with this section.

3 “(f) SANCTIONS.—

4 “(1) LOSS OF MEDICARE AND MEDICAID FUND-
5 ING.—A covered facility that fails to comply with the
6 requirements of subsection (a) (including failure to
7 provide for annual training of staff in accordance
8 with subsection (a)(3)) is subject to disqualification
9 from participation in the medicare program under
10 title XVIII and the medicaid program under title
11 XIX for such period at the Secretary may specify.

12 “(2) CIVIL MONEY PENALTY FOR FAILURE TO
13 FILE SENTINEL REPORTS.—A covered facility that
14 fails to file a report required to be made under sub-
15 section (b)(3) within the period so required is sub-
16 ject to a civil money penalty not to exceed \$5,000
17 for each such violation. The provisions of section
18 1128A (other than subsections (a) and (b)) shall
19 apply to civil money penalties under this subsection
20 in the same manner as they apply to a penalty or
21 proceeding under section 1128A(a).

22 “(g) DEFINITIONS.—For purposes of this section:

23 “(1) RESTRAINTS.—The term ‘restraints’
24 means any chemical or physical restraint (as defined
25 in paragraphs (2) and (3)).

1 “(2) CHEMICAL RESTRAINT.—The term ‘chem-
2 ical restraint’ means the use of any medication or bi-
3 ological for the purpose of immobilizing the indi-
4 vidual, inducing a state of sleep or unconsciousness,
5 or reducing the ability to move freely. Such term
6 does not include involuntary administration of medi-
7 cation when administered pursuant to a court order
8 or the administration of medication for voluntary or
9 emergency treatment (such as anesthesia adminis-
10 tered before a surgical procedure).

11 “(3) PHYSICAL RESTRAINT.—The term ‘phys-
12 ical restraint’ means any mechanical or personal re-
13 striction that immobilizes or reduces an individual’s
14 ability to move arms, legs, or head freely. Such term
15 does not include devices, such as orthopedically pre-
16 scribed appliances, surgical dressings and bandages,
17 protective helmets and supportive body bands, and
18 other physical holding when necessary for routine
19 physical examinations or tests or for orthopedic sur-
20 gical or other similar medical treatment purposes or
21 when used to provide support for the achievement of
22 functional body position or proper balance or to per-
23 mit an individual to participate in ongoing activities
24 with the risk of physical harm.

1 “(4) PROTECTION AND ADVOCACY AGENCY.—
2 The term ‘protection and advocacy agency’ means an
3 appropriate board under the protection and advocacy
4 system established under part C of title I of the De-
5 velopmental Disabilities Assistance and Bill of
6 Rights Act (42 U.S.C. 6041 et seq.).

7 “(5) SECLUSION.—The term ‘seclusion’ means
8 the involuntary confinement of a resident or patient
9 in a room from which the resident or patient is
10 physically prevented from leaving.

11 “(6) SENTINEL EVENT.—The term ‘sentinel
12 event’ means an unexpected occurrence involving a
13 substantial impairment of the physical or psycho-
14 logical condition of a resident or patient, including
15 any burn, laceration, or abrasion of the skin, frac-
16 ture of any bone, substantial hematoma, injury to
17 any internal organ, or any injury that occurs as a
18 result of repeated harm to any bodily function or
19 organ (including the skin), if the occurrence is unre-
20 lated to the natural course of the individual’s illness
21 or underlying condition, and includes the death of
22 the individual in any case.”.

23 (b) EFFECTIVE DATES.—

24 (1) PROTECTION AGAINST USE OF PUNITIVE
25 RESTRAINTS AND SECLUSION.—The requirements of

1 subsections (a)(1) and (c) of section 1164 of the So-
2 cial Security Act, as added by subsection (a), apply
3 to restraints and seclusion used on or after the first
4 date of the first month that begins more than 6
5 months after the date of the enactment of this Act.

6 (2) REPORTING REQUIREMENTS.—

7 (A) DEADLINE FOR ESTABLISHING PRO-
8 TOCOL.—The Secretary of Health and Human
9 Services shall first establish the protocol de-
10 scribed in section 1164(e)(1) of the Social Secu-
11 rity Act, as added by subsection (a), within 1
12 year after the date of the enactment of this Act.

13 (B) REPORTS.—Covered facilities are first
14 required to record information and submit re-
15 ports under section 1164(c) of the Social Secu-
16 rity Act, as so added, for restraints and seclu-
17 sion used on and after a date (specified by the
18 Secretary of Health and Human Services) that
19 is not later than 2 months after the date of the
20 establishment of the protocol under section
21 1164(e)(1) of such Act.

22 (3) ANNUAL TRAINING.—The requirement of
23 section 1164(a)(3) of the Social Security Act, as so
24 added, applies for annual periods beginning after the
25 effective date described in paragraph (1).

1 (4) POSTING INFORMATION.—The requirement
2 of section 1164(a)(4) of the Social Security Act, as
3 so added, takes effect on such date, not later than
4 the effective date described in paragraph (1), as the
5 Secretary of Health and Human Services shall speci-
6 fy.

○