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February 4, 2025

Senate Health and Social Services Committee
Alaska Senate
State Capitol, Room 205
Juneau, AK 99801

Dear Chair Dunbar and Honorable Members,

RE: Follow up to inquiries (S)HSS committee January 28, 2025

During the discussion of SB 44 Senator Hughes asked about implementing body cameras on children and/or staff or cameras within rooms at psychiatric hospitals to ensure that restraint is only being used in proper circumstances. The following outlines current rules and regulations regarding video monitoring of a patient who is restrained and/or secluded.

Overview

A psychiatric hospital is permitted to use audio and video monitoring of a patient who is restrained and/or secluded.

Regulatory Authority

The Alaska Administrative Code, specifically 7 AAC 12.920, requires a facility to comply with federal requirements, except where state requirements are more stringent than federal requirements.

7 AAC 12.920. Applicable federal, state, and local laws and regulations.

A facility must comply with all applicable federal, state, and local laws and regulations.

If a conflict or inconsistency exists between codes or standards, the more restrictive provision applies.

Monitoring of a Restrained and Secluded Patient

42 CFR 482.13(e)(15) requires a psychiatric hospital to continually monitor a patient who is simultaneously restrained **and** secluded and allows the monitoring requirement to be met through face-to-face or audio and video monitoring.

42 CFR 482.13(e)(15)

All requirements specified under this paragraph are applicable to the simultaneous use of restraint and seclusion. Simultaneous restraint and seclusion use is only permitted if the patient is continually monitored (i) Face-to-face by an assigned, trained staff member; or (ii) By trained staff using both video and audio equipment. This monitoring must be in close proximity to the patient.

The Centers for Medicare and Medicaid further clarifies, with the following interpretive guidelines, the monitoring requirement and methods by which the requirement can be met:

State Operations Manual

Appendix A - Survey Protocol, Regulations and Interpretive Guidelines for Hospitals

“...All requirements specified under standard (e) apply to the simultaneous use of restraint and seclusion. The simultaneous use of restraint and seclusion is not permitted unless the patient is continually monitored by trained staff, either through face-to-face observation or through the use of both video and audio equipment. Monitoring with video and audio equipment further requires that staff perform the monitoring in close proximity to the patient. For the purposes of this requirement, “continually” means ongoing without interruption. The use of video and audio equipment does not eliminate the need for frequent monitoring and assessment of the patient.”

Alaska does not prohibit or further restrict use of audio and video monitoring of a patient who is restrained and secluded; thus, federal regulations concerning patient monitoring during restraint and seclusion apply to an Alaska provider.

Monitoring of a Restrained or Secluded Patient

42 CFR 482.13(e)(10) requires a psychiatric hospital to monitor a patient who is either restrained **or** secluded, specifies who must monitor the patient, and requires that a face-to-face encounter with the patient must occur within one-hour of when the restraint or seclusion is initiated. Otherwise, 42 CFR 482.13 does not otherwise specify monitoring periodicity or restrict methods.

42 CFR 482.13(e)(10) – (12)

(10) The condition of the patient who is restrained or secluded must be monitored by a physician, other licensed practitioner, or trained staff that have completed the training criteria specified in paragraph (f) of this section at an interval determined by hospital policy.

(11) Physician and other licensed practitioner training requirements must be specified in hospital policy. At a minimum, physicians and other licensed practitioners authorized to order restraint or seclusion by hospital policy in accordance with State law must have a working knowledge of hospital policy regarding the use of restraint or seclusion. (12) When restraint or seclusion is used for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the patient, a staff member, or others, the patient must be seen face-to-face within 1 hour after the initiation of the intervention (i) By a

(A) Physician or other licensed practitioner. (B) Registered nurse who has been trained in accordance with the requirements specified in paragraph (f) of this section. (ii) To evaluate (A) The patient's immediate situation; (B) The patient's reaction to the intervention; (C) The patient's medical and behavioral condition; and (D) The need to continue or terminate the restraint or seclusion.

AS 47.30.825 imposes a monitoring requirement of a patient who is restrained or secluded that is more specific than that of federal regulations: a psychiatric hospital staff member must visit the restrained or secluded patient, in person, at least once per hour. However, Alaska does not otherwise prohibit or restrict the use of audio and video methods to provide monitoring in addition the hourly face-to-face requirement.

AS 47.30.825. Patient Medical Rights.

Patients placed in a quiet room or other physical restraint shall be checked at least every 15 minutes or more often if good medical practice so indicates. Patients in a quiet room must be visited by a staff member at least once every hour and must be given adequate food and drink and access to bathroom facilities. At no time may a patient be kept in a quiet room or other form of physical restraint against the patient's will longer than necessary to accomplish the purposes set out in this subsection.

Hospital Use of Audio/Video Recording of Patients in Alaska

Both psychiatric hospitals in Alaska, North Star Behavioral Health Systems, and Alaska Psychiatric Institute, use audio and/or video monitoring of patients in seclusion rooms, corridors, and common areas; audio/video monitoring is not used in patient sleeping rooms or restrooms.

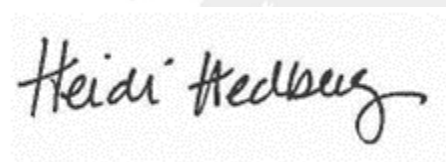
Access to Audio/Video Recordings

A parent or guardian of a minor has a right, with limited exceptions, to view the minor's medical records. Although neither federal nor state statutes and regulations identify an audio or video recording as a medical record, the Centers for Medicare and Medicaid Services' interpretive guidance of 42 CFR 482.24 (State Operations Manual Appendix A - Survey Protocol, Regulations and Interpretive Guidelines for Hospitals) concludes that the term "medical records" includes audio and videos, audio recording. Federal regulations, specifically 42 CFR 482.24(b), require a hospital to maintain medical records for at least five years, and to ensure the integrity of all medical records, however Alaska requires, under 7 AAC 12.770, an extended retention period:

7 AAC 12.770 Medical Record Service

- (i) *The facility must safely preserve patient records for at least seven years after discharge of the patient, except that ... (2) the records of minors must be kept until the minor has reached the age of 21 years, or seven years after discharge, whichever is longer.]*

Sincerely,



Heidi Hedberg
Commissioner