

# CLIENT ALERT

*January 2, 2007*

## **CMS ISSUES FINAL PATIENTS' RIGHTS RULE REGARDING USE OF RESTRAINTS AND SECLUSION IN HOSPITALS**

On December 8, 2006, the Centers for Medicare & Medicaid Services ("CMS") issued a final patients' right rule for all participating hospitals, which revises the standards for restraint and seclusion and expands upon the standards for staff training and death reporting (the "Restraint Rule").

These changes, which take effect on January 8, 2007, are discussed briefly below:

### **RESTRAINT AND SECLUSION**

The Restraint Rule revises the two existing standards regarding restraint and seclusion (i.e., restraint for acute medical and surgical care, and restraint and seclusion for behavior management) and combines them into a single standard that applies to all uses of restraint or seclusion in all hospital care settings.

The definition of "restraint" has been altered to conform to the definition contained in the Children's Health Act of 2000 (Pub. L. 106-310) as follows:

Any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body, or head freely; or a drug or medication when it is used as a restriction to manage the patient's behavior or restrict the patient's freedom of movement and is not a standard treatment or dosage for the patient's condition.



The revised definition also carves out an exception for certain devices, like orthopedically prescribed devices, surgical dressings or bandages, and protective helmets, as well as other methods that involve the physical holding of a patient for the purpose of conducting routine physical examinations or tests, or to protect the patient from falling out of bed, or to permit the patient to participate in activities without the risk of physical harm.

The requirements relating to orders by a physician or other licensed independent practitioner (“LIP”) were clarified under the Restraint Rule to require that the attending physician be consulted as soon as possible if he or she did not order the restraint or seclusion. The Restraint Rule also retained the requirement that the order, which may endure for a maximum of 24 hours, must be renewed every 4 hours for adults, 2 hours for children ages 9-17, and 1 hour for children under the age of 9.

However, the Restraint Rule broadens the class of practitioners allowed to perform the one hour face-to-face evaluation that is required for patients who are restrained or secluded for the management of violent or self-destructive behavior. The rule now also permits a trained registered nurse or physician assistant to perform the one-hour-rule evaluation, but requires that the responsible attending physician or LIP to be consulted as soon as possible after evaluation. The Restraint Rule also clarifies that simultaneous use of restraint and seclusion is not permitted, unless the patient is “continually monitored face-to-face by an assigned, trained staff member, or continually monitored by trained staff using both video and audio equipment.”

## STAFF TRAINING

The Restraint Rule strengthens the current requirement that all staff who have direct patient contact have ongoing education and training regarding the proper and safe use of seclusion and restraint applications and techniques and alternative methods for handling behavior, symptoms, and situations by specifying the components of such training. In addition, it identifies the required training intervals, sets forth requirements for individuals who perform staff training, and mandates the hospital to document in its staff personnel records that such training was completed and that competency was demonstrated.

## REPORTING A DEATH

In accordance with the existing rule, hospitals must report to CMS “any death that occurs while a patient is restrained or in seclusion, or where it is reasonable to assume that a patient death is a result of restraint or seclusion.” The final rule includes stricter standards regarding when a hospital must report the death of a patient associated with the use of restraints or seclusion. For example, in addition to reporting each death that occurs while a patient is in restraint or seclusion, the final rule requires that a hospital report each death that occurs within 24 hours after the patient has been removed from restraint or seclusion and each death known to the hospital that occurs within one week after restraint or seclusion where it is reasonable to assume that use of restraint or seclusion contributed to the patient’s death.

The final rule also requires a hospital to report each death to CMS by telephone no later than the close of business the next business day following knowledge of the patient’s death and to document in the patient’s medical record the date and time the death was reported to CMS.

The final rule may be viewed at:

[http://www.shipmangoodwin.com/files/upload/final\\_patients\\_rights.pdf](http://www.shipmangoodwin.com/files/upload/final_patients_rights.pdf). ▲

## QUESTIONS OR ASSISTANCE?

If you have any questions about the changes to the patients’ rights rule regarding the use of restraints and seclusion in hospitals, training of staff or reporting a death, please do not hesitate to contact Joan Feldman at (860) 251-5104, Alex Lloyd at (860) 251-5102, John Lawrence at (860) 251-5139, Maureen Anderson at (860) 251-5589, or Jeri Barney at (860) 251-5108.