

State of Arkansas

85th General Assembly

Regular Session, 2005

A Bill

HOUSE BILL 2812

By: Representatives Flowers, Davis, J. Johnson, Willis

For An Act To Be Entitled

AN ACT TO AMEND THE LAW REGARDING ASSISTANCE FOR
INDIGENT PERSONS; TO ENSURE APPROPRIATE TREATMENT
OF PROVIDERS; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO CLARIFY DEFINITIONS FOR
PROVIDERS OF INDIGENT ASSISTANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 20, Chapter 46 is amended to add an
additional subchapter to read as follows:

20-46-701. Scope.

(a) Except when otherwise specified in federal or state law, this
subchapter shall be the exclusive state authority governing the survey
process for inpatient psychiatric hospitals, psychiatric residential
treatment facilities, and outpatient mental health services programs.

(b) The scope of any survey or audit shall not extend to the direction
of the program, treatment, or any part of the program or treatment.

(c) In the event that the Department of Human Services conducts
retrospective audits of program providers, the department shall be limited to
no more than five percent (5%) of the provider patient population per
calendar quarter in the care of each program provider.

20-46-702. Definitions.

(a) As used in this subchapter:

(1)(A) "Brief hold" means holding a resident without undue force



1 for twenty (20) minutes or less in order to calm or comfort the resident.

2 (B) In no event shall a brief hold be construed as a personal
 3 restraint;

4 (2) "Department" means the Department of Human Services;

5 (3) "Director" means the Director of the Department of Human
 6 Services or his or her designee;

7 (4) "Personal restraint" means the application of physical force
 8 without the use of any device for the purpose of restraining the free
 9 movement of a resident's body which imposes the immobility for a period
 10 exceeding twenty (20) minutes and which does not fall within the definition
 11 of a brief hold;

12 (5) "Program provider" means any inpatient psychiatric hospital,
 13 psychiatric residential treatment facility for children, or outpatient mental
 14 health services funded by a medical care program for indigents;

15 (6) "Seclusion" means a behavior control technique involving the
 16 involuntary confinement of a resident in locked isolation from which the
 17 resident is physically prevented from leaving by means of physical contact by
 18 staff or by locked access to egress;

19 (7) "Serious injury" means any significant impairment of the
 20 physical condition of the resident whether self-inflicted or inflicted by
 21 someone else as determined by the provider's qualified personnel, including,
 22 but not limited to:

23 (A) Burns;

24 (B) Lacerations;

25 (C) Bone fractures;

26 (D) Substantial hematoma; and

27 (E) Injuries to internal organs, whether self-inflicted or
 28 inflicted by someone else;

29 (8) "Serious occurrence" means a resident's death, serious
 30 injury, or suicide attempt;

31 (9) "Suicide attempt" means any action taken by a resident for
 32 the purpose of inflicting death or serious injury and which does in fact
 33 inflict serious injury as determined by the provider's qualified medical
 34 personnel;

35 (10) "Survey" means any process by which compliance with federal
 36 law and regulations applicable to a program provider is determined;

1 (11) "Survey team" means the group of department personnel
2 conducting a survey; and

3 (12)(A) "Time-out" means a behavior management technique that
4 involves the separation of a resident from other residents for a period of
5 time to a designated area from which the resident is not physically prevented
6 from leaving by means of physical contact by staff or by locked access to
7 egress.

8 (B) In no event shall a time-out be construed as a
9 seclusion.

10 (b) The definitions in this section apply to any survey conducted upon
11 any inpatient psychiatric hospital, psychiatric residential treatment
12 facility, or outpatient mental health services funded by a medical care
13 program for indigents.

14
15 20-46-703. Surveys of program providers.

16 (a) The purpose of a survey shall not be punitive but shall be to
17 assist program providers in compliance with federal regulations.

18 (b) The survey team shall:

19 (1) Provide copies to program providers of all audit instruments
20 to be used in any survey to program providers;

21 (2) Conduct an exit conference during every survey;

22 (3) State with specificity in the survey report a factual
23 description of the conditions that constitute an alleged violation of federal
24 law or federal regulation;

25 (4) State with specificity in the survey report at least one (1)
26 possible course of action which in the view of the survey team would
27 constitute a correction of the alleged violation of federal law or federal
28 regulation;

29 (5) Allow electronic signatures and dates and dictated dates to
30 serve as service delivery documentation;

31 (6) Allow physician's stamps to service as delivery
32 documentation;

33 (7) If requested by a provider that is a subject of a survey,
34 conduct all on-site record reviews of out-patient mental health services
35 providers in the provider's central record location;

36 (8) Conduct patient interviews in a manner that does not disrupt

1 patient care or suggest a particular response from the interviewee;

2 (9) Conduct follow-up surveys on an accelerated schedule only
3 upon a finding that a program provider is not in substantial compliance with
4 applicable laws and regulations; and

5 (10) Allow the program provider the option to submit to the
6 surveyor within one (1) working day of an entrance interview a written
7 summary of incident and accident reports instead of the actual reports.

8 (c) A corrective action response shall be submitted to the survey team
9 within thirty (30) days after the provider receives the report, but the time
10 allowed for submitting the corrective action response shall be extended up to
11 sixty (60) days upon request of the provider.

12 (d) For purposes of compliance with the state Medicaid program,
13 program providers shall be prohibited from reporting serious occurrences to
14 another entity other than the Department of Human Services and, if
15 applicable, to the Centers for Medicare and Medicaid Services.

16 (e) The Director of the Department of Human Services shall ensure that
17 all surveys of program providers comply with the Arkansas Administrative
18 Procedure Act, § 25-15-201 et seq. and § 20-77-107.