



Minnesota Department of **Human Services**

Rule 40 Advisory Committee Meeting Summary: 4.2.12

Attending:

Committee members:

Steven Anderson, Sheryl Grassie, Kay Hendrikson, Anne Henry, Traci Lisowski, Tim Moore, Annie Mullin, Leanne Negley, Andrew Pietsch, Dan Reed, Kelly Ruiz, Bonnie Jean Smith, Gloria Steinbring and Colleen Wieck.

Others:

Alex Bartolic, Bruce Biddlecome, Barbara Case, Donovan Chandler, Gail Dekker, Dan Hohmann, Jill Johnson, Jennifer Kirchen, Bob Klukas, Natalie Marr, Michelle Ness, Dean Ritzman, Michael Tessneer, Rick Cardenas, Barb Kleist, Matt Burdick, Rick Amado and Suzanne Todnem.

Committee Charge The Rule 40 Advisory Committee was formed as part of a settlement agreement. The committee will study, review and advise the Department of Human Services on how to modernize Rule 40 to reflect current best practices. This was the third meeting of the Rule 40 Advisory Committee, which met from 9:00 a.m. to 3:00 p.m.

Informational Presentations The Committee heard a presentation from two external experts Michael Mayer and Derrick Dufresne. The Minnesota Governor's Council on Developmental Disabilities commissioned Mayer and Dufresne to look at the rules and statutes of all 50 states and the District of Columbia regarding the use of restraints and other aversive approaches. They produced a report that summarized their findings and included a recommendation improving Minnesota's current Rule 40. The report was provided to the Committee in advance of the April meeting and at the meeting.

Mayer and Dufresne said that generally, most states have, to varying degrees, limited seclusion, restraint and aversive procedures and use of PRN medications for behavior control. They stated that most states allow emergency use of restraints only but not for punishment.

Mayer and Dufresne made some recommendations:

Prohibit use of:

- Overcorrection
- Intimidation
- Humiliation
- Harassment
- Threats of punishment
- Deprivation

Severely limit use of:

- Forcing compliance
- Delay of a basic human need
- Response cost
- Protective devices used to prevent self-injury
- Restriction of visitors and/or phone privileges

Emergency They pointed out that every state has a definition of the term “emergency” but there are slight variations from state to state. A definition of emergency has included need for safety, imminent threat, an unanticipated event that is already occurring, or risk of criminal detention. Every state also provides at least a basic procedure about what requires positive approaches first when there is an emergency. They recommended debriefing after an emergency use of restraint and use that information to reduce the likelihood of future emergencies including a review of the client and his or her environment to determine if changes in the plan are required.

Opportunity Their assessment is that the settlement agreement represents an opportunity for Minnesota because it requires Minnesota to establish best practices (versus minimum standards). Based on their experience, this is likely a multi-year effort.

Culture change To change culture, Mayer and Dufresne recommend the following:

- Repeat the new standard and training over and over and begin before the rule is in effect
- Engage the pushback that recurs repeatedly
- Establish clear expectations with well-understood consequences
- Provide good training and modeling
- Reward excellence
- Sanction non-compliance

Additional recommendations:

- Get adequate and appropriate feedback
- Get good technical assistance
- It is important to have staff with the right attitude
- You need unwavering commitment
- Start with just one discipline

Gloria Steinbring’s Story Gloria shared a personal story that explains some of her motivation to be involved in this advisory committee and in the development of the original Rule 40. She was falsely accused of theft by a staff person at her residence and was punished in an inhumane way that has had long-term side-effects. She does not want to see anyone punished the way she was.

Other presentations included:

- Updates from Dean Ritzman on the provider survey
 - Incorporated suggestions from 3.5.12 meeting
 - Went out in a field test last Friday to 16 providers
- Updates from Barb Case, Department of Education
 - There have been 105 restraints since last meeting
 - The bill to extend use of prone restraint for one more year passed on Friday
- Introduction to Community Support Services (CSS) – Barbara Roberts
 - CSS helps providers and families support “clinically complex individuals” and serves about 700 people per year
 - CSS has nine teams across the state (see back of brochure)
 - Requests for services are often urgent or emergency needs
 - CSS does case formulation, assesses what needs to be remedied, determines what’s important to the person, what’s important for the person, performs a functional analysis of the behavior, identifies the support network and determines how to better enable the support network
 - CSS is currently conducting a longitudinal study per the settlement agreement, called “extended supports,” which currently involves 25 people
- Traci Lisowski, committee member and provider – Traci focused on training and how Region 10 in southeastern Minnesota has become more self-sufficient in that area
 - Three internal behavioral groups in three agencies have been established
 - Three individuals’ Rule 40 plans have been discontinued after three to five years’ work.
 - Feedback from other providers, requests and concerns: They want clarification on deprivation procedures, how rule 40 applies to younger children, what to do about inconsistent answers from DHS policy and licensing; if emergency use only

(EU), then there is a lack of consent because the guardian is not signing off on the use.

- Discussion included concern that if the new rule permits EU only, members do not want an increase in the number of EUs; team meetings around use of restraint are not happening as often as they should be. A clear focus on it should be made.
- Steve Anderson committee member and provider – The current Rule 40 is an impediment for some providers because providers do not want to deal with the rule or get in trouble. Some providers call the police when a crisis arises. Many providers do not train staff to do any hands-on crisis intervention, thus reducing available placement options. Training is a challenge because training budgets decrease during tight times.

Work DHS provided a proposed work approach for the committee’s consideration. The committee came up with a different work approach. The committee chose unanimously to use the same five categories laid out by DHS but separating training into its own category. The whole committee would work on the first two categories as a whole and then do small group work on the remaining four categories. Each committee member would sit in on two of the last four categories. The categories are:

1. **Applicability and Definitions** – Who, what populations, is/are included in this new statute/rule? What is the definition of emergency? What situations fail to meet the definition of an emergency? What other terms will be needed? Based on the current rule, what terms should be kept, cut, modified or added?
2. **Prohibited actions / Restricted actions** – What is absolutely forbidden to ever do? What is allowed only in an emergency? What standards will be in place? What requirements for use of a restricted action?
3. **Oversight / Oversight of Emergency Use /Rights and Safeguards** – What oversight belongs with the provider? What qualifications must a provider’s internal reviewer have? What oversight belongs with DHS? Or others? What policies must individual providers have regarding use of restricted actions? How will DHS monitor use and/or emergency use? Who in DHS will monitor the emergency use? How often? What methods?
4. **Data Collection** –What activities or outcomes should be measured? What data will DHS or others gather to monitor use of restrictive practices? What will be done with the metrics once they are collected? What information will be disseminated and to whom? How will reports of state wide use be disseminated?

5. **Positive Practices, Person-centered Planning** – What are current best practices for avoiding restrictive interventions and emergency interventions? What should DHS explicitly encourage?
6. **Training** – What training should be required on positive practices? How much training should be general training on positive practices and how much should be specific to particular clients? Who should be trained? Who should be responsible for developing the training? Delivering the training?

Work began with whole group work on Category 1.

Category 1: Applicability and definitions, Round-robin

Committee member comments showed concern about:

- Definitions – terms missing, clarifying current definitions
- Scope – balancing Mayer and Dufresne’s recommendation to not do too much at once with other mandates to apply across some divisions
- New name that reflects a new focus on positive approaches
- Clarifying the rule – what is meant and what is proper/improper use of the tools and eliminating loopholes in how the rule is used or could be abused

The committee discussed how to move forward. After some discussion, it was suggested, and the committee agreed, that:

1. Suzanne and Gail would cluster the round-robin input into topics (e.g., scope, purpose, definitions).
2. Suzanne will then send an email to the committee for each topic with the relevant round-robin comments.
3. Committee members are requested, as they are able, to provide feedback on the comments, to define the terms in the comments, all to begin providing content for the committee’s recommendation
4. Committee members will then use “reply-all” to Suzanne’s and subsequent emails to create a discussion thread that all members can see and respond to. Committee members are free to contribute as much or as little as they would like. Committee members who would like to contribute without disclosing their contact information may email their input to the DHS.rule40@state.mn.us mailbox with instruction for Suzanne to share the comment with the committee on their behalf.

Co-chair One committee member had proposed that the committee and DHS each have a committee co-chair to help focus and provide leadership. The co-chairs would meet on a regular basis, set the agenda, put some of the speakers together, update the committee, be more focused. The committee members voted on whether to have a co-chair. Two members voted in favor of a co-chair while nine members abstained. No co-chair position was formed.

Closing The committee was asked to evaluate the meeting: What worked well? What didn't work well? What suggestions do you have for improvement?

Worked well:

- Good table set up – everyone can see each other
- Staff input
- Round-robin
- Emails throughout the month with the agenda- can see the progress
- Helpful presentations, they went well

Didn't work well:

- CMS requirements – need a better walk through
- Include handout numbers on the agenda

Suggestions for Improvement:

- Provide an update from Dean Ritzman and Barb case at every meeting
- There has been heavy emphasis on rule when we need to look at statute as well; consider a combination like children's mental health
- Data request – What is happening on the annual reports as required in the children's mental health statute?
- Information request – from Mayer and Dufresne, do the top three states at-a-glance of what they are doing well, including the actual language they used

As always, if members or observers have questions, please email them to the Rule 40 email box at:

DHS.rule40@state.mn.us