



Minnesota Department of **Human Services**

Rule 40: Emergency Use of Restraints – REVISED
Rule advisory committee’s recommendation to DHS

Attended one or both work group meetings:

Rick Amado, DHS-SOS; **Maria Anderson**, DHS-AMH; **Steve Anderson**, Rule 40 Advisory Committee; **Jane Brink**, LTC Ombudsman; **Stacy Danov**, DHS-SOS; **Alicia Donahue**, MH-DD Ombudsman; **Kay Hendrickson**, Rule 40 Advisory Committee; **Anne Henry**, Rule 40 Advisory Committee; **Dan Hohmann**, MSOCS; **Renee Jensen**, Barbara Schneider Foundation; **Jill Johnson**, DHS-CMH; **Barbara Kleist**, Rule 40 Advisory Committee; **Bob Klukas**, DHS-Rules; **Annie Mullin**, Rule 40 Advisory Committee; **Michelle Ness**, MN Dept. of Health; **Dean Ritzman**, DHS-DSD; **Lauren Siegel**, DHS-DSD; **Mike Tessneer**, DHS-Office of Compliance; **Suzanne Todnem**, DHS-DSD; **Cheryl Turcotte**, MH-DD Ombudsman; **Charles Young**, DHS-DSD; **Gail Dekker**, DHS-DSD, facilitator

- I. Context and reminders
 - A. The charge of the work group is to recommend standards that will apply to persons with disabilities
 - B. The standards will be expressed in statute, rule, and manual
 - C. The department presented a preliminary rule draft at the July Advisory Committee meeting that included this definition of emergency based on the Jensen Settlement definition: “Emergency” means situations when the person’s conduct poses an imminent risk of physical harm to self or others and less restrictive strategies would not achieve safety. Person’s refusal to receive and participate in treatment shall not constitute an emergency
 - D. This work group discussed techniques and methods in two contexts:
 1. Emergencies
 2. Non-emergencies
 - E. The non-emergency discussion was limited to a few select topics at these work group meetings; other non-emergency recommendations and standards discussed at other meetings remain part of the whole recommendation but are not repeated in this summary.
- II. Main discussion points
 - A. Definition of emergency – in addition to “imminent danger to self or others”
 1. Whether to include property damage
 2. Only unpredicted events or include “somewhat predictable” situations?
 3. Customized “emergency” definition for each individual – personalized crisis plan
 4. Narrow view (danger to self or others) vs. broad view (includes property damage, risk of criminal repercussions, and risk of loss of housing)
 5. Includes modifying usual use of equipment such as slowing down a person’s electric wheelchair
 6. Replace with other terminology such as “behavioral crisis” to coordinate with 245D

7. Not left to individual staff discretion
 8. If provider calls for police assistance in a situation, then it must be treated as any other emergency that triggers reporting, documentation, review, etc.
- B. Emergency techniques permitted, criteria
1. Not medically contraindicated
 2. Proven to be safe and effective (data required)
 3. Short period of time; not necessarily based on “when person is calm”
 4. First-time event for the person with that provider, then the provider must create a plan to address the type of incident in the future.
- C. “As approved by the commissioner” to keep standards current
1. This would be a list of permissible emergency techniques referred to in rule or statute; would be updated and maintained to keep standards current
 2. Would entail a process for standard review and updating
 3. Concern: too loose a standard? Sufficient transparency?
- D. Emergency deprivation, permitted?
1. Maybe (4 yes, 1 no, 8 maybe)
 2. Should be temporary
 3. For person’s safety
- E. Role of crisis plan
1. Broader than use of restraints; should restraints (last resort) be part of a crisis plan?
 2. Slippery slope?
 3. When must a provider develop a crisis plan for a person?
 4. Should follow the person to new providers
- F. Non-emergency techniques permitted
1. Voluntary participation, e.g., person chooses to go to his room, provider engages the person in a new activity, conversation, questions about what would be helpful
 2. Redirection, de-escalation, teaching, temporary interruption without the use of force (and well defined)
 3. Standards must include process to reintroduce the person into regular activities
- G. Non-emergency techniques prohibited
1. Involuntary participation, e.g., person sent to room (room time out)
- H. Other definitions
1. Deprivation
 2. Blocking apparatus (and its use) – prohibited but needs to be well-defined
 3. Seclusion, time out, etc. must be better defined; and allows a provider to separate two residents who are attacking each other or a resident who is attacking others

III. Rejections

- A. Risk of criminal repercussions not involving physical danger to self or others
1. Not an emergency
 2. Concern: would require staff to know what constitutes criminal behavior

IV. Recommendations – Emergency context

- A. Definition of emergency – from Jenson settlement: situations when the person’s conduct poses an imminent risk of physical harm to self or others and less restrictive strategies would not achieve safety. Person’s refusal to receive and participate in treatment shall not constitute an emergency; property damage is an emergency only if it poses imminent danger to self or others

- B. New standards should specifically list the permitted techniques
 - C. No mechanical restraints in emergencies
 - D. No deprivation of basic rights in any situation
 - E. No seclusion and time outs in emergencies (vote 0-13)
 - F. Only correct use of blocking apparatuses for safety and protection of self or others
- V. Recommendations – Non-emergency context
- A. No use of negative punishment as a consequence to behavior
 - 1. E.g., person refuses to clean his room so can't go to the movie that night = not acceptable practice
 - B. No use of positive punishment
 - 1. i.e., presenting an unfavorable outcome or event following an undesirable behavior; an aversive stimulus is added to the situation
 - 2. e.g., being scolded for doing something; e.g., spanking, corporal punishment
 - C. No deprivation that requires the person to earn everything
 - 1. Including token and level programs
 - D. No deprivation of basic rights in any situation
 - E. No new mechanical restraints for SIB; plus interim process to move persons away from existing mechanical dependencies (or variance with a plan), with oversight and monitoring; no new mechanical restraint use for persons with a history or restraints used on them in the past.
- VI. Other work groups
- A. Training
 - 1. Crisis intervention training – need more/better
 - 2. Trauma-informed care – should be required training
 - 3. Requirements should apply to night staff and relief staff
 - 4. Providers need more training to reduce or eliminate the need to call law enforcement

Note

There are additional comments and additional recommendations below from the September advisory committee meeting. Additional Recommendations include new items to the recommendations of the work groups. Sometimes Comments are repeated as Additional Recommendations; this is intentional. The requested changes to the summary and recommendation document dispersed at the September meeting have already been implemented and reflected above.

- VII. Additional comments from the September advisory committee meeting
- A. Clarify terms:
 - 1. Deprivation means removing or denying something from someone before a person's behavior happens. Example: Depriving a person of food.
 - 2. Negative punishment means removing something from someone after a person's behavior happens. Example: Removing a person's dinner plate after they throw food.
 - B. However, if a person uses a crutch to hit another person, this is an emergency, and temporary removal is not a punishment but an issue of safety.
 - 1. Return the crutch when the person is calm.
 - 2. Report the incident.
 - 3. This should be a critical incident that is subject to review.
 - C. Distinguish between protective equipment used for medical conditions and restraints used for behavior "management."

- D. Note that the term “emergency” in Minn. Stat. 245D is defined more broadly than this committee has been talking about. It refers to a situation that affects a provider, such as a tornado, rather than a situation that affects a person receiving services. We need a different word for what this committee means, “situations when the ...[person’s] conduct poses an imminent risk of physical harm to self or others and less restrictive strategies would not achieve safety.” The term “emergency” in this document will refer to the committee’s meaning.
- E. If a person will not leave a public place, even though the place is closing: It is not an emergency according to the definition in #4 when a person will not leave a public place. The person is not harming himself or another, but the situation must be addressed because, for example, the public place is closing. The person cannot stay. The rule should permit physical escort or broaden what is permitted in such situations.
- F. It would help if emergency techniques or crisis techniques are defined so people know what their options are.
- G. Physical escort:
 - 1. Distinguish provider’s convenience vs. legal trespass.
 - 2. Recognize that if provider abandons a person-centered approach to deal with this situation there will be costs, including erosion of trust, therapeutic setbacks, and so on. Options include:
 - a. Re-direction or de-escalation techniques
 - b. Seeking consultation
 - c. Determine reason for resistance
 - d. Recognize that over time, staff will learn new skills.
 - 3. Define physical escort and guidance and put these in the context of a hierarchy of prompts. Delineate when restraint begins.
 - 4. Recognize that when police are called, they have weapons and the provider loses control of the situation.
 - 5. Define protective equipment. Separate from mechanical restraint; provide examples and non-examples.
 - 6. It is an industry standard that guidance, whether physical escort or hand-over-hand guidance, is never used against a client’s resistance; otherwise it is force and a manual restraint.
- H. Use of blocking apparatus: Use of pillow for self-protection or to protect another person
 - 1. Use of a pillow for self-protection or to protect another person is not the use of a restraint. When a blocking apparatus is used to isolate or seclude a person, it is used as a restraint. The former is for self-protection, the latter is to control or restrain a person.
- I. Are all emergencies unpredictable and unforeseen? Should the definition of emergency be tightened? The intent is to lead to the development or refinement of the person’s crisis plan.
 - 1. You simply cannot anticipate all behaviors in all situations for all causes. But you can require providers to plan and revise plans as needed.
 - 2. Change the circumstances to avoid recurrence.
 - 3. Conduct a functional behavior assessment (FBA).
 - 4. Provide examples and non-examples in a manual along with the definition. For example, context is important; a swing is not always a hit or an emergency.
- J. Concern about programs that use levels:
 - 1. Many youth corrections programs use these and there is concern about absolute bans. This is not an emergency. Simply eliminating this approach could result in loss of providers.

2. They should be prohibited because they are punitive and are often used as a substitute for treatment.
 3. They can also provoke an outburst.
 4. The members present agreed that level programs should be prohibited.
- K. However, members agreed that token economies are not the same as level programs and should not be prohibited.
- VIII. Additional Recommendations from the September advisory committee meeting
- A. Use Jensen Settlement agreement language to define emergency.
 - B. Distinguish between protective equipment for medical conditions (such as a seizure disorder) and use of restraints for behavior “management.”
 - C. Only manual restraints are permitted to be used in emergencies.
 - D. Expand Item G on Summary. It applies to more than self-injurious behavior. It applies also to persons who have a history of restraints used on them and any use of restraints.
 - E. Refer to the Monitoring work group: Address training response to emergency—systems response.
 - F. Describe what can be done in an emergency besides resorting to a restraint, such as de-escalation techniques.
 - G. Describe which manual restraints may be used and which are prohibited.
 - H. Provide examples of emergencies and non-emergencies, perhaps in the manual.
 - I. Include definitions.