

External Program Review Committee (EPRC) minutes

Date of meeting: Dec. 6, 2018

DSD liaison: Stacie Enders

Type: Whole committee

Location: Minnesota Department of Human Services, Room 3146, 444 Lafayette Road, St. Paul 55155. Most members of the committee, however, participated through an online video conference line

Committee members

In attendance: Dan Baker, Amber Maki, Kim Frost, Laura Daire, Mary Piggott, Jodi Greenstein, Melanie Eidsmoe, Nichole Kottke, Stacy Danov, Stephanie Schaefer, Lindsay Nash, Barbara White, Danielle Bishop

Absent: None

Agenda items

- Public comments
 - There were no public comments at this meeting
- Approval of minutes from November
 - Vote: Those in favor of approving the meeting minutes from November 2018
 - Dan Baker: abstain
 - Amber Maki: yes
 - Mary Piggott: yes
 - Stacy Danov: not connected
 - Melanie Eidsmoe: yes
 - Stephanie Schaefer: yes
 - Nichole Kottke: yes
 - Jodi Greenstein: yes
 - Barbara White: yes
 - Danielle Bishop: abstain
 - Kim Frost: abstain
 - Laura Daire: yes
 - Lindsay Nash: abstain
- Vote: Those in favor of approving the recommended changes to the 2019 Olmstead report
 - Dan Baker: yes
 - Amber Maki: yes
 - Mary Piggott: yes
 - Stacy Danov: not connected
 - Melanie Eidsmoe: yes
 - Barbara White: yes
 - Danielle Bishop: abstain
 - Stephanie Schaefer: yes

- Jodi Greenstein: yes
- Nichole Kottke: yes
- Kim Frost: yes
- Laura Daire: yes
- Lindsay Nash: yes
- Discussion
 - Stacy Danov completed a literature review and shared her findings on best practices for seatbelt guards and harnesses
 - Both Stacy Danov and Dan Baker did not find anything directly related to seatbelt buckle guards/harnesses
 - Their searches included academic journal articles, Google Scholar, library systems, <https://eric.ed.gov>, general internet search and parenting blogs
 - They did see several articles about teaching to use a seatbelt
 - Might be helpful to go back to what other states consider restraint. Most other states do not consider seatbelt harnesses/guards restraint
 - Amber Maki compiled data for the subcommittee to review. The data will be viewed in closed session at a subcommittee meeting because the report contains private health information
- Presentation
 - Sarah Knoph and Vanessa Vogel presented. Their slides may be viewed in the December minutes and agenda
- Subcommittees
 - Each group provided an update on the work it has completed recently
- Closing
 - The committee listed out action steps and topics that members would like to discuss for the next meeting
 - Continue conversation about seatbelt guards and harnesses
 - 4+1 with Stacy Danov
 - Summarize the findings from the survey sent by the subcommittee that focuses on the emergency use of manual restraint



External Program Review Committee Determination Process

Sarah Knoph | Associate General Counsel

Learning Objectives

- Apply legal standard and document recommendations.
- Gain a broader understanding of case law considerations.

PSR EPRC Duties and Responsibilities: Recommendations

- Positive Supports Rule (PSR) Applies to most DHS-licensed facilities.

Note, as of August 2018, child care providers are not covered by the rule.

- “The external program review committee shall monitor implementation of this chapter, make recommendations to the commissioner about policy changes related to the requirements in this chapter, and make recommendations to the commissioner to approve or deny requests for **emergency use of procedures** in accordance with Minnesota Statutes, section 245.8251, subdivision 4. The committee shall...”

Minn. R. 9544.0130

Minn. Stat. § 245D.06, subd. 8

“The commissioner has limited authority to grant approval for the emergency use of procedures identified in subdivision 6 that had been part of an approved positive support transition plan when a person is at imminent risk of serious injury as defined in section 245.91, subdivision 6, due to self-injurious behavior and the following conditions are met:

(1) the person's expanded support team approves the emergency use of the procedures; and

(2) the interim review panel established in section 245.8251, subdivision 4, recommends commissioner approval of the emergency use of the procedures...”

You Received an Application: Initial Questions

DHS Staff Reviews Application and screens issues, e.g.:

- The procedure is part of a positive support transition plan, which must be informed by a functional behavior assessment (FBA) and person-centered plan or description.
- The person's expanded support team approves of the use of the procedure.

Requested Procedure

- What is the actual procedure?
- Does the requested procedure require approval?

How is the procedure being used?

- Emergency use in a PSTP? Or another use? What is the difference?
- Do you need more information to reach your decision?

Types of Prohibited Procedures

The provider should describe the proposed use so you have an understanding of what it is you are approving or denying. This is where asking for additional documentation or meeting with the provider is key.

For example:

- Mechanical restraints
- Seclusion
- Time-Out

Prohibitions Checklist Applies

The license holder is prohibited from using chemical restraints, mechanical restraints, manual restraints, time out, seclusion, or any other aversive or deprivation procedure, as:

- a substitute for adequate staffing,
- for a behavioral or therapeutic program to reduce or eliminate behavior,
- as punishment, or
- for staff convenience.

Minn. Stat. § 245D.06, subd. 5; Minn. R. 9544.0060, subp. 2

Subpart 3A

“[R]eview requests made in accordance with the requirements of [Minn. Stat. § 245D.06, subd. 8b], for **emergency** use of procedures that have been part of an approved **positive support transition plan when necessary** to protect a person from **imminent risk of serious injury** as defined in [Minn. Stat. § 245.91, subd. 6], due to **self-injurious behavior**, and make a recommendation to the commissioner to approve or deny these requests.

Minn. R. 9544.0130, subp. 3A

Subpart 3A

The committee must base its recommendation upon the determination that the provider has:

- Made a **good faith effort to reduce** the need for the procedure
and
- That the **emergency use** of procedures is **necessary** to protect the person from **imminent risk of serious injury**.

Minn. R. 9544.0130, Subp. 3A

Self-injurious behavior

"Self-injurious behavior" means behavior of a person which results in damage to the person's own body.

Minn. R. 9544.0020

Serious injury

- “**Serious injury**” is defined in statute at [Minn. Stat. § 245.91](#), subd. 6.
- Examples include: “(1) fractures; (2) dislocations; (3) evidence of internal injuries; (4) head injuries with...[additional requirements]; (5) ...(14)...”
- Review the listed requirements to ensure the approval addresses “serious injury.”

Minn. Stat. § 245.91, subd. 6

Subp. 3A: Documentation (Minn. Stat. § 245D.06, Subd. 8)

- (1) a copy of the person's current positive support transition plan and copies of each positive support transition plan review containing data on the progress of the plan from the previous year;
- (2) documentation of a **good faith effort to eliminate** the use of the procedures that had been part of an approved positive support transition plan;
- (3) justification for the continued use of the procedures that **identifies the imminent risk of serious injury due to the person's self-injurious behavior** if the procedures were eliminated;
- (4) documentation of the clinicians consulted in creating and maintaining the positive support transition plan; and
- (5) documentation of the expanded support team's approval and the recommendation from the interim panel required under paragraph (b).

Subpart 3B: Scope of Review

- “[R]eview requests for use of a prohibited procedure that is not specifically permitted by part 9544.0050, or specifically prohibited by part 9544.0060...”

Subpart 3B: Legal Standard

The committee must base its recommendation upon the determination that:

- The provider has made a **good faith effort to reduce the need** for a restrictive intervention
- and
- That the prohibited procedure is **necessary to protect the person's health and safety** for a limited time while positive support strategies are developed and implemented.

Minn. R. 9544.0130, Subp. 3B

Subp. B: Documentation

Requests for use of a prohibited procedure must include the following:

- (1)** a copy of the person's current positive support transition plan, copies of each positive support transition plan review, if any, and data on the interfering behavior;
- (2)** documentation of methods the provider has tried to reduce and eliminate the incidence of interfering behavior that have not been successful;
- (3)** documentation of the assessments performed to determine the function of the behavior for which the interventions have been developed;
- (4)** documentation of a good faith effort to eliminate the use of restrictive interventions currently in use;
- (5)** documentation that the interfering behavior is unlikely to be prevented in the immediate future by a reasonable increase in staffing or the provision of other positive supports...

Subp B: Documentation Cont.

- (6) justification for the use of the procedure that **identifies the imminent risk of serious injury due** to the person's interfering behavior if the procedure were not utilized;
- (7) documentation of the persons consulted in creating and maintaining the current positive support transition plan;
- (8) documentation of approval by the person's expanded support team of the submission to the committee of the request for use of a prohibited procedure; and
- (9) additional documentation as requested by the committee.

The committee must base its determination upon the documentation provided in accordance with this chapter. The committee must include in an approval the additional terms or conditions that the license holder must meet specific to that approval, if any...

Minn. R. 9544.0130

Process



Legal Considerations & Good Stakeholder Engagement

- Are we applying the language of the rule and its definitions?
- What issues are necessary for your determination?
- Is the process reasonable in terms of timing and opportunity to be heard?
- Can a provider understand the rationale for the determination and the duration of approvals? What is your written record?
- What discretion do members (clinicians) have and how is it applied to specific facts and according to the legal standards?

Resources

- [The Positive Supports Rule, Chapter 9544](#)
- [Department of Administration: Open Meeting Law](#)
- [Department of Administration: Data Practices](#)
- [The Office of the Revisor of Statutes](#)

Thank You!

Sarah Knoph

sarah.knoph@state.mn.us

651-431-2843