



Minnesota Department of **Human Services**

Rule 40 Advisory Committee Meeting Summary: 12.10.12

Attending:

Committee members: Kay Hendrikson, Anne Henry, Barbara Kleist, Pat Kuehn, Tim Moore, Kelly Ruiz, Annie Santos, Bonnie Jean Smith, Gloria Steinbring and Colleen Wieck

DHS Staff: Rick Amado, Alex Bartolic, Lori Dablow, Stacy Danov, Gail Dekker, Katherine Finlayson, Dan Hohmann, Jill Johnson, Jerry Kerber, Jennifer Kirchen, Bob Klukas, Michelle Ness, Sandra Newbauer, Dean Ritzman, Michael Tessneer, Suzanne Todnem, Munna Yasiri and Charles Young

Other Organizations and guests: Mark Anderson (Barbara Schneider Foundation), David Ferleger (appointed court monitor), Joe Fuemmeler (Chrestomathy, Inc.), Brad Hansen (The ARC Greater Twin Cities), Renee Jenson (Barbara Schneider Foundation), Gail Lorenz (Barbara Schneider Foundation), Elizabeth McElroy (assistant to the court monitor), Sue McGuigan (TBI Advisory Council), Susan O'Neil (Institute on Community Integration), and Kelly Ryan (Chrestomathy, Inc.)

Committee Charge. The Rule 40 Advisory Committee was formed as part of the Jensen Settlement Agreement. The committee will study, review and advise the Department of Human Services (DHS) on how to modernize Rule 40 to reflect current best practices. This was the tenth meeting of the Rule 40 Advisory Committee, which met from 9:00 a.m. to 3:30 p.m.

Presentations. The Committee heard a brief update from Alex Bartolic, a survey update and analysis from Dean Ritzman and Dr. Jim Leibert and a message from the court monitor David Ferleger.

Alex Bartolic. Alex Bartolic shared that [The Promise of Olmstead: Recommendations of the Olmstead Planning Committee](#) is completed and available from DHS on the web by clicking the link or DHS can provide a printed copy. The Rule 40 Advisory Committee recommendation must be consistent with the Olmstead recommendation. The Olmstead recommendation looks at basic principles regarding the person's rights, use of positive approaches with a person, and ensuring a person's access to services and supports. The Olmstead recommendation has a strong focus on specific measurable outcomes to ensure that each person can get community-based supports and services that are person-centered, individually directed and adequately funded. The Rule 40 Advisory Committee has based recommendations with a

similar focus on directed and positive approaches as the Olmstead committee, and the committee report will be reviewed for consistency with the Olmstead recommendations prior to finalization.

Ms. Bartolic spoke about next steps. This is the last official meeting of the rule 40 Advisory Committee. Moving forward, the department will continue to gather feedback from advisory committee members and share committee member comments about the rule 40 Advisory Committee's recommendations with Advisory Committee members and the public. The draft document will be updated and sent out to the Advisory Committee for further review and an assessment of agreement with the recommendations. Based on comments and information received from committee members, the department will determine whether additional steps are necessary, such as additional work group efforts or another committee meeting to discuss targeted areas raised through the comment process in order to finalize the recommendations and final report.

Dean Ritzman and Dr. Jim Leibert. Dean Ritzman reminded the committee members what the context and questions of the survey. The survey was designed at the request of committee members and sent to a variety of provider types. The intent was to gain some information about the current use of restraints and seclusion in licensed facilities.

Because of the small data sample, Dr. Leibert was able to do only limited analysis. He explained that the respondents were self-selected and therefore we cannot generalize beyond the sample itself. Dr. Leibert stated that:

1. We know more than before the survey.
2. We have a better scope of the issue.
3. We need a more efficient way of gathering this information and recommends asking no more than 7-10 questions.
4. If we collect a probability sample rather than self-selected sample, we would need less than 400 respondents to get accurate information.

The department was waiting for additional information before formally releasing [Rule 40 Data Request Results](#) that is now available below and on the Rule 40 Advisory Committee website.

David Ferleger. David Ferleger is an attorney in Pennsylvania who was appointed in July 2012 as court monitor for the Jensen Settlement Agreement. Mr. Ferleger explained his role as court monitor is to address systemic relief resulting from the Jensen settlement agreement as the principles from the settlement agreement are expanded. Mr. Fergler expressed his understanding and appreciation of the culture change the advisory committee recommendation proposes.

Recommendation draft

Committee members reviewed the first draft of the narrative form of the committee's recommendation, which is tentatively titled: Rule 40 Advisory Committee Recommendations on Best Practices and Modernization of Rule 40, dated December 6, 2012. The purpose of the review

was to gather input from committee members about the draft document to determine whether there were inaccuracies or substantive recommendation pieces missing from the draft document.

The first thirteen pages of the recommendation provides context including a description of the Jensen Settlement Agreement, the role of advisory committee and the values expressed by committee members. Committee members want this portion of the recommendation document to be more inspirational and recommended some additions such as a section recognizing the anticipated culture change.

While discussing the recommendation section beginning on page 13, committee members revisited some discussion topics. It became clear that unsettled issues remain among committee members. Committee members engaged in in-depth discussions about the use of mechanical restraints, what transition might look like and how a person's plan or plans should be viewed, developed and operationalized.

Other comments included requests to clarify, reorganize and redraft the recommendation.

Committee members and others were instructed to make their changes to the digital copy with track changes turned on and to email them to the dhs.rule40@state.mn.us by Monday, December 17, 2012. The department will review all suggested changes.

Draft statute language: 245D

DHS provided a copy of proposed legislation that includes standards reflective of the department's current understanding of the advisory committee's recommendation. Due to time constraints, committee members did not have time to review and discuss any concerns about the draft at the advisory committee meeting. However, committee members voted in favor of recommending the department put the standards in chapter 245A instead of 245D. The department instructed committee members and others to submit any concerns or suggestions they have to the dhs.rule40@state.mn.us email address.

Questions or comments As always, if committee members or observers have questions, please email them to the Rule 40 email box at DHS.rule40@state.mn.us

Visit our website: [Rule 40 advisory committee](#)

RULE 40 DATA REQUEST RESULTS

Sample

Disability Services Division sent out a data request to all **7,864** providers of residential services. The intent of this data request was to obtain a census of residential service providers concerning Rule 40.

Four hundred and forty-nine providers responded to the data request out of the **7,864** providers for a response rate of **5.7%**.

Two thousand nine hundred and ninety-one residential households are represented by this sample.

This sample represents nine thousand two hundred and eighty-seven individuals that receive residentially-based services from the responding providers. This represents **5.7%** of the population of individuals who receive residentially-based services.

NOTE – The sample responses must be viewed as a self-selected sample and therefore **not** generalizable to the entire population of providers of residentially-based services.

Results

For those that responded to the data request, almost ten percent (9.9%) of the people they served have a written individualized behavior management plan that uses restrictive aversive/deprivation procedures.

For those that responded to the data request, slightly more than two and one-half percent (2.6%) regularly require emergency/crisis use of restrictive aversive/deprivation procedures at least once per month or more.

For those that responded to the data request, almost twelve and one-half percent (12.4%) received some form of restrictive aversive/deprivation procedure. (Note: the numbers do not add up to 12.5% due to rounding)

Conclusions and Next Steps

The scope of the issue is better understood but only for those who responded to the data request. Any attempt to generalize to the entire population is tenuous at best.

There are more efficient and cost effective methods of obtaining the data required to generate state-wide estimates. Using a probability technique (simple random sample), less than four hundred individuals would have been required to estimate the state-wide use of restrictive aversive/deprivation procedures both programmatic and crisis at a 95% confidence level +/-5%.

A real-time data collection tool should be developed to collect data on the use of restrictive aversive/deprivation procedures. This would collect the data necessary for monitoring and analysis of the use of restrictive aversive/deprivation procedures.