External Program Review Committee (EPRC) agenda

Date of meeting: 2-4 p.m. Sept. 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, will participate through an online video conference line.

Common acronyms used by the committee

We ask committee members to avoid the use of acronyms. Here are common acronyms:

- RA or Request: DHS form 6810D: Request for authorization of the emergency use of procedures
- FBA: Functional behavior assessment
- PSTP: DHS form 6810: Positive Support Transition Plan
- DHS: Minnesota Department of Human Services
- DSD: Disability Services Division
- EUMR: Emergency use of manual restraint
- BIRF: DHS form 5148: Behavioral Intervention Report Form
- IRP: Interim Review Panel (Predecessor to the EPRC)
- CABC: Context, antecedent, behavior, consequence
- PS Manual: DHS form 6810C: Guidelines for Positive Supports in DHS-Licensed Settings
- MDH: Minnesota Department of Health
- CCM: County case manager
- HCBS: Home and community-based services

Topics to discuss

- Technology
    - We will dedicate the first few minutes to addressing any connectivity issues.
- Public comments
    - We encourage public participants to share their thoughts and ask questions about committee activities at the beginning of each meeting. The committee will continue on to the next agenda item when either 1) 30 minutes have passed or 2) when there are no additional comments or questions, whichever comes first.
- General reminder
    - Before speaking, please state your name.
- Presentation
    - Vanessa Vogl, attorney, will review the rule-making process.
- Approval of minutes from August
- Update
    - The committee coordinator will provide an update about member recruitment.

- Subcommittees
    - Each group will provide an update on the work it has completed recently.
- Discussion
    - The committee will review a draft of the 2018 Olmstead report.
    - Time permitting, the committee will review the webpage for updates.
    - What is going well? What should we change? What have we learned?
- Presentation
    - Representatives from Community Support Services(CSS) will present from 3-3:30 p.m.
- Request for approval

DEPARTMENT OF HUMAN SERVICES

[DRAFT] External Program Review Committee: Annual Evaluation Report

Positive Supports: Strategy 2C

Jan. 1, 2019

DRAFT

Positive Supports, Strategy 2C

Annually evaluate progress and determine if there are additional measures to be taken to reduce the use of mechanical restraints to prevent imminent risk of serious injury due to self-injurious behaviors.

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External Program Review Committee
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https://mn.gov/dhs/partners-and-providers/program-overviews/long-term-services-and-supports/positive-supports/

Upon request, this material will be made available in an alternative format such as large print, Braille or audio recording.

For accessible formats of this information or assistance with additional equal access to human services, write to X@X.X, call XXX-XXX-XXXX, or use your preferred relay service. ADA1 (2-18)

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About the External Program Review Committee

Purpose

The External Program Review Committee monitors the implementation of Minn. R. 9544.0130, assesses the competency of qualified professional applicants to develop and implement positive support transition plans, reviews reports of emergency use of manual restraint and provides guidance to license holders about their response to the emergency use of manual restraint. The committee also makes recommendations to the commissioner on:

- Policies related to Minn. R. 9544.0130 requirements
- Requests for emergency use of procedures in accordance with Minn. Stat. §245.8251, subd. 4.

Background

Over the past several decades, models of care for people with disabilities have shifted from focusing on institutional-like care toward positive supports that encourage full participation in a life the person desires and values. The trend toward positive supports and person-centered approaches is occurring all over the country. People with disabilities have expectations for meaningful jobs, connections with others, community participation and independent living. Service providers are getting better at understanding how to support choice, control and direction.

The state of Minnesota recognized previous protections for people with disabilities were not adequate and changes were needed to reflect current best practices. In 2009, a class action lawsuit was filed against the Minnesota Department of Human Services (DHS) alleging that residents of the Minnesota Extended Treatment Options program had been unlawfully and unconstitutionally restrained. Under the conditions of a settlement agreement — known as the Jensen settlement agreement — Minnesota agreed to modernize its requirements surrounding restrictive interventions and the use of positive supports.

In 2012, the state passed Minn. Stat. 245D to offer several positive supports protections to people who receive services. However, these actions did not cover all people with a developmental disability or related condition. To fulfill the state's agreements for those not covered under Minn. Stat. 245D, the state established the Rule 40 Advisory Committee, whose work resulted in the Positive Supports Rule, Minn. R. 9544.

The Positive Supports Rule incorporates best practices identified by the Jensen settlement, national trends, lessons learned from the past and the Americans with Disabilities Act for serving people with disabilities in the most integrated setting. The Positive Supports Rule ensures all DHS-licensed services and facilities that serve people with developmental disabilities or related conditions follow the prohibitions and limits in Chapter 245D. As a result, no DHS-licensed service or facility is permitted to use clinically contraindicated practices on people who receive services governed by either 245D or the Positive Supports Rule.

The state recognizes providers face challenges while learning to support people with only positive support strategies after being allowed to use restrictions and restraints. Therefore, 245D and the Positive Supports Rule

outline some situations in which a provider may use a prohibited procedure for a limited time to phase out the procedure.

One situation in which a provider might use a prohibited procedure is when the provider begins services for a person whose previous caregiver used prohibited procedures. If the person and his/her care team determines immediately ending the use of the procedure might cause serious harm to the person or others, the team may use the procedure for up to 11 months. The care team must incorporate the use of this procedure into a Positive Support Transition Plan (PSTP), DHS-6810 (PDF) and regularly report its use to DHS via the Behavior Intervention Reporting Form (BIRF), DHS-5148. The care team has 30 days after the start of services to develop the plan and 11 months after the plan's implementation date to phase out the use of the prohibited procedure.

A second situation in which a provider might use a prohibited procedure is when a person continues to engage in interfering behavior beyond the 11-month phase-out period. If the person displays self-injurious behavior that could cause serious harm and the care team determines a prohibited procedure is necessary to safeguard the person and others, the commissioner may grant approval for a limited time while the care team develops effective positive support strategies to phase out the procedure. For these situations, the commissioner established the Interim Review Panel to review and grant approval for the emergency use of procedures (procedures are defined in Minn. Stat. 245D.06, subd. 5). The Interim Review Panel started reviewing and denying or approving requests in late 2014.

In February 2017, the Interim Review Panel transitioned to the External Program Review Committee. The functions of the External Program Review Committee continue to include those outlined in the Interim Review Panel process. Additionally, the committee has the option to make recommendations to the commissioner about policy changes related to the requirements of Minn. R. 9544, reviews Behavior Intervention Reporting Forms for the emergency use of manual restraints, evaluates provider responses following the emergency use of manual restraints and assesses the competency of qualified professionals who develop and implement Positive Support Transition Plans.

Current task

The current task of the External Program Review Committee includes evaluating progress and determining if providers need to take additional measures to reduce the use of mechanical restraints. Mechanical restraints are only allowed beyond the 11-month phase-out period as an emergency procedure for those who have submitted a Request for the Authorization of the Emergency Use of Procedures, DHS-6810 (PDF) form and have received approval from the committee and the commissioner. The commissioner grants approval for emergency use of procedures on a case-by-case basis. The length of approval ranges from 60 days to one year.

Table 1

Data on new approvals, renewed approvals and phased-out requests for mechanical restraints

Year	Total yearly approvals	New approvals	Renewed approvals	Phased-out
2014	28	28	0	0
2015	23	4	19	9
2016	18	5	13	10
2017	13	2	11	4
2018	12	0	12	1

Over time, members of both the Interim Review Panel and External Program Review Committee noticed teams struggle more with phasing out the seat belt harnesses/guards than phasing out mitts, arm splints or helmets. For example, of the seven people who had approval for a seat belt harness/guard in 2014, four still had approval in 2018. In comparison, of the 21 people who had approval for other types of mechanical restraint in 2014, only two still had approval in 2018. As of Aug. 31, 2018, seven of the 13 approved requests for prohibited procedures are for seat belt harnesses or guards.

One explanation for this observed difference is the contrast between the type of self-injurious behavior that requires a seat belt harness/guard vs. the type of self-injurious behavior that requires the use of mitts, arm splints or helmets. Specifically, seat belt harnesses/guards typically address self-endangerment behaviors (behaviors that increase the potential for harm) whereas mitts, arm splints and helmets address self-injurious behaviors (behaviors that result in immediate harm).

Another difference is the setting. It is unsafe for staff to unbuckle to assist the person and most of the requests for the emergency use of procedures were for people who do not tolerate others sitting near them. For those

who will allow staff to sit by them, it can still be challenging to both support the person and remain buckled. Pulling over can be dangerous or impossible on busy roads. Also, there are fewer environmental resources available in a vehicle: Some favored items include swings, mats/wedges, pianos, free space to move around, etc. Another consideration is that the emergency use of manual restraint is often not an option because staff cannot adequately position themselves to safely implement a hold, and unbuckling and other challenging behaviors can be distracting to the driver which puts passengers, other vehicles and pedestrians at risk.

Evaluation of progress

Providers with approval for emergency use of procedures must submit summation data to DHS on the use of mechanical restraints every seven days through the Behavior Intervention Reporting Form (BIRF), DHS-5148. Regardless of the frequency of mechanical restraint usage, each provider who has approval must submit one Behavior Intervention Reporting Form per week, per person. For example, a provider who uses mechanical restraint once a week with a person and a provider who uses mechanical restraint 100 times a week with a person both must submit only one Behavior Intervention Reporting Form for that person. Therefore, to determine if a team is making progress toward reducing the use of restraints, it is necessary to review the person's individual reports, which may include the behavior intervention reporting forms, positive support transition plans, quarterly positive support transition plan reviews or other data that care teams submit to DHS or the External Program Review Committee. The committee weighs and considers information from these reports within the context of the person's quality of life.

Successes

The External Program Review Committee has achieved success in increasing capacity of the state system and creating a culture of positive supports. Specifically, the committee regularly provides technical assistance to care teams in areas where teams have self- or committee-identified needs. For example, the External Program Review Committee:

- Meets with teams to review functional behavior assessments, data patterns and positive support transition plans
- Provides recommendations for consideration (e.g. examine staff fidelity of plan implementation)
- Maintains a webpage to provide resources for positive supports and an outline of information typically gathered during the phase-out period
- Informs providers and guardians about available services they might not have been previously aware of (e.g. Technology for Home or behavioral support services)
- Helps teams connect with other specialists (e.g., external positive support behavior specialists, deafblind communication experts, pharmacologists, etc.)
- Connects teams with DHS staff when technical assistance is needed in other areas (e.g. rate exceptions).

Future recommendations

Given the work of the Interim Review Panel and External Program Review Committee, we have learned much about what strategies work best. The committee will continue to expand on effective strategies. For issues that need to be addressed, the committee has the following recommendations to guide its future work:

- The committee will track data for seatbelt harnesses/guards separately from other types of mechanical restraints (e.g., mitts, arm splints, helmets). The committee will review this data in fall 2018 to identify similarities and differences between the two groups.
- The committee will provide additional technical assistance to teams for cases that have had little movement toward phasing out mechanical restraints. The committee encourages evidence-based practices and places an emphasis on quality-of-life measures that align with the person's values.
- The committee will continue conversations with teams and help them improve their data collection and analysis methods.