



New Jersey Protection and Advocacy, Inc.

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Advocating and advancing the human, civil and legal rights of persons with disabilities

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Re: Proposed Readoption: N.J.A.C. 10:42
Mechanical Restraints and Safeguarding Equipment

Dear Ms. Barry:

The following comments are submitted on behalf of New Jersey Protection and Advocacy, Inc., New Jersey's designated protection and advocacy system for individuals with developmental disabilities pursuant to 42 U.S.C. §§ 15041 to 15045.

NJP&A is disappointed that Division continues to avoid taking decisive action with respect to calls from families and advocates to revise the Division's regulations on mechanical restraints and safeguarding equipment. The Division's statement that it was delaying adopting revised regulations because,

Recently, the Department determined that additional input from the provider, family, and consumer communities would further enhance the quality of these rules. To allow sufficient time for continued collaboration, the Department is seeking to propose N.J.A.C.10:42 for readoption without amendments at this time.

is disingenuous.

The improper use of restraints became a priority issue with the death of Matthew Goodman in February 2002. The New Jersey Council on Developmental Disabilities, of which NJP&A is an *ex officio* member, adopted a position statement in October 2003, calling on the State to adopt regulations to "clarify, expand, and effectively monitor and enforce protections for children and adults who are vulnerable to being subjected to unnecessary restraint, seclusion and aversive measures." In May 2005, the Department of Human Services conducted a briefing and identified thirteen proposed changes to the existing regulations. These proposed changes included correcting very fundamental deficiencies in the existing regulations, including:

- the failure of the existing regulations to specifically mention the use of mechanical restraints on children

- the failure of the existing regulations to prohibit specific practices, such as electric shock, corporal punishment, ammonia, pepper spray, and mace
- the failure of the existing regulations to require notification to the individual or legal guardian of the restraint policy prior to admission to a facility
- the failure of the existing regulations to notify a parent or guardian when emergency restraint has been applied
- the failure of the existing regulations to require reports to the Division if an injury occurs to the individual during the use of restraints or when emergency restraints are used
- the failure of the existing regulations to require trend analysis
- the failure of the existing regulations to provide for specific monitoring requirements
- the failure of the existing regulations to require debriefing following the use of emergency restraints.

While NJP&A certainly supports collaborative efforts to resolve issues of importance to people with developmental disabilities and their families, the Division has had more than enough notice and opportunity here to move beyond the collaborative process to positive results. The changes the Department itself identified in May 2005, can, and should, have been adopted at that time without waiting for the existing and, by its own admission, deficient regulations to expire. These obvious changes should be made now, and the Division and Department must commit to an expedited time table for completing this prolonged review process.

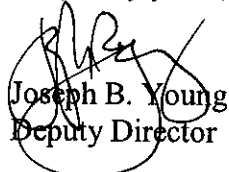
NJP&A also joins the Elizabeth M. Boggs Center, New Jersey's University for Excellence in Developmental Disabilities Education, Research, and Service, in its concerns regarding the existing regulations as noted below:

- In these existing regulations, there is no mandate for the completion of a Functional Assessment of Behavior (FA). A Functional Assessment of Behavior will assist in determining the ecological conditions which may lead to the occurrence of significant problem behaviors, and may provide information which can be used to improve supports and reduce the dependence on use of mechanical restraint.
- The present definition of "safeguarding equipment" is susceptible to misuse as an excuse for a lack of appropriate behavioral treatment, particularly in the area of self-injury. In the existing regulations, mechanical restraint for involuntary self injury is considered a safeguarding piece of equipment akin to a helmet for a person with an uncontrolled seizure disorder. This deprives an individual with involuntary self injury of important procedural measures that would otherwise be used in a mechanical restraint for control purposes.

- N.J.A.C. 10:42 as currently written notes that “mechanical restraint... shall be minimized in favor of other, more positive interventions.” We feel that this language is not sufficiently strong. It must be affirmatively mandated that appropriate methods of Positive Behavior Supports are to be used, giving the best possible chance for persons with intellectual and developmental disabilities the chance to live safe, quality lives.
- The definition of “Highly Restrictive Mechanical Restraint” is not sufficiently clear. Restraints listed under “Mechanical Restraint” also may restrict circulation, breathing, or render an individual vulnerable to other persons (e.g., splints or body harnesses). Continual observation by staff should be required for any mechanical restraint.
- The document in the New Jersey Register, 11/06/2006, notes that community care homes would not, in all likelihood, accept individuals who require the use of these behavioral interventions. Given the expansion of community presence for persons with developmental disabilities, we find this comment to be confusing. We see the need to create additional community capacity to support all persons with intellectual and developmental disabilities, including persons who present problem behaviors.

While NJP&A supports the goal of improving these regulations, we are seriously concerned about readopting N.J.A.C. 10:42 without amendment. People with developmental disabilities receiving services from the Department and the Division who are at risk of the inappropriate use of restraints should have the right to expect a swifter and more comprehensive response.

Very truly yours,


Joseph B. Young
Deputy Director

jby

cc: Clarke Bruno, Acting Commissioner, DHS
Gregory Fenton, Acting Director, DDD