

## 2020 Minnesota Statutes

### 245D.06 PROTECTION STANDARDS.

Subd. 5. **Prohibited procedures.** 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.

Subd. 6. **Restricted procedures.** (a) The following procedures are allowed when the procedures are implemented in compliance with the standards governing their use as identified in clauses (1) to (3). Allowed but restricted procedures include:

- (1) permitted actions and procedures subject to the requirements in subdivision 7;
  - (2) procedures identified in a positive support transition plan subject to the requirements in subdivision 8; or
  - (3) emergency use of manual restraint subject to the requirements in section [245D.061](#).
- (b) A restricted procedure identified in paragraph (a) must not:
- (1) be implemented with a child in a manner that constitutes sexual abuse, neglect, physical abuse, or mental injury, as defined in section [260E.03](#);
  - (2) be implemented with an adult in a manner that constitutes abuse or neglect as defined in section [626.5572, subdivision 2](#) or 17;
  - (3) be implemented in a manner that violates a person's rights identified in section [245D.04](#);
  - (4) restrict a person's normal access to a nutritious diet, drinking water, adequate ventilation, necessary medical care, ordinary hygiene facilities, normal sleeping conditions, necessary clothing, or any protection required by state licensing standards or federal regulations governing the program;
  - (5) deny the person visitation or ordinary contact with legal counsel, a legal representative, or next of kin;
  - (6) be used for the convenience of staff, as punishment, as a substitute for adequate staffing, or as a consequence if the person refuses to participate in the treatment or services provided by the program;
  - (7) use prone restraint. For purposes of this section, "prone restraint" means use of manual restraint that places a person in a face-down position. Prone restraint does not include brief physical holding of a person who, during an emergency use of manual restraint, rolls into a prone position, if the person is restored to a standing, sitting, or side-lying position as quickly as possible;
  - (8) apply back or chest pressure while a person is in a prone position as identified in clause (7), supine position, or side-lying position; or
  - (9) be implemented in a manner that is contraindicated for any of the person's known medical or psychological limitations.

Subd. 7. **Permitted actions and procedures.** (a) Use of the instructional techniques and intervention procedures as identified in paragraphs (b) and (c) is permitted when used on an intermittent or continuous basis. When used on a continuous basis, it must be addressed in a

person's coordinated service and support plan addendum as identified in sections [245D.07](#) and [245D.071](#).

(b) Physical contact or instructional techniques must use the least restrictive alternative possible to meet the needs of the person and may be used:

- (1) to calm or comfort a person by holding that person with no resistance from that person;
- (2) to protect a person known to be at risk of injury due to frequent falls as a result of a medical condition;
- (3) to facilitate the person's completion of a task or response when the person does not resist or the person's resistance is minimal in intensity and duration;
- (4) to block or redirect a person's limbs or body without holding the person or limiting the person's movement to interrupt the person's behavior that may result in injury to self or others with less than 60 seconds of physical contact by staff; or
- (5) to redirect a person's behavior when the behavior does not pose a serious threat to the person or others and the behavior is effectively redirected with less than 60 seconds of physical contact by staff.

(c) Restraint may be used as an intervention procedure to:

- (1) allow a licensed health care professional to safely conduct a medical examination or to provide medical treatment ordered by a licensed health care professional;
- (2) assist in the safe evacuation or redirection of a person in the event of an emergency and the person is at imminent risk of harm; or
- (3) position a person with physical disabilities in a manner specified in the person's coordinated service and support plan addendum.

Any use of manual restraint as allowed in this paragraph must comply with the restrictions identified in subdivision 6, paragraph (b).

(d) Use of adaptive aids or equipment, orthotic devices, or other medical equipment ordered by a licensed health professional to treat a diagnosed medical condition do not in and of themselves constitute the use of mechanical restraint.

**Subd. 8. Positive support transition plan.** (a) License holders must develop a positive support transition plan on the forms and in the manner prescribed by the commissioner for a person who requires intervention in order to maintain safety when it is known that the person's behavior poses an immediate risk of physical harm to self or others. The positive support transition plan must phase out any existing plans for the emergency or programmatic use of restrictive interventions prohibited under this chapter within the following timelines:

(1) for persons receiving services from the license holder before January 1, 2014, the plan must be developed and implemented by February 1, 2014, and phased out no later than December 31, 2014; and

(2) for persons admitted to the program on or after January 1, 2014, the plan must be developed and implemented within 30 calendar days of service initiation and phased out no later than 11 months from the date of plan implementation.

(b) 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.

(c) Written requests for the emergency use of the procedures must be developed and submitted to the commissioner by the designated coordinator with input from the person's expanded support team in accordance with the requirements set by the interim review panel, in addition to the following:

(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).

(d) A copy of the written request, supporting documentation, and the commissioner's final determination on the request must be maintained in the person's service recipient record.

## **245D.061 EMERGENCY USE OF MANUAL RESTRAINTS.**

Subd 1. **Standards for emergency use of manual restraints.** The license holder must ensure that emergency use of manual restraints complies with the requirements of this chapter and the license holder's policy and procedures as required under subdivision 9.

Subd. 2. **Conditions for emergency use of manual restraint.** Emergency use of manual restraint must meet the following conditions:

(1) immediate intervention must be needed to protect the person or others from imminent risk of physical harm; and

(2) the type of manual restraint used must be the least restrictive intervention to eliminate the immediate risk of harm and effectively achieve safety. The manual restraint must end when the threat of harm ends.

Subd. 3. [Repealed, [2015 c 78 art 6 s 32](#)]

Subd. 4. **Monitoring emergency use of manual restraint.** The license holder shall monitor a person's health and welfare during an emergency use of a manual restraint. Staff monitoring the procedure must not be the staff implementing the procedure when possible. The license holder shall complete a monitoring form, approved by the commissioner, for each incident involving the emergency use of a manual restraint.

Subd. 5. **Reporting emergency use of manual restraint incident.**

(a) Within three calendar days after an emergency use of a manual restraint, the staff person who implemented the emergency use must report in writing to the designated coordinator the following information about the emergency use:

(1) the staff and persons receiving services who were involved in the incident leading up to the emergency use of manual restraint;

(2) a description of the physical and social environment, including who was present before and during the incident leading up to the emergency use of manual restraint;

(3) a description of what less restrictive alternative measures were attempted to de-escalate the incident and maintain safety before the manual restraint was implemented that identifies when, how, and how long the alternative measures were attempted before manual restraint was implemented;

(4) a description of the mental, physical, and emotional condition of the person who was restrained, and other persons involved in the incident leading up to, during, and following the manual restraint;

(5) whether there was any injury to the person who was restrained or other persons involved in the incident, including staff, before or as a result of the use of manual restraint;

(6) whether there was a debriefing with the staff, and, if not contraindicated, with the person who was restrained and other persons who were involved in or who witnessed the restraint, following the incident and the outcome of the debriefing. If the debriefing was not conducted at the time the incident report was made, the report should identify whether a debriefing is planned; and

(7) a copy of the report must be maintained in the person's service recipient record.

(b) Each single incident of emergency use of manual restraint must be reported separately. For the purposes of this subdivision, an incident of emergency use of manual restraint is a single incident when the following conditions have been met:

- (1) after implementing the manual restraint, staff attempt to release the person at the moment staff believe the person's conduct no longer poses an imminent risk of physical harm to self or others and less restrictive strategies can be implemented to maintain safety;
- (2) upon the attempt to release the restraint, the person's behavior immediately re-escalates;

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- d (3) staff must immediately reimplement the restraint in order to maintain safety.

Subd. 6. **Internal review of emergency use of manual restraint.** (a) Within five working days

of the emergency use of manual restraint, the license holder must complete and document an internal review of each report of emergency use of manual restraint. The review must include an evaluation of whether:

- (1) the person's service and support strategies developed according to sections [245D.07](#) and [245D.071](#) need to be revised;
- (2) related policies and procedures were followed;
- (3) the policies and procedures were adequate;
- (4) there is a need for additional staff training;
- (5) the reported event is similar to past events with the persons, staff, or the services involved; and
- (6) there is a need for corrective action by the license holder to protect the health and welfare of persons.

(b) Based on the results of the internal review, the license holder must develop, document, and implement a corrective action plan for the program designed to correct current lapses and prevent future lapses in performance by individuals or the license holder, if any. The corrective action plan, if any, must be implemented within 30 days of the internal review being completed.

(c) The license holder must maintain a copy of the internal review and the corrective action plan, if any, in the person's service recipient record.

Subd. 7. **Expanded support team review.** (a) Within five working days after the completion of the internal review required in subdivision 6, the license holder must consult with the expanded support team following the emergency use of manual restraint to:

- (1) discuss the incident reported in subdivision 5, to define the antecedent or event that gave rise to the behavior resulting in the manual restraint and identify the perceived function the behavior served; and
- (2) determine whether the person's coordinated service and support plan addendum needs to be revised according to sections [245D.07](#) and [245D.071](#) to positively and effectively help the person maintain stability and to reduce or eliminate future occurrences requiring emergency use of manual restraint.

(b) The license holder must maintain a written summary of the expanded support team's discussion and decisions required in paragraph (a) in the person's service recipient record.

Subd. 8. **External review and reporting.** Within five working days of the expanded support

team review, the license holder must submit the following to the Department of Human Services, and the Office of the Ombudsman for Mental Health and Developmental Disabilities, as required under section [245.94, subdivision 2a](#):

- (1) the report required under subdivision 5;
- (2) the internal review and the corrective action plan required under subdivision 6; and
- (3) the summary of the expanded support team review required under subdivision 7.

Subd. 9. **Emergency use of manual restraints policy and procedures.** The license holder must develop, document, and implement a policy and procedures that promote service recipient rights and protect health and welfare during the emergency use of manual restraints. The policy and procedures must comply with the requirements of this section and must specify the following:

(1) a description of the positive support strategies and techniques staff must use to attempt to de-escalate a person's behavior before it poses an imminent risk of physical harm to self or others;

(2) a description of the types of manual restraints the license holder allows staff to use on an emergency basis, if any. If the license holder will not allow the emergency use of manual restraint, the policy and procedure must identify the alternative measures the license holder will require staff to use when a person's conduct poses an imminent risk of physical harm to self or others and less restrictive strategies would not achieve safety;

(3) instructions for safe and correct implementation of the allowed manual restraint procedures;

(4) the training that staff must complete and the timelines for completion, before they may implement an emergency use of manual restraint. In addition to the training on this policy and procedure and the orientation and annual training required in section [245D.09](#), subdivision 4, the training for emergency use of manual restraint must incorporate the following subjects:

(i) alternatives to manual restraint procedures, including techniques to identify events and environmental factors that may escalate conduct that poses an imminent risk of physical harm to self or others;

(ii) de-escalation methods, positive support strategies, and how to avoid power struggles;

(iii) simulated experiences of administering and receiving manual restraint procedures allowed by the license holder on an emergency basis;

(iv) how to properly identify thresholds for implementing and ceasing restrictive procedures;

(v) how to recognize, monitor, and respond to the person's physical signs of distress, including positional asphyxia;

(vi) the physiological and psychological impact on the person and the staff when restrictive procedures are used;

(vii) the communicative intent of behaviors; and

(viii) relationship building;

(5) the procedures and forms to be used to monitor the emergency use of manual restraints, including what must be monitored and the frequency of monitoring per each incident of emergency use of manual restraint, and the person or position who is responsible for monitoring the use;

(6) the instructions, forms, and timelines required for completing and submitting an incident report by the person or persons who implemented the manual restraint; and

(7) the procedures and timelines for conducting the internal review and the expanded support team review, and the person or position responsible for completing the reviews and for ensuring that corrective action is taken or the person's coordinated service and support plan addendum is revised, when determined necessary.