CHAPTER 42

MECHANICAL RESTRAINTS AND SAFEGUARDING EQUIPMENT

Authority

N.J.S.A. 30:1-12 et seq., 30:4-6 et seq., and 30:6D-5.

Source and Effective Date

R.2007 d.180, effective May 4, 2007.
See: 38 N.J.R. 4621(a), 39 N.J.R. 2258(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 42, Mechanical Restraints and Safeguarding Equipment, expires on October 31, 2014. See: 46 N.J.R. 1302(a).

Chapter Historical Note

Chapter 42, Emergency Mechanical Equipment, was adopted pursuant to authority of N.J.S.A. 30:1-12, 30:1-15.1; 30:4-1 et seq. and 30:6D-5, R.1986 d.341, effective August 18, 1986, operative January 1, 1987. See: 17 N.J.R. 1832(a), 18 N.J.R. 1706(a).

Chapter 42, Emergency Mechanical Equipment, was repealed and a new Chapter 42, Mechanical Restraints and Safeguarding Equipment, was adopted as new rules by R.1991 d.437, effective August 19, 1991. See: 23 N.J.R. 1653(a), 23 N.J.R. 2538(a).

Pursuant to Executive Order No. 66(1978), Chapter 42, Mechanical Restraints and Safeguarding Equipment, was readopted as R.1996 d.386, effective July 16, 1996. See: 28 N.J.R. 2314(a), 28 N.J.R. 3959(a). Pursuant to Executive Order No. 66(1978), Chapter 42, Mechanical Restraints and Safeguarding Equipment, expired on July 16, 2001.

Chapter 42, Mechanical Restraints and Safeguarding Equipment, was adopted as new rules by R.2001 d.372, effective November 5, 2001. See: 33 N.J.R. 1553(a), 33 N.J.R. 3743(a).

Chapter 42, Mechanical Restraints and Safeguarding Equipment, was readopted as R.2007 d.180, effective May 4, 2007. See: Source and Effective Date.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 42, Mechanical Restraints and Safeguarding Equipment, was scheduled to expire on May 4, 2014. See: 43 N.J.R. 1203(a).

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SUBCHAPTER 1. GENERAL PROVISIONS

10:42-1.1 Purpose

The purpose of this chapter is to detail the policies and procedures for the utilization of safeguarding equipment and mechanical restraints.

10:42-1.2 Scope

This chapter applies to components of the Division of Developmental Disabilities, as well as providers regulated by or under contract with the Division.

10:42-1.3 Definitions

For the purpose of this chapter, the following terms shall have the meaning defined herein:

"Chief executive officer" (CEO) means the person having administrative authority over, and responsibility for, a State-operated developmental center or a private licensed facility for persons with developmental disabilities under N.J.A.C. 10:47.

"Continual observation" means that the person in mechanical restraint can be seen by a staff member at all times.

"Emergency procedures" means the brief use of procedures to control severely aggressive or destructive behaviors that place the individual or others in imminent danger or physical harm.

"Highly restrictive mechanical restraint" means restraints whose use is considered to be intrusive, and can restrict circulation, breathing or render an individual vulnerable to other persons in the immediate area. Highly restrictive mechanical restraints include, but are not limited to: a camisole, wrist cuff, ankle cuff, papoose boards, restraint chairs and standing boxes.

"Human Rights Committee" means a group comprised of professionals, individuals served, advocates, and/or interested individuals from the community at large who function as an advisory body to the chief executive officer, executive director, regional administrator, or superintendent on issues directly or indirectly affecting the rights of individuals served by the Division.

"Individual Habilitation Plan" (IHP) (see N.J.S.A. 30:6D-10 et seq.) means a written plan of intervention and action that is developed by the interdisciplinary team. It specifies

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both the prioritized goals and objectives being pursued by each individual and the steps being taken to achieve them. It may identify a continuum of skill development that outlines progressive steps and the anticipated outcomes of services. The IHP is a single plan that encompasses all relevant components, such as an education plan, a behavior modification plan, a program plan, a rehabilitation plan, a treatment plan and a health care plan. The complexity of the IHP will vary according to the needs, capabilities and desires of the person. In most instances, the IHP shall address all major needs identified. The major needs shall be prioritized. For an individual who makes only specific service requests, the IHP shall be a service plan which addresses only those specific requests.

"Informed consent" means a formal expression, oral or written, of agreement with a proposed course of action by an individual who has the capacity, the information and the ability to render voluntary agreement on his or her own behalf or on behalf of another.

"Interdisciplinary Team" (IDT) means an individually constituted group responsible for the development of a single, integrated IHP. The team shall consist of the individual receiving services; the legal guardian, the parents or family member (if the adult desires that the parent or family member be present); those persons who work most directly with the individual served; and professionals and representatives of service areas who are relevant to the identification of the individual's needs and the design and evaluation of programs to meet them.

"Mechanical restraint" means the application of a device which restricts freedom or movement either partially or totally. These devices include, but are not limited to: bedside rails, mitts, jumpsuits, arm splints, vests, helmets and body harnesses. The use of domed or enclosed cribs shall be prohibited.

"Physical distress" means the individual is exhibiting one or more of the following: difficulty breathing; choking; vomiting; bleeding; fainting; unconsciousness; discoloration; swelling at points of restraint; appearance of pain; cold extremities or similar manifestations.

"Qualified mental retardation professional" (QMRP) means a person who has at least one year of experience in working with persons with developmental disabilities and is one of the following:

1. A doctor of medicine or osteopathy;

2. A registered nurse;

3. A professional program staff person who is licensed, certified or registered, as applicable. If the professional program staff do not fall under the jurisdiction of State licensure, certification or registration requirements, he or she shall meet the following qualifications:

i. To be designated as an occupational therapist, an individual shall be eligible for certification as an occupational therapist by the American Occupational Therapy Association or another comparable body;

ii. To be eligible as an occupational therapy assistant, an individual shall be eligible for certification as a certified occupational therapy assistant by the American Occupational Therapy Association or other comparable body;

iii. To be eligible as a physical therapist, the individual shall be eligible for certification as a physical therapist by the American Physical Therapy Association or other comparable body.

iv. To be eligible as a physical therapy assistant, an individual shall be eligible for registration by the American Physical Therapy Association or be a graduate of a two-year college level program approved by the American Physical Therapy Association or other comparable body;

v. To be designated as a psychologist, an individual shall have at least a master's degree in psychology from an accredited school;

vi. To be designated as a social worker, an individual shall:

(1) Hold a graduate degree from a school of social work accredited or approved by the Council on Social Work Education or another comparable body; or

(2) Hold a Bachelor of Social Work degree from a college or university accredited or approved by the Council on Social Work Education or another comparable body;

vii. To be designated as a speech language pathologist or audiologist, an individual shall:

(1) Be eligible for a certificate of clinical competence in speech language pathology or audiology granted by the American Speech Language Hearing Association or other comparable body; or

(2) Meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification;

viii. To be designated as a professional recreation staff, an individual shall have a bachelor degree in recreation or in a specialty area such as art, dance, music or physical education;

ix. To be designated as a professional dietician or nutritionist, an individual shall be eligible for registration by the American Dietetics Association;

x. To be designated as a human services professional, an individual shall have at least a bachelor degree in a human services field, including, but not limited to, sociology, special education, rehabilitation, counselling or psychology.

"Safeguarding equipment" means devices which restrict movement used to provide support for the achievement of functional body position or proper balance; devices used for specific medical, dental or surgical treatment; and devices to protect the individual from symptoms of existing medical conditions, including, but not limited to, seizures, ataxia and involuntary self abuse.

"Unusual incident" means an event involving an individual served by the Division or employee of the Division or an agency under contract with or regulated by the Division, involving indications or allegations of criminal actions, injury, negligence, exploitation, abuse, clinical mismanagement or medical malpractice; a major unforeseen event, for example, serious fire, explosion, power failure, that presents a significant danger to the safety or well being of individuals served and/or employees; or a newsworthy incident. In this chapter, the term "incident" shall refer to an unusual incident.

Amended by R.1996 d.386, effective August 19, 1996.
See: 28 N.J.R. 2314(a), 28 N.J.R. 3959(a).
Added "Chief executive officer", deleted "Individualized Education Program" (IEP), and amended "Individual Habilitation Plan" (IHP), "Interdisciplinary Team" (IDT) and "Physical distress".

10:42–1.4 General requirements

(a) The Division of Developmental Disabilities recognizes that acceptable behavior in children and adults with developmental disabilities is fostered and maintained by a stimulating environment, participation in activities that encourage development of new skills and support from the people with whom they come into contact. The Division is committed to providing a supportive environment to persons with developmental disabilities. However, the Division also recognizes that, even in a supportive environment, some individuals will exhibit aggressive, destructive or self-injurious behaviors. When such behaviors present a danger to the individual himself or herself or others, action must be taken to help the individual control himself or herself, or, if that is not possible to control the individual. If the individual exhibits these problem behaviors on a regular basis, a professionally designed program (such as a medical intervention or behavior modification) shall be applied to change these behaviors. When the individual exhibits a dangerous behavior that has not been previously observed or reported, emergency measures must be available to assist them in protecting the individual or others. Among the emergency measures that are used in such situations are mechanical restraints. Some of the devices used as mechanical restraints may also be used to help an individual achieve functional body alignment or to protect the individual from harm. In some instances, only the intended use of the device will determine whether it is a mechanical restraint or a piece of safeguarding equipment.

(b) Devices such as bed rails, mitts, jumpsuits, arm splints, vest, helmets and body harnesses may be used as either a mechanical restraint for control purposes or safeguarding equipment, depending upon circumstances. For example, a helmet used to prevent injury due to seizures is a safeguarding device. Use of a helmet to prevent injury due to self-injurious behavior is for control purposes.

(c) Primary reliance on punishment, physical or mechanical restraints or aversive techniques to decrease undesirable behavior is contrary to Division policy. Mechanical restraints for control purposes are considered to be appropriate only when absolutely necessary and their use shall be minimized in favor of other, more positive interventions.

(d) When highly restrictive mechanical restraints are in use, continual observation by staff is required to recognize obvious signs of physical distress.

(e) All devices shall be applied only by staff trained in their use and applications.

(f) The need for the particular device to be used as safeguarding equipment or for behavioral intervention shall be documented in the Individual Habilitation Plan (IHP) and re-evaluated no less than annually as a part of the IHP review or as specified by the Interdisciplinary Team in the IHP.

(g) Only commercially produced devices shall be employed for control purposes. If a special device must be developed, the need for the device shall be:

1. Documented in the IHP;

2. Approved by the Department's Chief Medical Consultant;

3. Approved by the appropriate Human Rights Committee; and

4. Approved by the Division Director.

(h) All safeguarding equipment shall be prescribed by a licensed physician. With regard to dental matters, the safeguarding equipment shall be prescribed by a dentist.

(i) Restraints may be used on a temporary basis to conduct medical and dental evaluations, examinations or treatments when the individual's behavior prevents the evaluation, examination or treatment.

(j) Mechanical restraints shall be inspected prior to each use to ensure that they remain in good repair and free from tears or protrusions which may cause injury.

(k) The Division of Developmental Disabilities may require a service provider to terminate restraint usage for an individual if any requirements of this chapter are violated.

SUBCHAPTER 2. SAFEGUARDING EQUIPMENT AND MECHANICAL RESTRAINTS

10:42–2.1 Use of safeguarding equipment

(a) The use of safeguarding equipment shall be initiated on the prescription of a physician.

(b) A physician shall document in the client record the need for safeguarding equipment and the specific device to be applied. That prescription shall indicate the specific medical condition for which the safeguarding equipment is to be used and the length of time permitted for its use. The prescription shall be included in the client record.

(c) If the equipment is used to prevent accidental self-injury, the physician shall document the specific medical condition which warrants its use. The equipment is to be used to address a specific symptom of the individuals medical condition which is not likely to be changed through behavior modification.

(d) Once the physician has documented the need for safeguarding equipment, the need shall be reviewed by the individual's IDT. If the use of the safeguarding equipment is consistent with the goals and objectives in the individual's IHP and can be implemented, the use of the safeguarding equipment shall be included in the IHP.

(e) If the use of the safeguarding device cannot be integrated into the IHP, the IDT shall meet to revise the plan to provide for the individual's safety and habilitation needs. The IDT shall meet within 10 working days from the initial application for a safeguarding device.

(f) The need for safeguarding equipment shall be reviewed as part of the IHP no less than annually.

(g) The continued need for a safeguarding device shall be authorized by a physician in the client record at least annually.

10:42–2.2 Mechanical restraints

(a) Mechanical restraints may be utilized only as follows:

1. As an emergency measure to control a person in order to protect him/herself or others from harm;

2. As part of an approved behavior modification program utilizing aversive techniques to attempt to change a targeted behavior;

3. As a safeguarding device to protect the individual from accidental self-injury; or

4. As a control device for medical, surgical and dental examinations.

(b) A facility or service provider may implement a program of mechanical restraint only with specific authorization of the Director, Division of Developmental Disabilities.

(c) Mechanical restraints shall not be used as punishment (retribution), for the convenience of staff, or as a substitute for programming.

(d) The individual shall be immediately released if he or she appears to be in physical distress.

(e) The individual must be placed in the least restrictive form of mechanical restraint unless clinical evidence to justify the use of a more restrictive technique is available.

(f) Only personnel who have successfully completed a training program approved by the Division of Developmental Disabilities shall be permitted to apply, monitor and release mechanical restraints.

(g) Whenever an individual exhibits serious assaultive, self-injurious or destructive behavior, controllable only by use of mechanical restraint, the interdisciplinary team shall meet to identify possible causes and develop strategies to address the maladaptive behavior.

SUBCHAPTER 3. APPLICATION AND IMPLEMENTATION

10:42–3.1 Application to use mechanical restraint

(a) Each facility or service provider requesting approval to utilize mechanical restraints shall submit to the Director, Division of Developmental Disabilities, comprehensive written procedures governing the use of restraint.

(b) The procedure submitted shall include the following:

1. A statement specifically identifying the forms of mechanical restraint to be used and the number of trained staff that shall be available to apply restraints;

2. Criteria for use of mechanical restraint;

3. Instructions for the application of each type of restraint;

4. Precautions for the use of mechanical restraint including certification by a physician that the use of restraint is not medically contra-indicated for the individual;

5. Recordkeeping and review requirements; and

6. A curriculum for training staff which shall include, but not be limited to, training in the proper use and application of each form of mechanical restraint to be employed as well as the recognition of the signs of physical distress.

10:42–3.2 Implementation standard: developmental centers/private licensed facilities for persons with developmental disabilities

(a) Following approval by the Director, Division of Developmental Disabilities, for use of mechanical restraint, the following standards shall apply:

1. Prior to the initial restraint authorization, a physician must certify that the technique to be employed is not medically contraindicated for the individual.

2. In an emergency situation, the superintendent, chief executive officer (CEO) or his or her designee shall be responsible for authorizing the use of restraint. The authorized agent must be a qualified mental retardation professional (QMRP) as defined in 42 CFR 483.430(a) and this chapter.

3. The CEO shall identify those QMRPs who are responsible to authorize the use of restraint.

4. As soon as possible, but in less than 24 hours, a physician must review and countersign each "emergency" restraint order.

5. An emergency restraint order shall be effective for not more than 12 consecutive hours. If a new order is issued, all authorization shall be renewed.

6. Restraint orders shall include documentation of the type of mechanical restraint authorized, the length of time to be applied, the reason for restraint, and any special instruction. Each restraint order must be signed and dated by the authorizing agent.

7. Individuals placed in highly restrictive forms of mechanical restraint shall be under continual observation by staff trained to recognize signs of physical distress.

8. While in a mechanical restraint, documentation of a physical check by a staff member every 15 minutes is required. The check shall document the following:

i. Whether the continued use of the restraint is necessary; and

ii. Whether the restraint is applied in accordance with principles of good body alignment, a concern for circulation and allowance for change of position.

9. The individual shall be released from restraint for a period of not less than 10 minutes during each hour of restraint. One limb may be released at a time during the 10–minute period if the person cannot be completely released.

10. The use of jumpsuits or open-faced helmets does not require 15–minute checks. The individual does not have to be removed from the restraint for a 10–minute period during each hour since it does not restrict range of motion.

11. The individual's personal hygiene and nutritional needs shall be met while in restraint.

12. If a crib is used as a safeguarding device, documentation of 15–minute checks shall not be required. If a crib is used for control purposes, checks shall be required. It is not necessary to remove the individual from a crib for 10 minutes during each hour of use if the crib is used for sleeping.

13. The nature, reasons for and notation of each staff check shall be recorded in the client record.

14. Whenever an individual exhibits serious assaultive self-injurious or destructive behavior controlled by use of mechanical restraints, a special meeting of the IDT must be held to review current programming and alternatives. If the recurrence of the behavior may be anticipated, a behavior plan shall be developed.

15. An unusual incident report shall be completed.

Amended by R.1996 d.386, effective August 19, 1996.
See: 28 N.J.R. 2314(a), 28 N.J.R. 3959(a).

10:42–3.3 Implementation standards: community programs for the developmentally disabled

(a) In community programs, the utilization of mechanical restraint shall be considered only for those special programs adequately staffed by trained professional personnel and serving individuals who present a danger to himself or herself or others.

(b) Following approval of a mechanical restraint program by the Director, Division of Developmental Disabilities, the following shall apply:

1. Only a licensed psychologist or physician may authorize each use of mechanical restraint.

2. Prior to or at the time of the initial authorization, a physician must certify that the technique to be employed is not medically contra-indicated for the individual.

3. Whenever possible, the restraint order shall be immediately signed by the licensed psychologist or physician. However, the use of mechanical restraint may be authorized over the telephone by the licensed psychologist or physician in accordance with the following:

i. Such approval is strictly temporary and the restraint order shall be reviewed and signed by the licensed psychologist or physician as soon as possible but at least within 12 hours of its application; and

ii. The specific circumstances necessitating approval over the telephone shall be part of the client record and include the name of the party requesting or authorizing the restraint.

4. Restraint orders shall be effective for not more than 12 consecutive hours. If a new order is issued, all authorization shall be renewed.

5. Restraint orders shall include documentation of the type of mechanical restraint authorized, the length of time to be applied, the reason for restraint, and any special instruction for utilizing the restraint. Each restraint order must be signed and dated by the licensed psychologist or physician.

6. Individuals placed in highly restrictive forms of mechanical restraints shall be under continual observation by staff trained to recognize signs of physical distress.

7. While in mechanical restraint the individual shall be checked by a staff member every 15 minutes. The check shall document the following:

i. Whether the continued use of the restraint is necessary; and

ii. Whether the restraint is applied in accordance with principles of good body alignment, a concern for circulation and allowance for change of position.

8. The individual shall be released from restraint for a period of not less than 10 minutes during each hour of restraint. One limb may be released at a time for a 10–minute period if the person cannot be completely released.

9. The use of jumpsuits or open faced helmets do not require 15–minute checks. The individual does not have to be removed from the restraint for a 10–minute period during each hour of use since it does not restrict range of motion.

10. The nature, reasons for and notation of each staff check shall be recorded in the client record.

11. The individual's personal hygiene and nutritional needs shall be met while in restraint.

12. The service provider shall forward a report of the unusual incident to the Regional Assistant Director.

13. Whenever an individual exhibits serious assaultive, self-injurious or destructive behavior controlled by the use of mechanical restraints, a special meeting of the IDT must be held to review programming and alternatives. If a recurrence of the behavior is anticipated, a behavior plan shall be developed. The IDT shall forward the results of their review to the regional Human Rights Committee within 15 working days.

14. The Regional Human Rights Committee shall review the pertinent circumstance surrounding the utilization of each application of emergency mechanical restraints. The results of this review shall be forwarded to the Regional Assistant Director, appropriate Regional Administrator, and the Office of Licensing and Inspections within 10 days of the review by the Human Rights Committee.

Amended by R.1996. d.386, effective August 19, 1996.
See: 28 N.J.R. 2314(a), 28 N.J.R. 3959(a).
In (b)3 substituted licensed psychologist or physician for qualified authorizing agent, and in (b)8 added "if the person cannot be completely released".

SUBCHAPTER 4. MEDICAL/DENTAL EVALUATIONS, EXAMINATIONS OR TREATMENT

10:42–4.1 Use of mechanical restraint for medical/dental evaluations, examinations or treatment

(a) The physician/dentist may use or direct the use of restraint to accomplish a needed evaluation, examination or treatment. Such use shall be documented in the client record.

(b) Informed consent shall be required unless an emergency exists.

(c) In the judgment of the physician/dentist, when there is an emergency he or she may use or direct the use of restraints to accomplish a needed evaluation, examination or treatment. Such use shall be documented in the client record.

(d) Restraints shall be used under the continuous observation of the physician/dentist or his/her designee. The individual shall be released upon completion of the necessary procedures.

(e) At no time shall the individual be permitted to remain in restraints for the convenience of staff including pre- and post-treatment.