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Sponsored by:

Assemblywoman NANCY F. MUNOZ

District 21 (Morris, Somerset and Union)

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District 37 (Bergen)

SYNOPSIS

Establishes "Matthew's Law Limiting the Use of Restraints."

CURRENT VERSION OF TEXT

As introduced.



An Act concerning persons with developmental disabilities and persons with traumatic brain injuries, amending and supplementing P.L.1977, c.82 and amending P.L.1983, c.524.

**Be It Enacted** *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) Sections 6 through 10 of P.L. , c. (C.        ) (pending before the Legislature as this bill) shall be known and may be cited as "Matthew's Law Limiting the Use of Restraints."

2. Section 3 of P.L.1977, c.82 (C.30:6D-3) is amended to read as follows:

3. As used in **[**this act**]** P.L.1977, c.82 (C.30:6D-1 et seq.) and P.L. , c. (C. ) (pending before the Legislature as this bill), unless a different meaning clearly appears from the context:

a. "Developmental disability" means a severe, chronic disability of a person **[**which**]** that:

(1) is attributable to a mental or physical impairment or combination of mental or physical impairments;

(2) is manifest before age 22;

(3) is likely to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activity, that is, self-care, receptive and expressive language, learning, mobility, self-direction, and capacity for independent living or economic self-sufficiency; and

(5) reflects the need for a combination and sequence of special inter-disciplinary or generic care, treatment, or other services **[**which**]** that are of lifelong or extended duration and are individually planned and coordinated. Developmental disability includes, but is not limited to, severe disabilities attributable to**[**,**]** an intellectual disability, autism, cerebral palsy, epilepsy, spina bifida, and other neurological impairments where the above criteria are met;

b. "Services" or "services for persons with developmental disabilities" means specialized services or special adaptations of generic services provided by any public or private agency, organization, or institution and directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability; and **[**such term**]** includes diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with **[**such**]** a developmental disability and of his family, protective and other social and socio-legal services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to persons with developmental disabilities; **[**and**]**

c. "Facility" or "facility for persons with developmental disabilities" means a facility operated by any public or private agency, organization or institution for the provision of services for persons with developmental disabilities;

d. "Aversive technique" means the presentation of stimuli or conditions to decrease the frequency, intensity, or duration of maladaptive behavior by inducing distress, discomfort, or pain, which may place the individual at some degree of risk of physical or psychological injury;

e. "Commissioner" means the Commissioner of Human Services;

f. "Division" means the Division of Developmental Disabilities in the Department of Human Services;

g. "Emergency" means a situation in which immediate intervention is necessary to protect the physical safety of a person receiving services at a facility or from a public or private agency, or to protect the safety of others from an immediate threat of serious physical injury;

h. "Mechanical restraint" means the application of a device, at a facilityor a public or private agency, that restricts a person's freedom of movement either partially or totally and includes, but is not limited to, a bedside rail, mitt, jumpsuit, arm splint, vest, helmet, and body harness, but does not include a domed or enclosed crib;

i. "Person with traumatic brain injury" means a person who has sustained an injury, illness, or traumatic changes to the skull, the brain contents, or its coverings, which results in a temporary or permanent physiobiological decrease of cognitive, behavioral, social, or physical functioning that causes partial or total disability;

j. "Physical restraint" means physical contact by facility or public or private agencystaff that restricts a person's freedom of movement either partially or totally;

k. "Public or private agency" means an entity under contract with, licensed by, or working in collaboration with, the division or Department of Human Services, as appropriate, to provide services for persons with developmental disabilities; and

l. "Unusual incident" means: an event involving a person receiving services at a facility or from a public or private agency, which event includes indications or allegations of criminal actions, injury, negligence, exploitation, abuse, clinical mismanagement, or medical malpractice; a major unforeseen event, including a serious fire, explosion, or power failure, which presents a significant danger to the safety or well-being of persons served or staff; or a newsworthy incident, including an incident that affects the Department of Human Services or the division in a manner that may attract media interest or calls, especially those incidents involving potential criminal charges, famous, notorious, or dangerous people, or relating to a news item of wide public interest.

(cf: P.L.2010, c.50, s.52)

3. Section 5 of P.L.1977, c.82 (C.30:6D-5) is amended to read as follows:

5. a. No person receiving services for persons with developmental disabilities at any facility shall:

(1) be subjected to any corporal punishment;

(2) be administered any medication or chemical restraint, except upon the written authorization of a physician when necessary and appropriate as an element of the service being received or as a treatment of any medical or physical condition in conformity with accepted standards for that treatment. The nature, amount of, and reasons for the administration of any medication or chemical restraint shall be promptly recorded in the person's medical record; or

(3) be **[**physically or**]** chemically restrained or isolated in any manner, except in emergency situations for the control of violent, disturbed, or depressed behavior **[**which**]** that may immediately result in or has resulted in harm to the person or other person **[**or in substantial property damage**]**.

The chief administrator of the facility, or the chief administrator's designee, shall be notified immediately upon the application of any chemical restraint or isolation, and thereafter, the restraint or isolation shall be continued only upon the written order of the administrator or designee. The order shall be effective for not more than 24 hours, and may be renewed for additional periods of not more than 24 hours each if the administrator or designee **[**shall determine**]** determines that continued restraint or isolation is necessary. While in restraint or isolation, the person shall be checked by an attendant every 15 minutes**[**,**]** and bathed every 24 hours. The restraint or isolation shall be terminated at any time if an attending physician **[**shall find**]** finds the restraint or isolation to be medically contraindicated. The nature, duration of, reasons for, and notation of attendant checks shall be promptly recorded in the person's medical record;

(4) be subjected to shock treatment, psychosurgery, sterilization, or medical, behavioral, or pharmacological research without the express and informed consent of the person, if the person is an adult who has mental capacity, or of the person's guardian ad litem specifically appointed by a court for the matter of consent to these proceedings, if the person is a minor **[**or**]**, is an adult who lacks mental capacity, or is a person administratively determined to have a mental deficiency. The consent shall be made in writing and shall be placed in the person's record.

Either the party alleging the necessity of the procedure or the person or the person's guardian ad litem may petition a court of competent jurisdiction to hold a hearing to determine the necessity of the procedure at which the client is physically present, represented by counsel, and provided the right and opportunity to be confronted with and to cross-examine all witnesses alleging the necessity of the procedure. In the proceedings, the burden of proof shall be on the party alleging the necessity of the procedure. In the event that a person cannot afford counsel, the court shall appoint an attorney not less than 10 days before the hearing. An attorney so appointed shall be entitled to a reasonable fee to be determined by the court and paid by the county from which the person was admitted. Under no circumstances may a person in treatment be subjected to hazardous or intrusive experimental research **[**which**]** that is not directly related to the specific goals of the person's treatment program.

(5) Notwithstanding the provisions of paragraph (4) of this subsection to the contrary, nothing in this section shall prohibit consent obtained or research conducted pursuant to the provisions of P.L.2007, c.316 (C.26:14-1 et seq.) as provided in this paragraph (5).

(a) In addition to meeting the requirements of sections 4 and 5 of P.L.2007, c.316 (C.26:14-4 and C.26:14-5), medical research involving persons who are protected by the provisions of this subsection shall also meet the approval of the Interdisciplinary Research Committee established herein.

(b) The members of the Interdisciplinary Research Committee shall be appointed by the Assistant Commissioner of the Division of Developmental Disabilities in the Department of Human Services, and shall serve at the pleasure of the Assistant Commissioner. The members shall have diverse backgrounds, represent a variety of professions, and include at least one self-advocate and one family member, neither of whom shall be an employee of the department.

(c) The committee shall independently determine whether the criteria set forth in section 3 of P.L.2007, c.316 (C.26:14-3), and where required, the informed consent provisions of section 4 of P.L.2007, c.316 (C.26:14-4), have been met. In addition, the committee may impose such other conditions on approval as it determines are necessary to protect the health, safety, and autonomy of the individuals participating in the medical research.

(d) Notices of proposals for medical research received by the committee, and the committee's action on the proposals, shall be posted on the department's website and forwarded to the New Jersey Council on Developmental Disabilities, The Elizabeth M. Boggs Center on Developmental Disabilities, and Disability Rights of New Jersey.

(e) Two years after enactment of P.L.2011, c.182 and every two years thereafter, the division shall provide to the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and post on the division's Internet website, a summary of the research proposals reviewed by the committee and the actions taken.

b. Every person with a developmental disability in residence at any facility shall be provided with a nutritionally adequate and sufficient diet and shall receive appropriate and sufficient medical and dental care on a regular basis and whenever otherwise necessary.

c. Every person with a developmental disability between the ages of five and 21, inclusive, in residence or full-time attendance at any facility shall be provided a thorough and efficient education suited to the person's age and abilities.

(cf: P.L.2013, c.103, s.92)

4. Section 11 of P.L.1977, c.82 (C.30:6D-11) is amended to read as follows:

11. [Such] The plan shall:

a. Include a statement of the long-term habilitation goals for [such] the person and the intermediate objectives relating to the attainments of [such] the goals. [Such] These objectives shall be stated specifically and in sequence and shall be expressed in behavioral or other terms that provide measurable indices of progress;

b. Describe how the objectives will be achieved and the barriers that might interfere with the achievement of them;

c. State an objective criteria and an evaluation procedure and schedule for determining whether [such objective] the objectives and goals are being achieved;

d. Provide a coordinator who will be responsible for the implementation of the plan;

e. Specify habilitation services to be provided;

f. Describe the personnel, including their qualifications, necessary for the provision of the services described in [such] the plan;

g. Specify the date of initiation and the anticipated duration of each service to be provided;

h. Specify the role and objectives of all parties to the implementation of the plan.

The plan shall not include physical or mechanical restraints or aversive techniques as a planned intervention, but may provide for the use of physical or mechanical restraints in accordance with the provisions of subsection b. of section 6 of P.L.    , c.   (C.      )

(pending before the Legislature as this bill) and subsection b. of section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill).

(cf: P.L.1977, c.82, s.11)

5. Section 5 of P.L.1983, c.524 (C.30:6D-17) is amended to read as follows:

5. a. The department shall ensure that every developmentally disabled person in a community residential facility receives adequate medical and dental care, a nutritionally adequate diet, a full daily program of structured activities, and those other services which are necessary to maximize the developmental potential of the developmentally disabled person in a manner least restrictive of personal liberty. Every developmentally disabled person shall have adequate protection from abuse and a wholesome environment in which to live.

b. All rights and procedures for the enforcement of rights recognized in sections 4, 5, and 7 of the "Developmentally Disabled Rights Act," P.L.1977, c.82 (C.30:6D-4, 5, 7), and all rights and procedures specified in P.L. , c. (C. )(pending before the Legislature as this bill) shall apply to persons covered by [this act] P.L.1983, c.524 (C.30:6D-13 et seq.).

c. The department shall ensure that:

(1) aversive techniques are not used on a person with traumatic brain injury who is in a community residence licensed under P.L.1977, c.448 (C.30:11B-1 et seq.); and

(2) if a physical or mechanical restraint is used on a person with traumatic brain injury who is in a community residence licensed under P.L.1977, c.448 (C.30:11B-1 et seq.), that use shall be in accordance with the provisions of sections 6 and 7 of P.L.    , c.    (C.     ) (pending before the Legislature as this bill).

(cf: P.L.1983, c.524, s.5)

6. (New section) a. Except as provided in subsection b. of this section, a person receiving services for persons with developmental disabilities at a facility or from a public or private agency shall not be subjected to physical restraint unless:

(1) an emergency exists that necessitates the use of physical restraint;

(2) the physical restraint is used only for the period that is necessary to contain the behavior of the person so that the person no longer poses an immediate threat of causing serious physical injury to himself or others, except that this period shall not exceed one hour;

(3) a medical order authorizing the use of physical restraint is obtained from the person's treating physician before the application of the physical restraint or not later than 15 minutes after the application;

(4) the physician who signed the order referred to in paragraph (3) of this subsection or the attending physician examines the person not later than one working day after the application of the physical restraint; and

(5) the use of force in the application of physical restraint does not exceed the force that is reasonable and necessary under the circumstances precipitating the use of physical restraint.

b. The provisions of subsection a. of this section shall not apply in the case of physical restraint that is applied to:

(1) assist a person in completing a task if the person does not resist the application of physical restraint or if the restraint is minimal in intensity and duration;

(2) escort or carry a person to safety if the person is in danger in his present location; or

(3) enable a health care professional totreat the medical needs of the person.

c. Within one working day of the use of physical restraint on a person in an emergency, the use shall be reported as an unusual incident, in accordance with the division's policy for reporting unusual incidents, which shall include reporting these incidents to the person's parent or legal guardian, an unusual incident report coordinator in the division, and theOffice of Operations Support, or its successor, in the Department of Human Services.

7. (New section) a. Except as provided in subsection b. of this section, a person receiving services for persons with developmental disabilities at a facility or from a public or private agency shall not be subjected to mechanical restraint unless:

(1) an emergency exists that necessitates the use of mechanical restraint;

(2) a medical order authorizing the use of mechanical restraint is obtained from the person's treating physician before the application of the mechanical restraint or not later than 15 minutes after the application of the mechanical restraint;

(3) the physician who signed the order referred to in paragraph (2) of this subsection or the attending physician examines the person not later than one working day immediately after the application of the mechanical restraint;

(4) the mechanical restraint is applied by staff trained in the use and application of the particular restraint;

(5) the person is given the opportunity to move and exercise the parts of his body that are restrained at least 10 minutes for every 60 minutes of restraint;

(6) a member of the staff lessens or discontinues the mechanical restraint every 15 minutes to determine whether the person will stop or control dangerous behavior without the use of the restraint;

(7) the record of the person contains a notation that includes: the time of day that the mechanical restraint was lessened or discontinued pursuant to paragraph (6) of this subsection; the response of the person to the lessening or discontinuation of the restraint; and the action taken by the member of the staff to lessen or discontinue the mechanical restraint, as appropriate;

(8) a member of the staff continuously monitors the person during the time that mechanical restraint is used on the person;and

(9) the mechanical restraint is used only for the period that is necessary to contain the behavior of the person so that the person no longer poses an immediate threat of causing serious physical injury to himself or others.

b. If a medical order authorizing the use of mechanical restraint is first obtained from the person's treating physician for any of the purposes listed in this subsection, the provisions of subsection a. of this section shall not apply when the mechanical restraint is used to:

(1) enable a health care professional to treat the medical needs of the person;

(2) protect a person who is known to be at risk of injury to himself because he lacks coordination or suffers from frequent loss of consciousness;

(3) provide proper body alignment of a person; or

(4) position a person who has physical disabilities in a manner described in the person's individual habilitation plan.

c. Within one working day of the use of mechanical restraint on a person in an emergency, the use shall be reported as an unusual incident, in accordance with the division's policy for reporting unusual incidents, which shall include reporting these incidents to the person's parent or legal guardian, to an unusual incident report coordinator in the division, and to theOffice of Operations Support, or its successor, in the Department of Human Services.

8. (New section) As a condition of licensure, the Department of Human Services shall require that a private facility or agency that provides services for persons with traumatic brain injury shall not:

a. use aversive techniques on a person with traumatic brain injury; and

b. use physical or mechanical restraints on a person with traumatic brain injury, unless that use is in accordance with the provisions of sections 6 and 7 of P.L. , c. (C. ) (pending before the Legislature as this bill).

9. (New section) a. The division shall ensure that staff at a facility for persons with developmental disabilities, at a public or private agency providing services for persons with developmental disabilities, and at a public or private facility or agency providing services for persons with traumatic brain injury receive training that includes:

(1) positive approaches to behavior, including, but not limited to, methods of relationship-building, communication, de-escalation and resolution of conflict, and the implementation of environmental supports and accommodations for persons with challenging behaviors; and

(2) a course in understanding the legal and ethical responsibility of staff to persons under their care with developmental disabilities and traumatic brain injury.

b. Staff working at a public or private facility or agency on the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) who work directly with persons with developmental disabilities or traumatic brain injury shall successfully complete the training program provided for in subsection a. of this section within six months of the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill).

c. Staff hired at a public or private facility or agency after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) who work directly with persons with developmental disabilities or traumatic brain injury shall successfully complete the training program provided for in subsection a. of this section within six months of their date of hire.

10. (New section) The department shall develop and maintain a web site that shall be updated quarterly and shall include: statistical information about the number of unusual incidents that occurred at a public or private facility or agency providing services for persons with developmental disabilities or traumatic brain injury; and any reports or findings from any State monitoring agency regarding the public or private facility or agency.

11. Pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Commissioner of Human Services shall adopt rules and regulations necessary to effectuate the purposes of this act.

12. This act shall take effect on the 90th day after enactment, but the Commissioner of Human Services may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

STATEMENT

This bill restricts the use of physical and mechanical restraints on persons with developmental disabilities by providing that, except in limited circumstances, physical and mechanical restraints may be used in emergency situations only. Under current law, in addition to emergency use, such restraints may be used as planned interventions as part of approved behavior modification plans, and as a result of inclusion in these plans, the unusual incident reporting requirements of the Division of Developmental Disabilities in the Department of Human Services do not apply. The bill also excludes aversive techniques as planned interventions.

Specifically, under the provisions of the bill, a person receiving services for persons with developmental disabilities at a public or private facility or from a public or private agency that provides services for persons with developmental disabilities, would not be subjected to physical restraint unless: 1) an emergency exists that necessitates the use of physical restraint; 2) the physical restraint is used only for the period that is necessary to contain the behavior of the person so that the person no longer poses an immediate threat of causing seriousphysical injury to himself or others, except that this period may not exceed one hour; 3) a medical order authorizing the use of physical restraint is obtained from the person's treating physician before the application of physical restraint or not later than 15 minutes after the application; 4) the physician who signed the order or the attending physician examines the person not later than one working day after the application of physical restraint; and 5) the use of force in the application of the physical restraint does not exceed the force that is reasonable and necessary under the circumstances precipitating the use of physical restraint.

The limited circumstances under which the above provisions would not apply are when physical restraint is applied for the following reasons: to assist a person in completing a task if the person does not resist the application of physical restraint or if the restraint is minimal in intensity and duration; to escort or carry a person to safety if the person is in danger in his present location; or to enable a health care professionalto treat the medical needs of the person.

With regard to mechanical restraints, a person receiving services for persons with developmental disabilities at a facility or from a public or private agency would not be subjected to mechanical restraint unless: 1) an emergency exists that necessitates the use of mechanical restraint; 2) a medical order authorizing the use of mechanical restraint is obtained from the person's treating physician before the application of the mechanical restraint or not later than 15 minutes after the application of the mechanical restraint; 3) the physician who signed the order or the attending physician examines the person not later than one working day after the application of mechanical restraint; 4) the mechanical restraint is applied by staff trained in the use and application of the particular restraint; 5) the person is given the opportunity to move and exercise the parts of his body that are restrained at least 10 minutes for every 60 minutes of restraint; 6) a member of the staff lessens or discontinues the mechanical restraint every 15 minutes to determine whether the person will stop or control dangerous behavior without the use of the restraint; 7) the record of the person contains a notation that includes the time of day that the mechanical restraint was lessened or discontinued, the response of the person to the lessening or discontinuation of the restraint, and the action taken by the member of the staff to lessen or discontinue the mechanical restraint, as appropriate; 8) a member of the staff continuously monitors the person during the time that mechanical restraint is used on the person;and 9) the mechanical restraint is used only for the period that is necessary to contain the behavior of the person so that the person no longer poses an immediate threat of causing serious physical injury to himself or others.

The limited circumstances under which the above provisions would not apply are when mechanical restraint is applied for the following reasons: to enable a health care professional to treat the medical needs of the person; to protect a person who is known to be at risk of injury to himself because he lacks coordination or suffers from frequent loss of consciousness; to provide proper body alignment of a person; or to position a person who has physical disabilities in a manner described in the person's individual habilitation plan. In these circumstances, however, a medical order authorizing the use of mechanical restraint for any of these purposes would first need to be obtained.

For both physical and mechanical restraints, the bill provides that within one working day of the use of the restraint, the use is to be reported as an unusual incident, in accordance with the Division of Developmental Disabilities' policy for reporting unusual incidents, which would include reporting these incidents to the person's parent or legal guardian, to an unusual incident report coordinator in the division, and to the Office of Operations Support, or its successor, in the Department of Human Services.

The bill also provides that, as a condition of licensure, a private facility or agency that provides services for persons with traumatic brain injury may not use aversive techniques on persons with traumatic brain injury, and may not use physical or mechanical restraints unless that use is in accordance with the procedures outlined in the bill.

In addition, the bill includes a provision requiring staff training in positive approaches to behavior and completion of a course in understanding the legal and ethical responsibilities of staff. The bill also requires the department to develop and maintain a web site for statistical information about the number of unusual incidents occurring at public or private facilities or agencies, as well as any reports or findings from any State monitoring agencies.

The bill defines "emergency" as a situation in which immediate intervention is necessary to protect the physical safety of a person receiving services at a facility or from a public or private agency, or to protect the safety of others from an immediate threat of serious physical injury.

The bill amends N.J.S.A.30:6D-5 to exclude "substantial property damage" as a basis for using chemical restraint in emergency situations, and it amends N.J.S.A.30:6D-11 to provide that individual habilitation plans may not include aversive techniques orphysical or mechanical restraint as planned interventions, but may provide for the use of physical or mechanical restraint in accordance with the limited circumstances described above.

This bill is based on Nevada and Pennsylvania law and is intended to reduce the use of physical and mechanical restraints and eliminate the use of aversive techniquesin the State in order to address the tragic situation that occurred at a State-licensed facility in Haddonfield, where a teenage boy with autism, named Matthew, was improperly restrained and left unattended.