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5123:2-2-06 Behavioral support strategies that include restrictive measures.

(A) Purpose

This rule limits the use of and sets forth requirements for development and implementation of behavioral support strategies that include restrictive measures for the purpose of ensuring that:

- (1) Restrictive measures are used only when necessary to keep people safe;
- (2) Individuals with developmental disabilities are supported in a caring and responsive manner that promotes dignity, respect, and trust and with recognition that they are equal citizens with the same rights and personal freedoms granted to Ohioans without developmental disabilities;
- (3) Services and supports are based on an understanding of the individual and the reasons for his or her actions; and
- (4) Effort is directed at creating opportunities for individuals to exercise choice in matters affecting their everyday lives and teaching and supporting individuals to make choices that yield positive outcomes.

(B) Scope

- (1) This rule applies to persons and entities that provide specialized services regardless of source of payment, including but not limited to:
 - (a) County boards and entities under contract with county boards;
 - (b) Residential facilities licensed pursuant to section 5123.19 of the Revised Code, including intermediate care facilities;
 - (c) Providers of supported living certified pursuant to section 5123.161 of the Revised Code; and
 - (d) Providers of services funded by medicaid home and community-based services waivers administered by the department.
- (2) Individuals receiving services in a setting governed by the Ohio department of education shall be supported in accordance with administrative rules and policies of the Ohio department of education.

(C) Definitions

- (1) "County board" means a county board of developmental disabilities.

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- (2) "Department" means the Ohio department of developmental disabilities.
- (3) "Director" means the director of the Ohio department of developmental disabilities or his or her designee.
- (4) "Individual" means a person with a developmental disability.
- (5) "Individual plan" or "individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (6) "Informed consent" means a documented written agreement to allow a proposed action, treatment, or service after full disclosure provided in a manner the individual or his or her guardian understands, of the relevant facts necessary to make the decision. Relevant facts include the risks and benefits of the action, treatment, or service; alternatives to the action, treatment, or service; consequences of not receiving the action, treatment, or service; and the right to refuse the action, treatment, or service. The individual or his or her guardian, as applicable, may revoke informed consent at any time.
- (7) "Intermediate care facility" means an intermediate care facility for individuals with intellectual disabilities as defined in rule 5123:2-7-01 of the Administrative Code.
- (8) "Prohibited measure" means a method that shall not be used by persons or entities providing specialized services. "Prohibited measures" include:
 - (a) Prone restraint. "Prone restraint" means a method of intervention where an individual's face and/or frontal part of his or her body is placed in a downward position touching any surface for any amount of time.
 - (b) Use of a manual restraint or mechanical restraint that has the potential to inhibit or restrict an individual's ability to breathe or that is medically contraindicated.
 - (c) Use of a manual restraint or mechanical restraint that causes pain or harm to an individual.
 - (d) Disabling an individual's communication device.
 - (e) Denial of breakfast, lunch, dinner, snacks, or beverages.
 - (f) Placing an individual in a room with no light.
 - (g) Subjecting an individual to damaging or painful sound.
 - (h) Application of electric shock to an individual's body.
 - (i) Subjecting an individual to any humiliating or derogatory treatment.

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- (j) Squirting an individual with any substance as an inducement or consequence for behavior.
- (k) Using any restrictive measure for punishment, retaliation, instruction or teaching, convenience of providers, or as a substitute for specialized services.
- (9) "Provider" means any person or entity that provides specialized services.
- (10) "Qualified intellectual disability professional" has the same meaning as in 42 C.F.R. 483.430 as in effect on the effective date of this rule.
- (11) "Restrictive measure" means a method of last resort that may be used by persons or entities providing specialized services only when necessary to keep people safe and with prior approval by the human rights committee in accordance with paragraph (F) of this rule. "Restrictive measures" include:
 - (a) Manual restraint. "Manual restraint" means use of a hands-on method, but never in a prone restraint, to control an identified action by restricting the movement or function of an individual's head, neck, torso, one or more limbs, or entire body, using sufficient force to cause the possibility of injury and includes holding, blocking, or disabling an individual's wheelchair or other mobility device. An individual in a manual restraint shall be under constant visual supervision by staff. Manual restraint shall cease immediately once risk of harm has passed. "Manual restraint" does not include a method that is routinely used during a medical procedure for patients without developmental disabilities.
 - (b) Mechanical restraint. "Mechanical restraint" means use of a device, but never in a prone restraint, to control an identified action by restricting an individual's movement or function. Mechanical restraint shall cease immediately once risk of harm has passed. "Mechanical restraint" does not include:
 - (i) A seatbelt of a type found in an ordinary passenger vehicle or an age-appropriate child safety seat;
 - (ii) A medically-necessary device (such as a wheelchair seatbelt or a gait belt) used for supporting or positioning an individual's body; or
 - (iii) A device that is routinely used during a medical procedure for patients without developmental disabilities.
 - (c) Time-out. "Time-out" means confining an individual in a room or area and preventing the individual from leaving the room or area by applying physical force or by closing a door or constructing another barrier, including placement in such a room or area when a staff person remains in the room or area.
 - (i) Time-out shall not exceed thirty minutes for any one incident nor one hour in

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any twenty-four hour period.

- (ii) A time-out room or area shall not be key-locked, but the door may be held shut by a staff person or by a mechanism that requires constant physical pressure from a staff person to keep the mechanism engaged.
 - (iii) A time-out room or area shall be adequately lighted and ventilated and provide a safe environment for the individual.
 - (iv) An individual in a time-out room or area shall be protected from hazardous conditions including but not limited to, sharp corners and objects, uncovered light fixtures, or unprotected electrical outlets.
 - (v) An individual in a time-out room or area shall be under constant visual supervision by staff.
 - (vi) Time-out shall cease immediately once risk of harm has passed or if the individual engages in self-abuse, becomes incontinent, or shows other signs of illness.
 - (vii) "Time-out" does not include periods when an individual, for a limited and specified time, is separated from others in an unlocked room or area for the purpose of self-regulating and controlling his or her own behavior and is not physically restrained or prevented from leaving the room or area by physical barriers.
- (d) Chemical restraint. "Chemical restraint" means a medication prescribed for the purpose of modifying, diminishing, controlling, or altering a specific behavior. "Chemical restraint" does not include medications prescribed for the treatment of a diagnosed disorder identified in the "Diagnostic and Statistical Manual of Mental Disorders" (fifth edition) or medications prescribed for treatment of a seizure disorder.
- (e) Restriction of an individual's rights as enumerated in section 5123.62 of the Revised Code.
- (12) "Risk of harm" means there exists a direct and serious risk of physical harm to the individual or another person. For risk of harm, the individual must be capable of causing physical harm to self or others and the individual must be causing physical harm or very likely to begin causing physical harm.
- (13) "Service and support administrator" means a person, regardless of title, employed by or under contract with a county board to perform the functions of service and support administration and who holds the appropriate certification in accordance with rule 5123:2-5-02 of the Administrative Code.

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- (14) "Specialized services" means any program or service designed and operated to serve primarily individuals with developmental disabilities, including a program or service provided by an entity licensed or certified by the department. If there is a question as to whether a provider or entity under contract with a provider is providing specialized services, the provider or contract entity may request that the director of the department make a determination. The director's determination is final.
 - (15) "Team," as applicable, has the same meaning as in rule 5123:2-1-11 of the Administrative Code or means an interdisciplinary team as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.
- (D) Development of a behavioral support strategy that includes restrictive measures
- (1) A behavioral support strategy shall never include prohibited measures.
 - (2) A behavioral support strategy may include manual restraint, mechanical restraint, time-out, or chemical restraint only when an individual's actions pose risk of harm.
 - (3) A behavioral support strategy may include restriction of an individual's rights only when an individual's actions pose risk of harm or are very likely to result in the individual being the subject of a legal sanction such as eviction, arrest, or incarceration. Absent risk of harm or likelihood of legal sanction, an individual's rights shall not be restricted (e.g., by imposition of arbitrary schedules or limitation on consumption of food, beverages, or tobacco products).
 - (4) The focus of a behavioral support strategy shall be creation of supportive environments that enhance the individual's quality of life. Effort is directed at:
 - (a) Mitigating risk of harm or likelihood of legal sanction;
 - (b) Reducing and ultimately eliminating the need for restrictive measures; and
 - (c) Ensuring individuals are in environments where they have access to preferred activities and are less likely to engage in unsafe actions due to boredom, frustration, lack of effective communication, or unrecognized health problems.
 - (5) A behavioral support strategy that includes restrictive measures requires:
 - (a) Documentation that demonstrates that positive and non-restrictive measures have been employed and have been determined ineffective; and
 - (b) An assessment conducted within the past twelve months that clearly describes:
 - (i) The behavior that poses risk of harm or likelihood of legal sanction;
 - (ii) The level of harm or type of legal sanction that could reasonably be expected to

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occur with the behavior;

(iii) When the behavior is likely to occur; and

(iv) The individual's interpersonal, environmental, medical, mental health, and emotional needs and other motivational factors that may be contributing to the behavior.

(6) Persons who conduct assessments and develop behavioral support strategies that include restrictive measures shall:

(a) Hold professional license or certification issued by the Ohio board of psychology; the state medical board of Ohio; or the Ohio counselor, social worker, and marriage and family therapist board; or

(b) Hold a certificate to practice as a certified Ohio behavior analyst pursuant to section 4783.04 of the Revised Code; or

(c) Hold a bachelor's or graduate-level degree from an accredited college or university and have at least three years of paid, full-time (or equivalent part-time) experience in developing and/or implementing behavioral support and/or risk reduction strategies or plans.

(7) A behavioral support strategy that includes restrictive measures shall:

(a) Be designed in a manner that promotes healing, recovery, and emotional wellbeing based on understanding and consideration of the individual's history of traumatic experiences as a means to gain insight into origins and patterns of the individual's actions;

(b) Be data-driven with the goal of improving outcomes for the individual over time and describe behaviors to be increased or decreased in terms of baseline data about behaviors to be increased or decreased;

(c) Recognize the role environment plays in behavior;

(d) Capitalize on the individual's strengths to meet challenges and needs;

(e) Delineate measures to be implemented and identify those who are responsible for implementation;

(f) Specify steps to be taken to ensure the safety of the individual and others;

(g) As applicable, identify needed services and supports to assist the individual in meeting court-ordered community controls such as mandated sex offender registration, drug-testing, or participation in mental health treatment; and

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- (h) As applicable, outline necessary coordination with other entities (e.g., courts, prisons, hospitals, and law enforcement) charged with the individual's care, confinement, or reentry to the community.
- (8) When a behavioral support strategy that includes restrictive measures is deemed necessary by the individual and his or her team, the qualified intellectual disability professional or the service and support administrator, as applicable, shall:
 - (a) Ensure the strategy is developed in accordance with the principles of person-centered planning and incorporated as an integral part of the individual plan or individual service plan.
 - (b) Submit to the human rights committee a written rationale based upon the assessment that clearly indicates risk of harm or likelihood of legal sanction described in observable and measurable terms and ensure the strategy is reviewed and approved by the human rights committee in accordance with paragraph (F) of this rule prior to implementation and whenever the behavioral support strategy is revised to add restrictive measures, but no less than once per year.
 - (c) Secure informed consent of the individual or the individual's guardian if one exists.
 - (d) Provide an individual or the individual's guardian, as applicable, with written notification and explanation of the individual's or guardian's right to seek administrative resolution if he or she is dissatisfied with the strategy or the process used for its development.
 - (e) Ensure the strategy is revised and reconsidered by the individual and the team at least every ninety days to determine and document the effectiveness of the strategy and whether the strategy should be continued, discontinued, or revised. A decision to continue the strategy shall be based upon review of up-to-date information which indicates risk of harm or likelihood of legal sanction is still present.
- (E) Implementation of behavioral support strategies with restrictive measures
 - (1) Restrictive measures shall be implemented with sufficient safeguards and supervision to ensure the health, welfare, and rights of individuals receiving specialized services.
 - (2) Each person providing specialized services to an individual with a behavioral support strategy that includes restrictive measures shall successfully complete training in the strategy prior to serving the individual.
- (F) Human rights committees
 - (1) Each county board, or county board jointly with one or more other county boards, or county board jointly with one or more providers, and each intermediate care facility

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shall establish a human rights committee to safeguard individuals' rights and protect individuals from physical, emotional, and psychological harm. The human rights committee shall:

- (a) Be comprised of at least four persons;
- (b) Include at least one individual who receives or is eligible to receive specialized services;
- (c) Include qualified persons who have either experience or training in contemporary practices for behavioral support; and
- (d) Include an equal number of representatives from each of the following two groups:
 - (i) Individuals who receive or are eligible to receive specialized services or family members or guardians of individuals who receive or are eligible to receive specialized services; and
 - (ii) County boards or providers.
- (2) All information and documents provided to the human rights committee and all discussions of the committee shall be confidential and shall not be shared or discussed with anyone other than the individual and his or her guardian and the individual's team.
- (3) The human rights committee shall review, approve or reject, monitor, and reauthorize strategies that include restrictive measures. In this role, the human rights committee shall:
 - (a) Ensure that the planning process outlined in this rule has been followed and that the individual or the individual's guardian, as applicable, has provided informed consent and been afforded due process;
 - (b) Ensure that the proposed restrictive measures are necessary to reduce risk of harm or likelihood of legal sanction;
 - (c) Ensure that the overall outcome of the behavioral support strategy promotes the physical, emotional, and psychological wellbeing of the individual while reducing risk of harm or likelihood of legal sanction;
 - (d) Ensure that a restrictive measure is temporary in nature and occurs only in specifically defined situations based on risk of harm or likelihood of legal sanction;
 - (e) Verify that any behavioral support strategy that includes restrictive measures also incorporates actions designed to enable the individual to feel safe, respected, and valued while emphasizing choice, self-determination, and an improved quality of life; and

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- (f) Communicate the committee's determination in writing to the qualified intellectual disability professional or service and support administrator submitting the request for approval.
 - (4) Members of the human rights committee shall receive department-approved training within three months of appointment to the committee in: rights of individuals as enumerated in section 5123.62 of the Revised Code, positive culture, informed consent, confidentiality, and the requirements of this rule.
 - (5) Members of the human rights committee shall annually receive department-approved training in relative topics which may include but are not limited to: self-advocacy and self-determination; role of guardians and section 5126.043 of the Revised Code; effect of traumatic experiences on behavior; and court-ordered community controls and the role of the court, the county board, and the human rights committee.
- (G) Use of a restrictive measure without prior approval by the human rights committee
- (1) A restrictive measure used in a crisis situation (e.g., to prevent an individual from running into traffic) without prior approval by the human rights committee shall be reported as an unapproved behavior support major unusual incident in accordance with rule 5123:2-17-02 of the Administrative Code.
 - (2) Nothing in this rule shall be construed to prohibit or prevent any person from intervening in a crisis situation as necessary to ensure a person's immediate health and safety.
- (H) Reporting of behavioral support strategies that include restrictive measures
- After securing approval by the human rights committee and at least five working days prior to implementation of a behavioral support strategy that includes restrictive measures, the county board or intermediate care facility shall notify the department in a format prescribed by the department.
- (I) Recording use of restrictive measures
- Each provider shall maintain a record of the date, time, duration, and antecedent factors regarding use of a restrictive measure other than a restrictive measure that is not based on antecedent factors (e.g., bed alarm or locked cabinet). The provider shall share the record with the individual and the individual's team whenever the individual's behavioral support strategy is being reviewed or reconsidered.
- (J) Analysis of behavioral support strategies that include restrictive measures
- (1) Each county board and each intermediate care facility in collaboration with its human rights committee shall compile and analyze data regarding behavioral support strategies that include restrictive measures. Data compiled and analyzed shall include, but are not

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limited to:

- (a) Nature and frequency of risk of harm or likelihood of legal sanction that triggered development of strategies that include restrictive measures;
 - (b) Nature and number of strategies reviewed, approved, rejected, and reauthorized by the human rights committee;
 - (c) Nature and number of restrictive measures implemented;
 - (d) Duration of strategies that include restrictive measures implemented; and
 - (e) Effectiveness of strategies that include restrictive measures in terms of increasing or decreasing behaviors as intended.
- (2) County boards and intermediate care facilities shall make the data and analyses available to the department upon request.

(K) Department oversight

- (1) The department shall take immediate action as necessary to protect the health and welfare of individuals which may include, but is not limited to:
 - (a) Suspension of a behavioral support strategy not developed, implemented, documented, or monitored in accordance with this rule or where trends and patterns of data suggest the need for further review;
 - (b) Provision of technical assistance in development or redevelopment of a behavioral support strategy; and
 - (c) Referral to other state agencies or licensing bodies, as indicated.
- (2) The department shall compile and analyze data regarding behavioral support strategies for purposes of determining methods for enhancing risk reduction efforts and outcomes, reducing the frequency of restrictive measures, and identifying technical assistance and training needs. The department shall make the data and analyses available.
- (3) The department may periodically select a sample of behavioral support strategies for review to ensure that strategies are developed, implemented, and monitored in accordance with this rule.
- (4) The department shall conduct reviews of county boards and providers as necessary to ensure the health and welfare of individuals and compliance with this rule. Failure to comply with this rule may be considered by the department in any regulatory capacity, including certification, licensure, and accreditation.

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(L) Waiver of provisions of this rule

For adequate reasons and when requested in writing by a county board or provider, the director may waive a condition or specific requirement of this rule except that the director shall not permit use of a prohibited measure as set forth in paragraph (C)(8) of this rule. The director shall grant or deny a request for a waiver within ten working days of receipt of the request or within such longer period of time as the director deems necessary and put whatever conditions on the waiver as are determined to be necessary. Approval to waive a condition or specific requirement of this rule shall not be contrary to the rights, health, or safety of individuals receiving services. The director's decision to grant or deny a waiver is final and may not be appealed.