

5123:2-2-05

**Behavior support.**

(A) Purpose

The purpose of this rule is to provide direction to persons and entities responsible for developing or implementing specialized services for individuals with developmental disabilities to ensure that individuals are supported in a positive and responsive manner with respectful solutions that recognize individuals' rights, promote individuals' personal growth and emotional wellbeing, and ensure individuals' health and welfare.

(B) Scope

This rule applies to persons and entities that provide specialized services regardless of source of payment, including, but not limited to:

- (1) County boards and entities under contract with county boards;
- (2) Residential facilities licensed pursuant to section 5123.19 of the Revised Code, including intermediate care facilities;
- (3) Providers of supported living certified pursuant to section 5123.161 of the Revised Code; and
- (4) Providers of services funded by medicaid home and community-based services waivers administered by the department.

(C) Definitions

- (1) "County board" means a county board of developmental disabilities.
- (2) "Department" means the Ohio department of developmental disabilities.
- (3) "Individual" means a person with a developmental disability.
- (4) "Individual plan" or "individual service plan" means the written description of services, supports, and activities to be provided to an individual.
- (5) "Informed consent" means a documented written agreement to allow a proposed action, treatment, or service after full disclosure 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.
- (6) "Provider" means any person or entity that provides specialized services.
- (7) "Qualified intellectual disability professional" has the same meaning as in 42

C.F.R. 483.430 (October 1, 2012).

- (8) "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.
- (9) "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.
- (10) "Team" has the same meaning as in rule 5123:2-1-11 of the Administrative Code.
- (11) "Trauma-informed care" means a method of providing support that promotes healing, recovery, and emotional wellbeing based on the care giver's understanding and consideration of an individual's history of traumatic experiences as a means to gain insight into origins and patterns of the individual's behavior.

(D) Philosophy of behavior support

- (1) Behavior support shall be provided in a positive, systematic, whole-person approach that promotes dignity, respect, and trust and recognizes that individuals with developmental disabilities are equal citizens with the same rights and personal freedoms granted to Ohio's citizens without developmental disabilities. Behavior support shall be based on an understanding of the individual and the reasons for his or her behavior and evidence-based practices for promotion of positive behavior and reduction of inappropriate and unsafe behavior. The foundation of this approach is creation of supportive and caring environments that enhance individuals' quality of life.
- (2) There are two tiers of behavior support:
  - (a) Positive techniques which are universally available for all individuals. Effort is directed at:
    - (i) Ensuring individuals are in environments where they are less likely to engage in undesirable behavior due to lack of access to preferred activities, boredom, frustration, lack of effective communication, or unrecognized health problems;

(ii) Increasing opportunities for individuals to have choice in matters affecting their everyday life; and

(iii) Teaching and supporting individuals to self-manage behavior and make choices that yield positive outcomes and achievement of the individuals' goals.

(b) Restrictive techniques set forth in paragraph (H) of this rule used in situations when an individual's behavior poses imminent risk of harm. "Imminent risk of harm" means there exists an immediate risk of physical harm to the individual or another person. For imminent 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. Effort is directed at:

(i) Mitigating imminent risk of harm; and

(ii) Reducing and ultimately eliminating the need for restrictive techniques.

(E) Development of a behavior support strategy

(1) An individual's behavior support needs and the strategy for responding to the individual's needs shall be addressed as an integral part of the individual plan or individual service plan, as applicable.

(2) The behavior support strategy shall be developed by the qualified intellectual disability professional or the service and support administrator, as applicable, with the active participation of the individual and the team.

(3) A behavior support strategy shall be individualized, designed in accordance with trauma-informed care, and consider the individual's experiences, strengths, unmet needs, medical history, and history of specialized services.

(4) A behavior support strategy shall be designed to support the individual's needs across all settings and shall:

(a) Align with the philosophy of behavior support set forth in paragraph (D) of this rule;

(b) Be data-driven with the goal of improving outcomes for individuals over time;

(c) Foster self-direction by providing the individual with choice and control;

(d) Recognize the role environment plays in behavior;

- (e) Provide emotional support for the individual;
  - (f) Capitalize on the individual's strengths to meet challenges and needs;
  - (g) Focus on learning and practicing positive behaviors;
  - (h) Include deescalation measures as appropriate;
  - (i) Reinforce skills and practices that help individuals and providers avoid undesirable behavior and coercive methods; and
  - (j) Identify training and support for the individual's providers to help them learn to be caring and effective team members.
- (5) A behavior support strategy shall describe behaviors to be increased or decreased, include baseline data on behaviors to be increased or decreased, delineate techniques to be implemented, and identify persons responsible for implementation.
- (6) An individual's behavior support strategy shall be reviewed and reconsidered at least every twelve months and more frequently at the request of the individual or a member of the team or whenever the individual plan or individual service plan is revised.
- (7) A behavior support strategy that includes restrictive techniques set forth in paragraph (H) of this rule requires:
- (a) Documentation that demonstrates that less aversive techniques have been employed and have been determined ineffective;
  - (b) A risk assessment that clearly describes the behavior that poses imminent risk of harm, the level of risk posed by the behavior, when the behavior is likely to occur, and steps to be taken to mitigate the behavior; and
  - (c) A behavioral assessment conducted within the past twelve months that identifies the causes for an individual's behavior and determines the most appropriate teaching and support techniques. The behavioral assessment for an individual who poses a community safety risk (i.e., the individual has taken action or attempted to take action to assault or injure others, set fires, or engage in sexual aggression) shall be conducted by persons who have the experience necessary to perform psychometric tests that assess an individual's functional behavioral level and who are one of the following:
    - (i) Psychologist licensed by the state pursuant to Chapter 4732. of the

Revised Code:

- (ii) Professional clinical counselor licensed by the state pursuant to section 4757.22 of the Revised Code;
- (iii) Professional counselor licensed by the state pursuant to section 4757.23 of the Revised Code;
- (iv) Independent social worker licensed by the state pursuant to section 4757.27 of the Revised Code; or
- (v) Social worker licensed by the state pursuant to section 4757.28 of the Revised Code working under the supervision of a licensed independent social worker.
- (d) Review and approval by the human rights and ethical oversight committee in accordance with paragraph (I) of this rule prior to implementation and whenever the behavior support strategy is revised. A qualified intellectual disability professional or service and support administrator seeking approval from the human rights and ethical oversight committee for a behavior support strategy shall submit a written rationale based upon the behavioral assessment that clearly indicates imminent risk of harm to the individual or others described in observable and measurable terms.
- (e) Informed consent from the individual or the individual's guardian, as applicable.
- (f) The qualified intellectual disability professional or service and support administrator, as applicable, to 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 behavior support strategy or the process used for its development.
- (g) The qualified intellectual disability professional or the service and support administrator, as applicable, to notify the department within five days, in the manner and format prescribed by the department, when a behavior support strategy that includes restrictive techniques set forth in paragraph (H) of this rule is being implemented. [HOW DO WE GET DATA ABOUT THE NATURE AND FREQUENCY OF RESTRICTIVE TECHNIQUES THAT ARE ACTUALLY IMPLEMENTED?]
- (h) Review and reconsideration by the qualified intellectual disability professional or service and support administrator, individual, and team at least every sixty days to determine and document the effectiveness of

the behavior support strategy and whether the strategy should be continued, discontinued, or revised.

(F) Provision of behavior support

- (1) Behavior support shall be provided in a manner that reflects the philosophy of behavior support set forth in paragraph (D) of this rule.
- (2) Behavior support shall be provided with sufficient safeguards and supervision to ensure the health, welfare, and rights of individuals receiving services.
- (3) Behavior support shall never be used for retaliation, convenience of providers, or as a substitute for an active treatment program.
- (4) All persons providing specialized services to an individual with a behavior support strategy shall be trained in the strategy prior to implementation of the strategy.

(G) Prohibited techniques

The following techniques are prohibited and shall not be used:

- (1) Any action that constitutes a major unusual incident as defined in rule 5123:2-17-02 of the Administrative Code.
- (2) Prone restraint. "Prone restraint" means a method of aversive behavior intervention where an individual's face and/or frontal part of his or her body is placed in a downward position touching any surface.
- (3) Denial of breakfast, lunch, or dinner.
- (4) Placing an individual in a room with no light.
- (5) Subjecting an individual to damaging or painful sound.
- (6) Application of electric shock to an individual's body.
- (7) Squirting an individual with any substance as an incentive or consequence for behavior.
- (8) Time-out. "Time out" means as a consequence for behavior, confining an individual in a room and preventing the individual from leaving the room by applying physical force or by closing a door or other barrier, including placement in such a room when a care giver remains in the room with the individual.
- (9) Emerging methods and technology. "Emerging methods and technology" means

new methods of restraint or seclusion that create possible health and safety risks for the individual.

(10) Medication for behavior control, unless prescribed by and under the supervision of a licensed physician who is involved in the behavior support strategy planning process.

(11) Restriction of an individual's rights as enumerated in section 5123.62 of the Revised Code when there is no imminent risk of harm (such as attempts to control an individual's habits regarding eating, smoking, or following directions).

(H) Restrictive techniques that require prior authorization

The following techniques are methods of last resort and may be used only when an individual's behavior poses an imminent risk of harm to self or others and with prior authorization by the human rights and ethical oversight committee in accordance with paragraph (I) of this rule:

(1) Manual restraint. "Manual restraint" means use of a hands-on method, but never in a prone restraint, to control an identified behavior 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.

(2) Mechanical restraint. "Mechanical restraint" means use of a device, but never in a prone restraint, to control an identified behavior by restricting an individual's movement or function, including a device used in any vehicle except a seat belt of a type found in an ordinary passenger vehicle or an age-appropriate child safety seat.

(3) Restriction of an individual's rights as enumerated in section 5123.62 of the Revised Code when there exists imminent risk of harm.

(I) Human rights and ethical oversight committees

(1) Each county board or county board jointly with one or more providers and each intermediate care facility shall establish a human rights and ethical oversight committee to safeguard individuals' rights and protect individuals from physical, emotional, and psychological harm.

(2) The human rights and ethical oversight committee shall be comprised of no less than seven members and shall include:

(a) At least two individuals who receive specialized services or who are eligible to receive specialized services;

(b) At least two family members or guardians of individuals who receive

specialized services;

(c) At least one representative of county boards; and

(d) At least one representative of providers.

(3) The human rights and ethical oversight committee shall review, approve, reject, monitor, and reauthorize behavior support strategies that include restrictive techniques set forth in paragraph (H) of this rule. In this role, the human rights and ethical oversight committee shall:

(a) Ensure that the behavior support strategy planning process 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 behavior support strategy is necessary to reduce imminent risk of harm to the individual or others.

(c) On a quarterly basis, review and make a determination regarding whether the behavior support strategy or a component thereof is still required. The decision of the committee to continue authorization of the behavior support strategy shall be based upon its review of documentation and a determination that the imminent risk of harm to the individual or others is still present.

(d) Ensure that the overall outcome of the behavior support strategy promotes the physical and emotional wellbeing of the individual while reducing the risk of physical, emotional, and/or psychological harm to the individual or others.

(e) Ensure that a restrictive technique is temporary in nature and occurs only in specifically defined situations based on the level of imminent risk of harm to the individual or others.

(f) Verify that any behavior support strategy that includes restrictive techniques also incorporates actions designed to enable individuals to feel safe, respected, and valued while emphasizing choice, self-determination, and an improved quality of life.

(g) Communicate the committee's determination in writing to the qualified intellectual disability professional or service and support administrator submitting the request for approval.

(4) The human rights and ethical oversight committee shall have a process in place to review and approve an emergency response (i.e., use of a restrictive technique set forth in paragraph (H) of this rule determined to be necessary



and appropriate when an individual's behavior that causes imminent risk of harm to self or others was not anticipated, and therefore, not addressed in the individual's behavior support strategy) that is immediately needed to respond to imminent risk of harm to an individual or others.

(5) The human rights and ethical oversight committee may make recommendations to county boards, providers, and the department regarding methods to:

(a) Improve decision-making as referenced in section 5126.43 of the Revised Code and the rights of individuals as enumerated in section 5123.62 of the Revised Code;

(b) Promote and protect individuals' rights regardless of the individuals' habilitation, vocational, or residential support arrangements; and

(c) Reduce major unusual incidents related to provision of behavior support.

(6) Members of the human rights and ethical oversight committee shall receive department-approved training within three months of appointment to the committee in the following topics:

(a) Introduction to developmental disabilities;

(b) The rights of individuals as enumerated in section 5123.62 of the Revised Code;

(c) Positive culture;

(d) Confidentiality;

(e) Role of guardian;

(f) Section 5126.043 of the Revised Code;

(g) Informed consent;

(h) Causes and contributing factors to abuse of individuals;

(i) Trauma-informed care;

(j) Rule 5123:2-17-02 of the Administrative Code;

(k) Department-issued information notices 08-09-02 and 08-11-03 (available at <http://dodd.ohio.gov/healthandsafety/Pages/Information-Notices.aspx>); and

(I) Self-advocacy and self-determination.

(J) 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 behavior 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 behavior support strategy; and

(c) Referral to other state agencies or licensing bodies, as indicated.

(2) The department shall compile and analyze data regarding behavior support strategies for purposes of determining methods for enhancing behavior support efforts and outcomes, reducing the frequency of restrictive techniques, 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 behavior support strategies for review to ensure that behavior support 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.