GUIDELINES TO
HUMAN RIGHTS, ETHICS & STANDARDS OF PRACTICE
IN REGARD TO
THERAPEUTIC CONSULTATION SERVICE DELIVERY

THE STATE OF VIRGINIA HAS SIGNED A SET OF REGULATIONS INTO LAW -- THIS LAW GUIDES OUR THERAPEUTIC RELATIONSHIP AND INFORMS THE ACTIVITIES THAT THE PBSF IS ABLE TO PARTICIPATE IN AND THE GUIDELINES THAT THE PBSF IS OBLIGATED TO FOLLOW. THESE REGULATIONS ARE LISTED BELOW:

THE REGULATIONS ARE AS FOLLOWED:

- People trained in behavior support interventions are the ones who will implement and monitor support plans.
- Policies and procedures on behavior interventions are available to the individual, their family, and support teams.
- Any injuries that occur during the implementation of the support plan will be recorded in their record, reported, and assigned to a Human Rights Advocate.
- The use of seclusion, restraint, and time out will comply with the federal and state laws as well as be consistent with the policies that are provided from each waiver provider. If any of these methods are used it must first be agreed upon within the team, have approval by the Human Rights Board for VA, and specific instances will be documented in the focus person's file.
- Any devices used for restraint are designed specifically for behavioral management in clinical therapeutic programs. If a device is used, agreement must happen within the team, a physician's order must be provided and approval must be obtained through the Human Rights Board of VA.

Restrictions on Freedoms of Everyday Life (12VAC35-115-100)

A. From admission until discharge from a service, each individual is entitled to:

1. Enjoy all the freedoms of everyday life that are consistent with his need for services, his protection, and the protection of others, and that do not interfere with his services or the services of others.

These freedoms include:

a. Freedom to move within the service setting, its grounds, and the community;

b. Freedom to communicate, associate, and meet privately with anyone the individual chooses;

c. Freedom to have and spend personal money;

d. Freedom to see, hear, or receive television, radio, books, and newspapers, whether privately owned or in a library or public area of the service setting;

e. Freedom to keep and use personal clothing and other personal items;

f. Freedom to use recreational facilities and enjoy the outdoors; and

g. Freedom to make purchases in canteens, vending machines, or stores selling a basic selection of food and clothing.

2. Receive services in that setting and under those conditions that are least restrictive of his freedom.

B. The provider's duties.

1. Providers shall encourage each individual's participation in normal activities and conditions of everyday living and support each individual's freedoms.

2. Providers shall not limit or restrict any individual's freedom more than is needed to achieve a therapeutic benefit, maintain a safe and orderly environment, or intervene in an emergency.

3. Providers shall not impose any restriction on an individual unless the restriction is justified and carried out according to this chapter or otherwise required by law. If a provider imposes a restriction pursuant to this chapter, except as provided in 12VAC35-115-50, the following conditions shall be met:

a. A qualified professional involved in providing services has, in advance, assessed and documented all possible alternatives to the proposed restriction, taking into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently.

b. A qualified professional involved in providing services has, in advance, determined that the proposed restriction is necessary for effective treatment of the individual or to protect him or others from personal harm, injury, or death.

c. A qualified professional involved in providing services has, in advance, documented in the individual's services record the specific reason for the restriction.

d. A qualified professional involved in providing services has explained and provided written notice so that the individual can understand the reason for the restriction, the criteria for removal, and the individual's right to a fair review of whether the restriction is permissible.

e. A qualified professional regularly reviews the restriction and that the restriction is discontinued when the individual has met the criteria for removal.

4. If a court has ordered the provider to impose the restriction or if the provider is otherwise required by law to impose the restriction, the restriction shall be documented in the individual's service record.

5. Providers shall obtain approval of the LHRC of any restriction imposed on an individual's rights under this subsection or 12VAC35-115-50 that lasts longer than seven days or is imposed three or more times during a 30-day time period. If the LHRC finds that the restriction is not being implemented in accordance with this chapter, the director shall be notified, and the LHRC shall provide recommendations.

6. Providers may develop and enforce written program rules, but only if the rules do not conflict with this chapter or any ISP and are needed to maintain a safe and orderly environment.

7. Providers shall, in the development of these program rules:

a. Get as many suggestions as possible from all individuals who are expected to obey the rules;

b. Apply these rules in the same way to each individual;

c. Give the rules to and review them with each individual and his authorized representative in a way that the individual can understand them, including explaining possible consequences for violating them;

d. Post the rules in summary form in all areas to which individuals and their families have regular access;

e. Submit the rules to the LHRC for review and approval upon request of the advocate or LHRC; and

f. Prohibit individuals from disciplining other individuals, except as part of an organized self-government program conducted according to a written policy approved in advance by the LHRC.

Behavioral Treatment Plans (12VAC35-115-105)

A. A behavioral treatment plan is used to assist an individual to improve participation in normal activities and conditions of everyday living, reduce challenging behaviors, alleviate symptoms of psychopathology, and maintain a safe and orderly environment.

B. Providers may use individualized restrictions such as restraint or time out in a behavioral treatment plan to address challenging behaviors that present an immediate danger to the individual or others, but only after a licensed professional or licensed behavior analyst has conducted a detailed and systematic assessment of the behavior and the situations in which the behavior occurs. Providers shall document in the individual's service record that the lack of success or probable success of less restrictive procedures attempted or considered, and the risks associated with not treating the behavior, are greater than any risks associated with the use of the proposed restrictions.
C. Providers shall develop any behavioral treatment plan according to their policies and procedures, which shall ensure that:
1. Behavioral treatment plans are initiated, developed, carried out, and monitored by professionals who are qualified by expertise, training, education, or credentials to do so;
2. Behavioral treatment plans include non restrictive procedures and environmental modifications that address the targeted behavior; and
3. Behavioral treatment plans involving the use of restraint or timeout are submitted to an independent review committee, prior to implementation, for review and approval of the technical adequacy of the plan and data collection procedures.
D. In addition to any other requirements of 42 CFR 483.440(f)(3), providers that are intermediate care facilities for individuals with intellectual disabilities shall submit any behavioral treatment plan that involves the use of restraint or time out, and its independent review committee approval, to the SCC under 42 CFR 483.440(f)(3) for the SCC's approval prior to implementation.
E. Providers other than intermediate care facilities for individuals with intellectual disabilities shall submit any behavioral treatment plan that involves the use of restraint or time out, and its independent review committee approval, to the LHRC, which shall determine whether the plan is in accordance with this chapter prior to implementation.
F. If either the LHRC or SCC finds that the behavioral treatment plan violates the rights of the individual or is not being implemented in accordance with this chapter, the LHRC or SCC shall notify the director and provide recommendations regarding the proposed plan.
G. Behavioral treatment plans involving the use of restraint or time out shall be reviewed quarterly by the independent review committee and the LHRC or SCC to determine if the use of restraint has resulted in improvements in functioning of the individual.
H. Providers shall not use seclusion in a behavioral treatment plan.

Use of Seclusion, Restraint, and Time Out (12VAC35-115-110)

A. Each individual is entitled to be completely free from any unnecessary use of seclusion, restraint, or time out.
B. The voluntary use of mechanical supports to achieve proper body position, balance, or alignment so as to allow greater freedom of movement or to improve normal body functioning in a way that would not be possible without the use of such a mechanical support, and the voluntary use of protective equipment are not considered restraints.
C. The provider's duties.
1. Providers shall meet with the individual or his authorized representative upon admission to the service to discuss and document in the individual's services record his preferred interventions in the event his behaviors or symptoms become a danger to himself or others and under what circumstances, if any, the intervention may include seclusion, restraint, or time out.

2. Providers shall document in the individual's services record all known contraindications to the use of seclusion, time out, or any form of physical or mechanical restraint, including medical contraindications and a history of trauma, and shall flag the record to alert and communicate this information to staff.

3. Only residential facilities for children that are licensed under the Regulations for Children's Residential Facilities (12VAC35-46) and inpatient hospitals may use seclusion and only in an emergency.

4. Providers shall not use seclusion, restraint, or time out as a punishment or reprisal or for the convenience of staff.

5. Providers shall not use seclusion or restraint solely because criminal charges are pending against the individual.

6. Providers shall not use a restraint that places the individual's body in a prone (face down) position.

7. Providers shall not use seclusion or restraint for any behavioral, medical, or protective purpose unless other less restrictive techniques have been considered and documentation is placed in the ISP that these less restrictive techniques did not or would not succeed in reducing or eliminating behaviors that are self-injurious or dangerous to other people or that no less restrictive measure was possible in the event of a sudden emergency.

8. Providers that use seclusion, restraint, or time out shall develop written policies and procedures that comply with applicable federal and state laws and regulations, accreditation and certification standards, third party payer requirements, and sound therapeutic practice. These policies and procedures shall include at least the following requirements:

a. Individuals shall be given the opportunity for motion and exercise, to eat at normal meal times and take fluids, to use the restroom, and to bathe as needed.

b. Trained, qualified staff shall monitor the individual's medical and mental condition continuously while the restriction is being used.

c. Each use of seclusion, restraint, or time out shall end immediately when criteria for removal are met.

d. Incidents of seclusion and restraint, including the rationale for and the type and duration of the restraint, shall be reported to the department as provided in 12VAC35-115-230 C.

9. Providers shall comply with all applicable state and federal laws and regulations, certification and accreditation standards, and third party requirements as they relate to seclusion and restraint.

a. Whenever an inconsistency exists between this chapter and federal laws or regulations, accreditation or certification standards, or the requirements of third party payers, the provider shall comply with the higher standard.
b. Providers shall notify the department whenever a regulatory, accreditation, or certification agency or third party payer identifies problems in the provider's compliance with any applicable seclusion and restraint standard.

10. Providers shall ensure that only staff who have been trained in the proper and safe use of seclusion, restraint, and time out techniques may initiate, monitor, and discontinue their use.

11. Providers shall ensure that a qualified professional who is involved in providing services to the individual reviews every use of physical restraint as soon as possible after it is carried out and documents the results of his review in the individual's services record.

12. Providers shall ensure that review and approval by a qualified professional for the use or continuation of restraint for medical or protective purposes is documented in the individual's services record. Documentation includes:

a. Justification for any restraint;

b. Time-limited approval for the use or continuation of restraint; and

c. Any physical or psychological conditions that would place the individual at greater risk during restraint.

13. Providers may use seclusion or mechanical restraint for behavioral purposes in an emergency only if a qualified professional involved in providing services to the individual has, within one hour of the initiation of the procedure:

a. Conducted a face-to-face assessment of the individual placed in seclusion or mechanical restraint and

documented that alternatives to the proposed use of seclusion or mechanical restraint have not been successful in changing the behavior or were not attempted, taking into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently;

b. Determined that the proposed seclusion or mechanical restraint is necessary to protect the individual or others from harm, injury, or death;

c. Documented in the individual's services record the specific reason for the seclusion or mechanical restraint;

d. Documented in the individual's services record the behavioral criteria that the individual must meet for release from seclusion or mechanical restraint; and

e. Explained to the individual, in a way that he can understand, the reason for using mechanical restraint or seclusion, the criteria for its removal, and the individual's right to a fair review of whether the mechanical restraint or seclusion was permissible.

14. Providers shall limit each approval for restraint for behavioral purposes or seclusion to four hours for individuals age 18 and older, two hours for children and adolescents ages nine through 17, and one hour for children under age nine.

15. Providers shall not issue standing orders for the use of seclusion or restraint for behavioral purposes.

16. Providers shall ensure that no individual is in time out for more than 30 minutes per episode.

17. Providers shall monitor the use of restraint for behavioral purposes or seclusion through continuous face-to-face observation, rather than by an electronic surveillance device.

THE VIRGINIA BOARD FOR POSITIVE BEHAVIOR SUPPORT HAS AN ETHICS GUIDANCE DOCUMENT AS WELL AS A STANDARDS OF PRACTICE DOCUMENT. THESE GUIDELINES DICTATE HOW A PBSF SHOULD BE CONDUCTING THEIR PRACTICE. THESE DOCUMENTS ARE PUBLIC INFORMATION AND CAN BE FOUND AT THE LINKS BELOW - PRINTED COPIES OF THE ETHICS GUIDELINES AND THE STANDARDS OF PRACTICE ARE AVAILABLE UPON REQUEST.

ETHICS:
http://personcenteredpractices.org/pdfs/ethics_code_final_11-1-16.pdf

STANDARDS OF PRACTICE:
http://personcenteredpractices.org/pdfs/va_pbd_network_standards_of_practice_final_may_2017.pdf

HOW TO REPORT VIOLATIONS:
http://personcenteredpractices.org/vpbs_current_trainees.html