

Person-Centered Behavioral Intervention

REVISED PROPOSED RULE MAKING

Comments due: Friday, November 16, 2012

The revised proposed regulations establish new requirements concerning behavioral interventions in the OPWDD system. OPWDD is proposing the addition of a new 14 NYCRR Section 633.16, which contains comprehensive requirements for supports and interventions related to challenging behavior. These new requirements will help agencies provide high quality services, and will protect the rights and welfare of individuals receiving services.

The new Section 633.16 contains a number of provisions to protect the health, safety and rights of individuals who engage in challenging behaviors. Among the provisions of Section 633.16 are the following:

- Aversive conditioning is prohibited.
- Agencies must conduct a functional behavioral assessment to obtain relevant information for effective intervention planning before a behavior support plan is developed to address challenging behavior. Specific components must be addressed or included in the functional behavioral assessment.
- Behavior support plans must be developed that are specific to each person who exhibits challenging behavior. These plans specify the interventions that may be used. The regulations establish a number of components that must be included in the plan. Among the specific required components of behavior support plans is the inclusion of a hierarchy of behavioral approaches, strategies, and supports to address the behavior(s) requiring intervention, with the preferred methods being positive approaches, strategies and supports.
- Additional safeguards are established for plans that contain “restrictive/intrusive interventions” or limitations on a person’s rights.” “Restrictive/intrusive interventions” are defined in the regulation and include specific behavioral interventions such as “intermediate” and “restrictive” physical intervention techniques (hands-on techniques), use of “time-out,” use of mechanical restraining devices, and use of medication to modify or control challenging behavior.
- Safeguards and protections related to restrictive/intrusive interventions and limitations on a person’s rights include:
 - Additional components must be included in the person’s behavior support plan. Plans must be developed or supervised by a licensed psychologist, licensed clinical social worker, or behavioral intervention specialist (either Level 1 or 2, with the appropriate supervision outlined in the regulation). Those providers who demonstrate sustained

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hardship in recruiting employees or contractors who meet the specified qualifications, may apply to OPWDD for a waiver.

- Plans must be reviewed and sanctioned before implementation by a behavior plan review /human rights committee. Required membership and procedures for these committees are established. (The requirement for committee review does not apply to monitoring plans that include medication to treat a co-occurring diagnosed psychiatric condition. The regulations describe standards for determining what constitutes a “co-occurring diagnosed psychiatric disorder”)
- Informed consent is required for the use of restrictive/intrusive interventions and for the use of psychotropic medications. Procedures are established to determine whether the person receiving services is capable of providing informed consent. If an individual is not capable of providing informed consent, procedures are established for obtaining informed consent from designated surrogate decision makers (e.g. actively involved parents and actively involved family members). In the event that no other surrogate is reasonably available and willing, consent can be sought from the Willowbrook Consumer Advisory Board or an informed consent committee. Required membership and procedures are established for the informed consent committee. Consent can also be obtained from a court.
- Procedures are established for objecting to interventions in behavior support plans, and addressing a lack of informed consent. Procedures are also established concerning refusal by the individual receiving services to take medication.
- Requirements are included for training of staff, family care providers and respite substitute providers.
- Additional safeguards are established for the use of physical intervention techniques (hands-on techniques). Physical intervention techniques are categorized as protective, intermediate or restrictive. Among these safeguards are requirements for training and certification in the use of the techniques.
- Additional safeguards are established for the limitations on a person’s rights.
- Additional safeguards are established for the use of “time-out.” “Time-out” includes both exclusionary time-out (placing a person in a specific time-out room), and non-exclusionary time-out (removing the positively reinforcing environment from the individual.) Environmental requirements are established for time-out rooms.
- Additional safeguards are established for the use of mechanical restraining devices.

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- Additional safeguards are established for the use of medication to modify or control challenging behavior, and/or to treat a diagnosed co-occurring psychiatric disorder. Safeguards include monitoring plans to be completed when medication is used to treat co-occurring diagnosed psychiatric conditions.
- The new Section 633.16 references existing requirements in Section 633.17(a)(18) concerning medication regimen reviews. Results of these reviews must be provided to prescribers and the program planning team.
- The regulations specify that restrictive/intrusive interventions cannot be used in an emergency, except for intermediate and restrictive physical intervention techniques and the use of medication. Limitations on a person's rights can also be used in an emergency.
- Provisions are established for phasing-in the requirements. Requirements for new behavior support plans (and associated informed consent) are applied 60 days after the regulation becomes effective, and requirements for existing plans (and associated informed consent) are applied a year after that. This will enable agencies to apply the new development standards to existing behavior support plans during regularly scheduled reviews.

The regulation also amends 14NYCRR Section 681.13, which contains requirements applicable to behavior management in ICF/DD facilities. The provisions of this section address many of the same issues that are addressed in Section 633.16. The amendments to Section 681.13 phase out the requirements of that section in conjunction with the phase-in of the requirements of the new Section 633.16. Once Section 633.16 is fully phased in, Section 681.13 will no longer be effective. Outdated and duplicative requirements in Part 81 are deleted.

14NYCRR Part 624 is amended so that new definitions of categories of abuse become effective once Section 633.16 is fully phased in. These new definitions conform to Section 633.16 so that if interventions are used which are not in accordance with the requirements of the new section, their use is considered to be abuse (unless actions were taken that were necessary to address an immediate risk to the health or safety of the person or others). Definitions in the glossary of Part 624 are also changed to conform to the new definitions in Section 633.16.

14NYCRR Part 633 is amended to enhance protections related to limiting the rights of a person receiving services and to conform to protections related to limitation of rights in the new Section 633.16. Definitions in Section 633.99 are also changed to conform to the new definitions used in Section 633.16.