



Putting People First

Memorandum

To: Provider Associations
 Voluntary Provider Agency Executive Directors
 DDSO Directors
 IBR Director
 Commissioner's Advisory Council
 DDPC Consumer Caucus
 OPWDD Required Regulations Mailing List

From: Barbara Brundage, Director **BB**
 Regulatory Affairs Unit

Date: December 28, 2011

Re: Proposed Regulations – Behavior management

Comments Due: Monday, February 13, 2012

Suggested distribution:

- Agency administrators
- Quality/compliance administrators
- Incident coordinators
- Psychologists
- Members of behavior management/human rights committees

Purpose:

OPWDD has proposed regulations concerning the management of maladaptive or inappropriate behavior.

A summary and full text of the proposed regulations is available at www.opwdd.ny.gov. Look under “Regulations.”

Needs and benefits:

Teaching and supporting positive, adaptive behaviors, and the effective management of challenging, maladaptive, or inappropriate behaviors, are important components of the services provided through the OPWDD system. Employing a range of behavioral interventions and managing behavior appropriately can significantly enrich the lives of individuals with developmental disabilities, and enable them to become more independent and successful in many aspects of their lives. Further, poor behavior management practices may have tragic consequences, resulting in serious injury or death.

OPWDD is proposing the addition of a new section containing comprehensive requirements for the management of maladaptive and inappropriate behavior. These new requirements will help agencies provide higher quality services and will protect the rights and welfare of individuals receiving services.

The regulation emphasizes that positive approaches, strategies and supports are always the preferred method of managing maladaptive or inappropriate behavior. In addition, the regulation establishes specific procedures that must be followed in order to safeguard the individual and regulate the use of specific behavioral interventions that limit rights or have potential adverse impacts.

The implementation of the new provisions would require that agencies incur additional expenses and redirect existing staff resources toward compliance activities. OPWDD considers that the additional costs and staff time involved are more than justified by the enhanced protections afforded to individuals receiving services. Further, OPWDD proposes a schedule for phasing-in the new requirements so that agencies will have adequate time to hire the necessary staff and integrate the new required processes into existing agency policies and procedures. OPWDD has also delayed the implementation of the new planning requirements for existing behavior support plans, so that the new requirements can be implemented during regularly scheduled reviews of the current plans.

Among its provisions, the proposed regulation prohibits aversive conditioning. OPWDD considers that the use of behavior modification techniques that involve deliberately inflicting sensations that are uncomfortable, painful, or noxious is inappropriate and unnecessary. The proposed regulation also does not allow for the emergency use of mechanical restraints (outside a healthcare provider's service setting). Additional monitoring, oversight and reporting requirements pertaining to the use of physical interventions have been incorporated into the regulation, in accord with moving toward a restraint-free environment in OPWDD settings.

The regulation also modifies the definitions of abuse in Part 624 to conform to the provisions of the new behavior management requirements and add additional clarity.

The provisions of Section 681.13 are phased out in conjunction with the phase-in of the new Section 633.16. The provisions of Section 681.13 contain requirements for behavior management-related issues specifically in Intermediate Care Facilities (ICF/DDs) settings. Requirements applicable to ICF/DD settings have been integrated where relevant into the text of the proposed Section 633.16 and separate ICF/DD-specific requirements concerning behavior management will no longer be needed in Part 681. Please note that ICF/DD facilities will need to comply with specific requirements in 42 CFR 483 which are more stringent than the requirements in Section 633.16.

Outdated and duplicative requirements contained in Part 81 which concern review of "untoward incidents" and "extra risk procedures" in "Schools for the Mentally Retarded" have been deleted. These areas are addressed in Part 624 and the new Section 633.16.

Compliance activities:

OPWDD expects to finalize the proposed regulations in the spring of 2012. No specific anticipated effective date has been established. The earliest possible effective date is March 7, 2012 and the latest expected effective date is sometime in June, 2012.

OPWDD recognizes that imposing additional requirements concerning behavior management will mean that providers will need to establish new policies and procedures or revise existing documents and practices. In some cases, agencies will need to hire new staff to fulfill the new requirements. Training will also be a critical compliance activity since staff, family care providers and respite/substitute providers will need to be trained in existing behavior support plans and in specific interventions on the effective date (see subdivision 633.16(i)). Staff who are responsible for support and supervision of a person whose plan includes the use of any physical intervention technique (and supervisors of these staff) must also be trained and certified in SCIP-R on the effective date. Formation or establishment of behavior management/human rights committees, informed consent committees and pharmacy review practices will also require sufficient lead time for agencies to put into place or arrange for and should be prioritized.

OPWDD is consequently notifying providers of its intention to promulgate these regulations well in advance of the anticipated effective date to give providers enough time to make any changes or arrangements that might be necessary for the agency to come into compliance.

OPWDD will send additional guidance once decisions are made about the anticipated effective date.

Public comments:

The deadline for public comment for these regulations is the close of business on Monday, February 13, 2012.

Written comments about the proposed regulations should be addressed to:

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If you have any questions about the proposed regulations please contact Dr. Ann Troy at (518) 474-3558 or by email at Behavior.Management.Regulation@opwdd.ny.gov.

Thank you.

cc: Dr. Pettinger
Dr. Troy
Ms. Mugno
Ms. Zibell
Ms. Matthews