

PROPOSED AGENCY ACTION - §633.16 and .99

TABLE OF CONTENTS

Principles of Compliance

All Interventions to Modify or Control Maladaptive or Inappropriate Behavior - General Requirements . . . . . 1

Restrictive/Intrusive Interventions - Specific Requirements . . . . . 4

Personal Intervention . . . . . 6

Time-Out Room - Where Normal Egress is Prevented by Someone's Direct and Continuous Physical Action . 8

Mechanical Restraining Devices - General Requirements . . . . . 10

Mechanical Restraining Devices - To Modify, Control, or Limit Self-Injurious or Assaultive Behavior as Part of a Behavior Management Plan . . . . . 14

Mechanical Restraining Devices - Emergency Use in OMRDD Operated or Certified Facilities . . . . . 14

Mechanical Restraining Devices - For Medical Purposes . . . . . 17

Medication to Modify or Control Maladaptive or Inappropriate Behavior - General Requirements . . . . . 19

Medication to Modify or Control Maladaptive or Inappropriate Behavior - Planned Use . . . . . 20

Medication to Modify or Control Maladaptive or Inappropriate Behavior - Short-Term Use When There is No Behavior Management Plan . . . . . 20

Medication - Emergency Use to Control Self-Injurious or Assaultive Behavior . . . . . 21

Medication - To Treat a Diagnosed Psychiatric Disorder . . . . . 21

Medication - To Facilitate a Medical Procedure . . . . . 22

Aversive Conditioning . . . . . 22

Standards of Certification

General Requirements . . . . . 26

Personal Intervention . . . . . 27

Time-Out Room - Where Normal Egress is Prevented by Someone's Direct and Continuous Physical Action . 28

Mechanical Restraining Devices . . . . . 28

Medication . . . . . 30

Aversive Conditioning . . . . . 32

Glossary . . . . . 34

PROPOSED AGENCY ACTION

- Filed: August 17, 1994 -

Addition of a New Section 633.16 to Part 633  
And Additions to the Glossary (Section 633.99)

=====

633.16 Behavior Management - Modifying or Controlling Maladaptive or Inappropriate Behavior (see Glossary)

(a) Principles of Compliance

(1) All Interventions (see Glossary) to Modify or Control Maladaptive or Inappropriate Behavior - General Requirements.

- (i) Persons (see Glossary) with developmental disabilities may require the use of interventions aimed at developing new adaptive behaviors; maintaining, increasing, or maximizing existing adaptive behaviors; or ameliorating maladaptive behaviors. Such interventions shall emphasize positive approaches in modifying behavior, focus on teaching new behaviors, and provide persons with the skills needed to enhance their everyday functions and quality of life.
- (ii) Positive approaches that are consistent with standards of professional practice shall always be the preferred method for addressing maladaptive or inappropriate behavior. However, OMRDD recognizes that positive approaches alone may not always be effective and it may also be necessary to incorporate approaches that are restrictive and/or intrusive into a behavior management plan (see Glossary) to address such maladaptive or inappropriate behavior. If an agency/facility chooses to use such restrictive/intrusive interventions, OMRDD provides for their use when in conformance with this section.
- (iii) The use of aversive conditioning (see Glossary) is prohibited ~~unless all the requirements of paragraph (15) are met.~~
- (iv) When the primary purpose of using an intervention is to control a behavior, rather than to modify it, the intervention is not to be viewed as therapeutic or a substitute for positive approaches to behavior change.
- (v) All interventions shall be employed only as follows:
  - (a) To develop or increase adaptive behavior when maladaptive or inappropriate behavior is displayed, and never for the convenience of staff, as a means of retribution, or as a substitute for treatment or supervision.
  - (b) With sufficient safeguards and supervision to ensure that the dignity, safety, health, welfare, and civil rights of a person have been adequately protected.

- (1) No behavior management plan may deprive a person of a balanced and nutritious diet, served at appropriate times throughout the day. This does not preclude the use of mini-meals.
  - (2) No behavior management plan may incorporate the use of food in which the form of the food served is different to that served other people in the facility (e.g., pureed when others get sliced meat/vegetables).
  - (3) No behavior management plan may incorporate ~~deprivation of sleep~~ **sleep deprivation**.
- (c) After a functional analysis (see Glossary) of the behavior has been completed, which would include consideration of the antecedents of a behavior to evaluate whether environmental alterations would reduce or eliminate the behavior.
  - (d) In conformance with applicable regulatory provisions and agency/facility specific policies/procedures.
  - (e) With assurance that the restrictive/intrusive techniques (see Glossary) of any type of restrictive/intrusive intervention (see Glossary), as specified in a behavior management plan, are employed only after there is documentation that positive approaches have been tried and have not been sufficiently successful.
  - (f) With justification in a person's record for the necessity of a particular intervention, including medication, to achieve the objectives.
  - (g) With postponement of ~~other~~ activities, if necessary, specified in the person's record.

Nothing in this subparagraph shall prevent the use of an intervention in an emergency (see Glossary) when used in conformance with the requirements of this section addressing such emergency application.

- (v) Staff, volunteers, and interns whose job description specifies interaction with persons receiving services, and family care providers, shall receive in-service training in at least the basic principles of behavior management. Those parties implementing a technique (see Glossary) of a behavior management intervention shall be trained or receive instruction in the specific technique to be utilized with a specific person, prior to use. Volunteers and undergraduate interns shall not be designated to implement restrictive/intrusive interventions.

(vi) Agency/facility policies/procedures addressing the use of interventions to manage maladaptive or inappropriate behavior shall be in conformance with this section. Intermediate Care Facilities (ICF/DDs) shall also ensure compliance with 14 NYCRR Part 681 and 42 CFR 483, which may be more restrictive. Policies/procedures shall address, at a minimum, the following:

(a) The need to stress positive approaches and, only when necessary, to employ the least restrictive/intrusive intervention that will address a person's maladaptive or inappropriate behavior.

(b) Training of staff, volunteers, interns, and family care providers.

(c) Supervision of staff, volunteers, interns, and family care providers.

(d) Use of medication.

(e) Restrictive/intrusive interventions.

(1) The use of:

(i) Restrictive personal intervention (see Glossary).

(ii) Time-out (see Glossary).

(iii) Mechanical restraining devices (see Glossary).

(iv) Aversive conditioning (see Glossary).

(2) Making notifications.

(3) Designation of staff or graduate level interns who are authorized to use such interventions and the specific technique(s) they may use.

(4) The role of a committee to sanction (see Glossary) the use of intrusive/restrictive behavioral interventions.

(5) Record keeping, documenting use and conformance with required procedures.

(6) The removal of a person should a critical situation or emergency (such as a fire, bomb threat, or harmful physical reaction) occur while such interventions are in use.

- (7) Monitoring of the overall use of such Interventions.
  - (8) Maintaining statistical records on individualized and overall use of restrictive/intrusive interventions within a facility.
- (2) Restrictive/Intrusive Interventions (See Glossary) - Specific Requirements.
- (i) It is recognized and accepted that not every facility will use restrictive/intrusive interventions. For those facilities that choose to make use of any or all such interventions, conformance with the applicable requirements of this section is mandated.
  - (ii) Before implementation of a behavior management plan which designates the use of a specific technique(s) of a restrictive/intrusive intervention, the following requirements shall be met:
    - (a) The plan shall be developed and approved by the person's program planning team (see Glossary).
    - (b) The plan shall be sanctioned by a committee (see Glossary) created to protect the rights of persons when such techniques are proposed.
    - (c) Those parties implementing the technique shall be trained in its use.
  - (iii) If the person, and/or parent, guardian, or correspondent (see Glossary) has not participated in the program planning meetings, he or she shall be notified, prior to initiation, of the planned use of an intervention employing a restrictive/intrusive technique and of the specific technique to be employed. MHLS shall be notified if there is no parent, guardian, or correspondent. Such notification is also required to be made when medication is prescribed to control or modify maladaptive or inappropriate behavior. Said notice shall be in writing or in a form of communication that the recipient is most comfortable using and most clearly understands, and shall specify the right of the notified party to object to such treatment in conformance with section 633.12 of this Part. However, notification to a parent, guardian, correspondent, or MHLS shall not be made if the person is a capable adult and objects to such notification being made. ~~Informed consent is necessary, however, prior to the use of a mechanical restraining device which would constrain an ambulatory person to facilitate programming (see paragraph 6 of this section); or when aversive conditioning is considered necessary (see paragraph 15 of this section).~~
  - (iv) The committee created to protect the rights of persons whose behavior management plans incorporate the use of restrictive/intrusive interventions may be a separate committee created solely for the

purpose of meeting the requirements of this section, which includes the reviewing, sanctioning (see Glossary), and monitoring of behavior management plans; or it may be part of another committee, such as a rights committee. For purposes of this section, it shall hereinafter be referred to as the "committee."

- (a) The committee shall contribute to the protection of persons receiving services by:
- (1) Sanctioning or refusing to sanction proposed behavior management plans which utilize a restrictive personal intervention (see Glossary), a time-out room (see Glossary) from which egress is prevented, mechanical restraining devices, ~~aversive conditioning~~, any other interventions which the committee considers to be restrictive/intrusive (e.g., over-correction), or any other type of intervention specified in agency/facility policy/procedure.
  - (2) Ensuring that proposed behavior management plans, ~~other than those that employ aversive conditioning~~, presented to the committee are sanctioned for a time period based on the needs of the person, and which shall not be in excess of one year. ~~Plans employing aversive conditioning shall not be approved for a time period exceeding 60 calendar days.~~
  - (3) Ensuring that appropriate written notification has been ~~sent~~made.
  - (4) Reviewing and making suggestions to the agency/facility about its policies, practices, and programs as they relate to its use of:
    - (i) Medication to modify or control behavior.
    - (ii) Mechanical restraining devices for medical purposes.
    - (ii) Other interventions and techniques that are potentially restrictive/intrusive.
  - (5) Approving/disapproving the use of non-commercially designed mechanical restraining devices or clothing ~~(which has been specifically designed as a restraint)~~ for specific persons for a given situation, in conformance with the criteria of section 633.16(a)(5)(ix) of this section.

- (6) Approving or disapproving adaptations of existing and approved personal intervention (see Glossary) techniques.
  - (b) The agency/facility shall have a mechanism whereby a request for reconsideration of the decision of the committee may be made.
  - (c) ~~Membership of the committee~~ There shall be a minimum of three ~~persons~~ members on the committee, to include:
    - (1) Two clinicians (see Glossary), one of which must be a psychologist currently licensed in New York State or an applied behavior sciences specialist (see Glossary) with contemporary behavior management training; and
    - (2) ~~A party with no ownership, employment relationship, or other interest in the agency/facility which would compromise his or her objectivity in decision making who may be, but is not limited to:~~
      - (i) Someone charged with the responsibility for advocating for a person's rights (e.g., a volunteer or an advocacy organization representative); or
      - (ii) Someone with a developmental disability, or parent(s) or guardian(s) of someone with a developmental disability.
  - (d) ~~When the use of aversive conditioning is proposed, the committee shall include the additional participation or input of another psychologist currently licensed in New York State who does not have any ownership, employment relationship, or other interest in the agency/facility which would compromise his or her objectivity in decision making.~~
  - (e) Committee members reviewing plans shall not have developed or be responsible for the direct implementation of the plan.
  - (v) Volunteers and undergraduate interns shall not implement restrictive/intrusive techniques. ~~Under supervision, graduate level interns may participate in implementing a plan of services that incorporates the use of restrictive/intrusive techniques.~~
- (3) Personal Intervention
- (i) "Personal Intervention" is the name given to any collection of techniques which result in a person being manually protected,

constrained or held by another party or parties to interrupt or control behavior.

- (ii) "Restrictive personal interventions," as used in this section, refers to those techniques of personal intervention which have as their intent ~~bringing a person from a standing position down to the floor (or other surface)~~ for the temporary immobilization of the person when he or she displays dangerous behavior. Examples of restrictive personal intervention techniques include ~~a takedown~~ and those commonly referred to as a basket hold, lying wrap-up, ~~takedown~~, and prone or supine containment.
- (iii) Personal intervention techniques used shall be consistent with those in the current OMRDD training curriculum.
- (iv) The training material used for personal intervention shall be:
  - (a) The OMRDD training curriculum on the use of personal interventions; or
  - (b) A training curriculum, approved by OMRDD prior to use.
- (v) If personal intervention techniques need to be adapted due to a particular person's physical disability, such techniques shall be reviewed and sanctioned by the committee, and shall be designed and implemented for that person only.
- (vi) Personal intervention techniques which incorporate the use of a blow, hit, slap, spank, or similar body contact are expressly prohibited.
- (vii) All personal intervention techniques shall be designed:
  - (a) In accordance with principles of good body alignment.
  - (b) So as not to interfere with circulation and respiration.
  - (c) So as not to inflict pain.
  - (d) To avoid pressure on joints.
- (viii) The application of a restrictive personal intervention technique shall be done with the minimal amount of force necessary to safely interrupt the behavior, and the duration of the application for a single episode should not exceed 20 minutes.
- (ix) The use of any personal intervention technique shall be terminated:
  - (a) When it is judged that the person's behavior necessitating application of the personal intervention technique has diminished sufficiently or has ceased; or

- (b) Immediately if there appears to be a detrimental change in a person's vital signs (e.g., pulse, respiration), or the person exhibits signs of physical distress (e.g., breathing difficulty, gagging, vomiting, change of skin color). In such circumstance, ~~necessary~~ medical assistance shall be provided, ~~as necessary~~.
  - (x) Immediately after the use of a restrictive personal intervention techniques, a person shall be examined for possible injury and the findings of such examination shall be documented. Medical assistance shall be provided, as necessary.
  - (xi) While the use of a restrictive personal intervention may be specified in a behavior management plan to advise staff as to how to control a person when his or her behavior has reached a crisis level, such an approach is not to be considered as a therapeutic approach.
  - (xii) The party designated with the responsibility for coordinating a person's plan of services (see Glossary) shall be notified as soon as possible whenever it is necessary to use a restrictive personal intervention technique in an emergency.
  - (xiii) The use of a restrictive personal intervention technique in an emergency more than two times in a 30-day period or four times in a six month period shall require a careful and comprehensive review by appropriate members of a person's program planning team to determine if there is a need for a behavior management plan to address the exhibited behavior(s), a need to change an existing plan, or to establish the criteria for determining if a plan will need to be established in the future.
- (4) Time-Out Room - Where Normal Egress is Prevented by Someone's Direct and Continuous Physical Action
- (i) The placement of a person alone in a room from which his or her normal egress is prevented by someone's direct and continuous physical action shall be in conformance with the following:
    - (a) Such action shall be taken only when specified in a person's behavior management plan, and shall be in conformance with that plan.
    - (b) The person's behavior(s) that precipitates the use of such time-out is potentially dangerous to self or others.
    - (c) Constant auditory and visual contact shall be maintained.
  - (ii) When the requirements of this subparagraph are not met, the use of a time-out room where normal egress is prevented is considered to be

abuse and shall be reported as such in conformance with Part 624 of 14 NYCRR.

- (iii) The amount of time designated in a behavior management plan for a person to be placed in a time-out room from which normal egress is prevented by someone's direct and continuous physical action shall not exceed one continuous hour in duration.
- (iii) When a person, who has been placed in a time-out room from which normal egress is prevented by someone's direct and continuous physical action, displays signs of illness or significant physical distress or discomfort, staff shall take appropriate steps to address the situation.
- (iv) When a room, where egress is prevented by someone's direct and continuous physical action, is designated specifically for the purpose of employing time-out, the following requirements shall be met:
  - (a) The decision to create such a room for time-out use shall rest, ultimately, with the chief executive officer and shall be approved by the governing body (see Glossary).
  - (b) Both the design and intended use shall be approved by the commissioner. If the commissioner has approved the use of such a room prior to the promulgation of this section, such approval shall continue to be in effect. If such a room is being used as of the effective date of this section without the commissioner's approval, approval shall be obtained. Such approval must be obtained within six months of the effective date of this regulation, or such use shall be discontinued after that date.
  - (c) To ensure a person's safety, health, and comfort, environmental requirements for such a time-out room shall consider such items as:
    - (1) Access and egress.
    - (2) Decoration.
    - (3) Electrical wiring, fixtures, outlets, etc.
    - (4) Furnishings.
    - (5) Glass.
    - (6) Holes.
    - (7) Observation of occupant.

(8) Occupant comfort.

(9) Padding.

(10) Pipes.

(11) Protrusions.

(12) Sanitation.

(13) Size.

(14) Soundproofing.

(15) Temperature control.

(16) Ventilation.

(d) The room should be used exclusively for time-out, and not be considered a multi-purpose room. If such dual use is necessary, such use shall be described in agency/facility policy/procedures.

(e) While it may be necessary to lock such a time-out room when not in use, the mechanism used for this purpose shall be such that the door can be opened, at will, from the inside.

(5) Mechanical Restraining Devices - General Requirements

(i) A "mechanical restraining device" is any apparatus or equipment, the application of which restricts the free movement of, normal functioning of, or normal access to a portion or portions of a person's body, and which the person cannot remove or free himself or herself easily.

(ii) The use of any mechanical restraining devices, other than in conformance with this section, is prohibited. Such inappropriate use shall be reported as abuse in conformance with Part 624 of 14 NYCRR.

(iii) Barred enclosures and the use of bed linen employed to restrain movement shall be prohibited under all circumstances.

(iv) Mechanical restraining devices shall be applied only if the use of the mechanical restraining device imposes the least possible restriction in order to provide the necessary control.

(v) Mechanical restraining devices shall be maintained in good repair.

- (vi) Agency/facility policies/procedures on the use of mechanical restraining devices are to address the storage and limited access to mechanical restraining devices.
- (vii) Mechanical restraining devices shall be employed in accordance with the principles of correct body alignment; so as not to interfere with circulation and respiration; and with concern for a person's comfort.
- (viii) When the use of a mechanical restraining device is contemplated, the determination as to which additional specific regulatory requirements apply, shall be based on the circumstances under which the device is to be used:
  - (a) The Use is Specified in a Behavior Management Plan - If a mechanical restraining device is designated for use in a person's behavior management plan that is intended to lead to less restrictive/intrusive means of managing and eliminating self-injurious or assaultive behavior, the device shall be used programmatically in conformance with paragraph 633.16(a)(6). If the device will prevent the free movement of both arms or both legs or totally immobilize (see Glossary) the person, even though it is specified for use in a plan of services, it shall also be used in conformance with paragraph 633.16(a)(7) of this section.
  - (b) For Behavior Control in an Emergency - If a mechanical restraining device is to be used to limit a person's behavior as the result of an episodic behavioral or emotional disturbance which is likely to result in serious injury to that person or others and there is no written behavior management plan detailing its use, the device shall be used in conformance with paragraph 633.16(a)(7) of this section. ~~Because of the requirements of the Mental Hygiene Law, these same requirements/criteria~~ apply when the use of a device which will prevent the free movement of both arms or both legs or totally immobilize the body is specified for use in a behavior management plan because it is anticipated that a person may have a self-injurious or assaultive outburst requiring the use of such controlling device.
  - (c) For Medical Purposes -
    - (1) As a Medical Safeguard - If a mechanical restraining device is to be ordered by a physician or dentist for explicit medical reasons during healing, it shall be considered a "medical safeguard" when used in conformance with paragraph 633.16(a)(8)(i) of this section.

- (2) As Part of a Medical Procedure at a Facility -If a mechanical restraining device is to be ordered by a physician or dentist to facilitate a specific medically necessary procedure which is to take place in the facility, it shall be considered a "medical procedure" when used in conformance with paragraph 633.16(a)(8)(ii) of this section.
- (ix) By this section, and in conformance with this section, the commissioner approves, without further authorization as required in subparagraph (x) below, the use of mechanical restraining devices which meet all of the following criteria:
- (a) Are designated:
- (1) For use as part of a behavior management plan. The commissioner's approval is limited to mittens, helmets, face masks, goggles, and sleeve/arm control devices; or
- (2) For medical purposes, in conformance with paragraph (8) below of this subdivision.
- (b) Are commercially available and designed expressly for human use. The design of those devices which are not commercially available shall be approved by the committee.
- (c) Are designed and used in such a way as to cause a person the least possible physical discomfort and to avoid physical injury.
- (d) Do not secure or tether a person's body to an object; do not secure or tether an arm(s) or leg(s) to each other, to any other body part or to another object; or do not totally immobilize a person, except as part of a medical procedure as described in paragraph (8)(ii).
- (x) The use of a mechanical restraining device which does not meet the above requirements shall be prohibited unless authorization is received from the commissioner for a specific person for a given situation(s). Any request to obtain the commissioner's authorization to use a specific mechanical restraining device shall be submitted to the commissioner along with:
- (a) The behavior management plan specifying the use.
- (b) The committee's approval, and
- (c) The rationale for such approval by the committee.

- (xi) This section shall not be construed as prohibiting the use of a mechanical restraining device as a support when needed to assist a person in his or her comfort, functioning, and/or safety and when in conformance with the following:
  - (a) The only supports approved by the Commissioner are:
    - (1) Devices which maintain a person's body in good alignment.
    - (2) Devices which maintain a person in a safe and/or appropriate position when a person is not capable of self-support or self-ambulation.
    - (3) Devices (such as helmets) which protect the head of a person with a health problem that necessitates such a safeguard.
  - (b) Mechanical restraining devices used as support shall be considered a form of supportive treatment and shall be ordered at least on an annual basis by a physician in consultation with the person's program planning team. The program planning team shall be responsible for evaluating the appropriateness of the device and the need for any modification or change on at least a semi-annual basis or whenever there is a significant change in the physical condition or health status of the person.
  - (c) A mechanical restraining device used as a support shall only be employed as described in a person's plan of services, which shall specify the conditions and frequency for its use and the schedule for monitoring the comfort and safety of the person.
  - (d) A mechanical restraining device used as a support shall only be applied by the person, or others who have been trained in its use.
- (xii) Nothing in this section shall preclude the use of appropriate safety devices in moving vehicles.
- (xiii) Nothing in this section shall preclude the use of a mechanical restraining device(s) while a person is receiving services at a location other than OMRDD-operated or certified facilities as long as the use of such device(s) is consistent with the certification or licensure standards of that provider and the use of such a device(s) is not discriminatory due to the person having a diagnosis of a developmental disability. The facility shall ensure such discrimination does not take place.

(6) Mechanical Restraining Devices - To Modify, Control, or Limit Self-Injurious or Assaultive Behavior as Part of a Behavior Management Plan

(i) A behavior management plan may include the use of mechanical restraining devices to enable a person to participate effectively in habilitative programming, recreation, social, and other activities. The purpose of the plan is to reduce the frequency/severity of the behavior so non-restrictive/non-intrusive means of managing and eliminating self-injurious or assaultive behavior(s) can be implemented. If a device is to be used to maintain an ambulatory person in a location so as to facilitate programming:

(a) The plan of services explicitly sets forth the conditions and the manner in which the device will be used, and the staff actions expected; and

(b) There is written or witnessed informed consent of a capable adult person or, if the person is not a capable adult or is a minor, that of a parent or guardian or, in the absence of such consent, a court order; and

(c) There is approval from the Commissioner.

(ii) To ensure against physical or medical contraindication, there shall be a physician's order for the use of a mechanical restraining device as part of a behavior management plan, and the order shall be renewed as specified in the plan, but in all cases no less frequently than every six months. However, if the device will prevent the free movement of both arms or both legs or totally immobilize the person, even though its use is specified in a behavior management plan, conformance with the requirements of Paragraph 633.16(a)(7) of this section is also mandated.

(iii) A mechanical restraining device shall be employed only as described in a person's behavior management plan, which shall specify the conditions for its use and the maximum time period for which it may be continuously employed. The plan shall also address how the use of the device is expected to be reduced and eventually eliminated.

(iv) Unless a more frequent schedule is established by a physician, the mechanical restraining device shall be removed at least every two hours, at which time the comfort, safety, and physical needs of the person shall be addressed.

(7) Mechanical Restraining Devices - Emergency Use in OMRDD Operated or Certified Facilities

(i) In an emergency, the use of any mechanical restraining device shall be employed only when absolutely necessary to prevent a person who is undergoing an episodic behavioral or emotional disturbance from

seriously injuring himself, herself or others and only for as long as the condition exists.

- (ii) Except in a situation as described in subparagraph (iii) below, a mechanical restraining device used in an emergency shall be imposed only on the written order of a physician who has personally examined the person.
  - (a) All orders shall:
    - (1) Set forth the facts justifying the use of the device.
    - (2) Specify the nature of the device.
    - (3) Specify the conditions for continuing/ discontinuing the use of the device.
    - (4) Set forth the time of expiration of the order which shall be for a time-limited period of no more than four hours.
  - (b) A new order shall be written for each four hour period in which the emergency use of a mechanical restraining device(s) is necessary. The new order shall not be completed in advance of the time for which the mechanical restraining device is ordered. Each new order shall be written by a physician who has personally examined the person.
  - (c) The exception to clause (b) above is that if an order imposing a mechanical restraining device is made after 9:00 p.m., this order may extend until 9:00 a.m. of the next day. However, the order shall expire if the person is awake for four continuous hours during this period.
- (iii) In an emergency situation in which a physician is not immediately available, a mechanical restraining device may be used at the direction of the ~~head of shift (see Glossary)~~ senior member of the staff (see Glossary) who is present, based on ~~an order instructions~~ written by the ~~head of shift senior staff member~~ in conformance with clause 633.16(a)(7)(ii)(a) above. Such application of a device shall be only to the extent necessary to prevent the person from injuring himself, herself or others. Application of the device shall be in accordance with agency/facility emergency procedures. A physician is to be summoned immediately by the ~~head of shift senior staff member~~, who shall record the time of the contact, and the name of the physician contacted.
  - (a) In such a situation the person shall be kept under constant observation by a staff member with no other immediate

responsibilities than to ensure the person's safety and comfort until the arrival of a physician.

- (b) If a physician does not arrive within 30 minutes of being summoned, the following shall become a part of the person's clinical record (see Glossary):
  - (1) A record of the delay, recorded by the ~~head-of-shift~~ ~~senior staff member~~.
  - (2) An explanation of the delay, written by the physician.
- (c) If a physician has not arrived within one hour of the imposition of the mechanical restraining device, the ~~head-of-shift~~ ~~senior staff member~~ shall contact the ~~program-administrator~~ of the ~~facility~~, or designee, for further instructions. Under no circumstances shall the use of the device continue for a period in excess of two hours without the person being examined by a physician and the continued use of the device ordered by a physician.
- (iv) After the mechanical restraining device has been ordered by a physician (or ~~head-of-shift~~ ~~a senior staff member~~, if appropriate), it shall be applied by trained staff under the supervision of the physician (or ~~head-of-shift~~ ~~senior staff member~~).
  - (a) Staff, assigned to monitor a person while in a mechanical restraining device, shall stay in continuous auditory and visual contact with that person to ensure continued safety.
  - (b) At least once every 30 minutes, including when a person is asleep, or more frequently if directed by a physician, the person's physical needs, comfort, and safety shall be assessed and addressed, and documentation of the assessment and action taken, if any, entered in the person's record.
  - (c) Except when asleep, a person in a mechanical restraining device shall be released from the device at least once every two hours for a period of not less than 10 minutes, and provided the opportunity for movement, exercise, necessary liquid and food intake, and toileting. If the person has fallen asleep, opportunity for movement, exercise, necessary liquid and food intake, and toileting shall always be provided immediately upon wakening if more than the mandated two hours has elapsed. If a person falls asleep, the device should be released or ~~eased~~, if possible, to provide comfort and safety.

- (v) If, upon being released from a mechanical restraining device before the expiration of an order, a person makes no overt gesture(s) that would threaten serious harm or injury to self or others, the mechanical restraining device shall not be reimposed by staff.
    - (a) The physician shall be contacted immediately for further instructions.
    - (b) Based on observation and/or information provided, the physician shall determine if continued release has the potential for being harmful to the person or others and whether or not the restraining device shall be reimposed during the balance of the restraint order period, and so advise staff.
  - (vi) The party designated with the responsibility for coordinating a person's plan of services shall be notified as soon as possible whenever it is necessary to impose a mechanical restraining device on the person in an emergency.
  - (vii) The use of a mechanical restraining device in an emergency more than two times in a 30 day period or four times in a six month period shall require a careful and comprehensive review by the program planning team. The team shall determine if there is a need for a behavior management plan to address the exhibited behavior necessitating the emergency use of a mechanical restraining device, a need to modify an existing plan, or to establish the criteria for determining if a plan will be needed in the future.
  - (viii) The use of a mechanical restraining device in an emergency shall be considered as an "incident" and reported in conformance with 14 NYCRR Part 624.
- (8) Mechanical Restraining Devices - For Medical Purposes
- (i) As a Medical Safeguard
    - (a) Mechanical restraining devices approved in conformance with subparagraph 633.16(a)(5)(ix) of this section may be prescribed by a physician or dentist to enable an injured area to heal because a person has or can irritate, abuse, further injure the area or cause other detrimental effects. The use of such devices is considered to be medically necessary for the healing of a specific health problem.
    - (b) When a person's maladaptive behavior has caused the damage necessitating the use of a mechanical restraining device as a medical safeguard, and/or the behavior will be likely to prevent healing, the person's program planning team shall consider the need for developing a program to assist the

person to cope with the healing process rather than to rely solely on the use of a device. Following healing, the continued use of a mechanical restraining device to prevent further injury may only take place as part of a behavior management plan in conformance with paragraph 633.16(a)(6) of this section.

- (c) Mechanical restraining devices which are applied as medical safeguards are to be prescribed by a physician or dentist. They shall be reordered as required. Their use is to be supervised by a physician, dentist, physician's assistant or registered nurse and checked as frequently as ordered by a physician or dentist. When a check is made, the person's physical needs, comfort and safety shall be assessed and addressed and documentation of the assessment and action taken, if any, entered in the person's record.
  - (d) The party designated with responsibility for coordinating a person's plan of services shall be notified when such devices are ordered.
  - (f) Nothing in this section shall prevent the use of supports necessary to provide the stability necessary for the immobilization of fractures (e.g., casts) or similar health related problems (e.g., braces).
- (ii) As Part of a Medical Procedure at a Facility
- (a) A mechanical restraining device that is normally used by a physician or dentist for a patient, who is not developmentally disabled, to facilitate carrying out a specific medical or dental procedure which could not otherwise be performed due to the uncooperative or difficult behavior of a patient, may be ordered for use on a person with a developmental disability for that same purpose.
  - (b) A person's clinical record shall document the need for the device and contain a description of how the benefits to the person outweigh the potential for harm from the use of the device.
  - (c) All reasonable effort shall be made to modify the person's behavior or desensitize the person to the situation that might or does result in the use of such a device, and this shall be documented in the person's record.
  - (d) Nothing in this section shall prevent the use of devices necessary for therapeutic measures such as immobilization of fractures, or administration of intravenous or other medically necessary procedures.

(9) Medication to Modify or Control Maladaptive or Inappropriate Behavior - General Requirements

- (i) The use of medication shall not be the sole treatment modality for reducing maladaptive or inappropriate behaviors.
- (ii) Any use of medication shall be in compliance with section 633.17 of this Part.
- (iii) ~~The use of medication to modify or control maladaptive or inappropriate behavior~~ shall never replace programming; nor shall it intentionally interfere with a person's ability to participate in programming or other activities, unless specifically ordered for this purpose, in an emergency, and in conformance with paragraph 633.16(a)(12).
- (iv) Medication used to modify or control maladaptive or inappropriate behavior shall not be used unless it can be justified that the harmful effects of the behavior clearly outweigh the potentially harmful effects of the medication. At least annually, or more frequently as ordered by a physician, there shall be a documented evaluation of a person for side-effects.
- (v) Medication which alters or modifies a person's maladaptive or inappropriate behavior shall not be used for disciplinary purposes, for the convenience of staff, or as a substitute for programming or supervision. Use for such purposes constitutes abuse and shall be reported in conformance with 14 NYCRR Part 624.
- (vi) Any medication used to modify or control maladaptive or inappropriate behavior which renders a person unable to participate in programming, leisure, or other activities shall be reported as restraint in conformance with 14 NYCRR Part 624.
- (vii) When the use of medication to modify or control maladaptive or inappropriate behavior is contemplated, the determination as to which additional specific regulatory requirements apply shall be based on the circumstances under which the medication is to be used:
  - (a) The planned use of medication (see 633.16(a)(10)).
  - (b) The short-term (up to 30 days) use of medication when there is no behavior management plan (see 633.16(a)(11)).
  - (c) Emergency use of medication (see 633.16(a)(12)).
  - (d) Treating a diagnosed psychiatric disorder (see 633.16(a)(13)).
  - (e) Facilitating a medical procedure (see 633.16(a)(14)).

- (10) Medication to Modify or Control Maladaptive or Inappropriate Behavior - Planned Use
- (i) The medication is presented only as an appropriate integral part of a behavior management plan, in conjunction with other interventions.
  - (ii) The behavior management plan is specifically directed toward the potential reduction and eventual elimination of the maladaptive or inappropriate behavior(s).
  - ~~(iii) The use of medication is determined by the program planning team to be an appropriate approach to modify or control maladaptive or inappropriate behavior.~~
  - (iii) The continued use of medication must have a demonstrable positive impact on a person's behavior to justify as needed or ongoing use.
  - (iv) The use effectiveness of medication and the frequency of such use shall be re-evaluated at program plan reviews by the program planning team relative to the continued use of the medication; and consideration shall be given to reducing pursuing the reduction of the medication to the minimum effective dose, eliminating the medication, or changing it to a less toxic one.
- (11) Medication to Modify or Control Maladaptive or Inappropriate Behavior - Short-Term Use When There is No Behavior Management Plan
- (i) In the absence of a behavior management plan which incorporates the use of a specific medication, medication may be prescribed on a short-term basis.
  - (ii) The short term use of medication shall not exceed 30 days (with or without interruption) during a six month period.
  - (iii) If medication is to be used to modify or control maladaptive or inappropriate behavior when there is no behavior management plan, the agency/facility shall comply with the following:
    - (a) The party designated with responsibility for coordinating a person's plan of services shall be notified in conformance with agency/facility specific policies/procedures. Such notification shall be made within 24 hours (or on the next business day) of the prescribing of medication for short-term use or upon the admission of a person to the facility who already has a prescribed medication regimen and for whom there is no behavior management plan in place.
    - (b) Within five working days of the prescribing of the medication or of the admission of a person with such a medication regimen, a person's program planning team shall be

responsible for a prompt, careful, and comprehensive review of the circumstances which necessitated the use of such medication. The program planning team shall determine if it is necessary to develop a behavior management plan to modify or control the behavior or to modify an existing plan, or it shall establish the criteria for determining if a plan will be needed in the future; and the determination shall be documented.

- (c) If the program planning team considers the situation requiring the medication to be episodic, and recurring or continued use of the medication will not be required ~~necessary~~, the team may determine that a plan is not required. The determination made by the program planning team shall be documented in the person's record.

(12) Medication - Emergency Use to Control Self-Injurious or Assaultive Behavior

- (i) Medication may be prescribed in an emergency with the express intent of controlling a person's maladaptive or inappropriate behavior when the behavior is so severe as to be a potential cause of injury to self or others.
- (ii) The order shall cover a maximum period of 24 hours and must specify the dose, frequency, and situation requiring a repeat, if necessary. The order for an additional 24-hour period must be written by a physician after personally examining the person.
- (iii) Any time medication is used in an emergency to control self-injurious or assaultive behavior, this shall be brought to the attention of the party designated with responsibility for coordinating the person's plan of services within 24 hours, or on the next business day.
- (iv) The use of medication in an emergency more than two times in a 30-day period or four times in a six month period requires a careful and comprehensive review by the program planning team to determine if there is a need for a behavior management plan to address the exhibited behavior necessitating the emergency use of medication, a need to modify an existing plan, or to establish the criteria for determining if a plan will be needed in the future; such determination shall be documented.

(13) Medication - To Treat a Diagnosed Psychiatric Disorder.

- (i) This section shall not be construed as prohibiting the use of medication to treat a diagnosed psychiatric disorder.
- (ii) The specific psychiatric symptoms and conditions are considered to be responsive to medication.

- (iii) The medication regimen shall be consistent with the psychiatric diagnosis.
  - (iv) The person's plan of services shall set forth how a maladaptive or inappropriate behavior(s), if and when manifested, will be addressed.
  - (v) ~~There shall be a plan for monitoring the efficacy of the medication. The effectiveness of the medication and the frequency of use shall be reevaluated at program plan reviews by the program planning team.~~
- (14) Medication - To Facilitate a Medical Procedure.
- (i) Nothing in this section shall prevent the use of medication to facilitate a medically necessary procedure or medical/dental practice which is considered to be generally acceptable by the medical/dental profession.
  - (ii) Such use shall not be discriminatory against the person because of the person's diagnosis of a developmental disability.
  - (iii) All reasonable effort shall be made to modify the person's behavior or desensitize the person to the situation that might or does result in the use of medication to facilitate the procedure.

The material in Paragraph 15 below had been deleted in the November 3, 1992 version. For ease of reading, it has been reinstated here, and only changes to that text are shown by deletions and additions.

- (15) Aversive Conditioning (see Glossary)
- (i) Aversive conditioning techniques ~~may~~ shall only be implemented in accordance with a behavior management plan to address a person's self-injurious or abusive behavior and contingent upon the exhibition of that behavior. In addition, a person's self-injurious or abusive behavior must be severe enough to warrant the use of such aversive conditioning techniques.
    - (a) Implicit in the determination to use a specific aversive conditioning technique is the guiding principle that the unpleasantness of that technique must be outweighed by the seriousness of the behavior that needs to be ameliorated or changed.
    - (b) Such aversive conditioning techniques shall be considered only when there is documentation that substantially different or dissimilar positive approaches or plans have been previously implemented for a reasonable period of time and have not been successful.
    - (c) Any ~~behavior management~~ plan developed which employs aversive conditioning techniques shall be written by or under

the supervision of a psychologist currently licensed in New York State; in addition, it shall be reviewed and sanctioned by the committee, which includes an additional New York State licensed psychologist who does not have any ownership, employment relationship, or other interest in the agency/facility which would compromise his or her objectivity in decision making.

- (d) ~~Every effort shall be made to continue~~ The use of positive approaches ~~shall continue~~ when a behavior management plan incorporating an aversive conditioning technique is put in place.

(ii) Agency/facility responsibility:

- (a) ~~The person's program planning team approves of~~ develops a behavior management plan specifying the use of the aversive conditioning technique; ~~the physician must give medical clearance and includes medical clearance from the physician. The following restrictions shall apply:~~

NOTE: The following material was moved to (a)(1)(v)(b) so as to apply to all behavioral interventions:

~~(1) No behavior management plan may deprive a person of a balanced and nutritious diet, served at appropriate times throughout the day. This does not preclude the use of mini-meals.~~

~~(2) No behavior management plan may incorporate the use of food in which the form of the food served is different to that served other people in the facility (i.e., serving pureed food when others get sliced meat and/or vegetables.~~

~~(3) No behavior management plan may incorporate the deprivation of sleep sleep deprivation.~~

- (b) Only under extraordinary circumstances will ~~shall~~ painful or highly restrictive/intrusive aversive conditioning techniques be considered (e.g., electric shock; the use of slaps, hits, or pinches; simultaneous application of two or more aversives).

- (c) ~~Written or other witnessed form of consent of a capable adult person is required; if the person is not a capable adult, the written or other witnessed form of consent of a parent or guardian is shall be required. In the absence of such consent, a court order is shall be required. Consent may be withdrawn, in writing or other witnessed form, at any time, and shall necessitate immediate termination of the use of the~~

aversive conditioning technique upon receipt of such notice, and the implementation of alternative programming within 48 hours.

- (d) The committee established pursuant to this section shall review and sanction/refuse to sanction all requests for implementation of behavior management plans utilizing aversive conditioning techniques. Such sanctioning, if given, shall not be for more than a period of 60 calendar days, shall be reviewed monthly by the committee, and may be withdrawn, in writing, at any time, and which shall necessitate immediate termination of the use of the technique upon receipt of such notice, and the implementation of alternative programming within 48 hours.
  - (e) A psychologist currently licensed in New York State shall review the program and, at least monthly, provide a written report to the committee on all ~~committee-sanctioned~~ and commissioner approved plans at least monthly.
  - (f) A sanctioned plan shall be forwarded to the commissioner by the chief executive officer.
  - (g) A monthly report shall be forwarded to the commissioner with the committee's findings and/or recommendations; the report shall include the psychologist's report.
- (iii) Commissioner's approval:
- (a) The approval of the commissioner is required subsequent to agency/facility approval ~~sanctioning~~ and prior to implementation of any behavior management plan employing aversive conditioning.
  - (b) The commissioner's decision shall be based on the recommendations of a review panel appointed by the commissioner.
    - (1) The review panel shall review all requests for approval and make recommendations to the commissioner.
    - (2) The review panel shall have no fewer than three members.
    - (3) At least one of the members shall be a psychologist currently licensed in New York State, with experience in behavioral programming.
    - (4) All members shall have experience in working with persons with developmental disabilities.

- (5) The review panel shall review all monthly reports submitted to the commissioner from an agency, and make any recommendations it considers necessary.
- (b) Approval of the commissioner, when given, shall be for a maximum of ~~three months~~ 60 calendar days, with a monthly review by the review panel to determine if there is any reason to withdraw the approval. Upon proper application to the committee and the commissioner, approval may be extended, but for a maximum period of ~~three months~~ 60 calendar days per approval.
- (c) Approval may be withdrawn at any time based on a decision of the commissioner. This shall necessitate immediate termination of the use of the aversive conditioning technique upon receipt of such notice and the implementation of alternative programming within 48 hours.
- (iv) For purposes of this Part, time-out is not considered to be a form of aversive conditioning.

(b) Standards of Certification

(1) General Requirements

(i) There is a committee (or subcommittee) to protect the rights of persons when restrictive/intrusive interventions or techniques are used to manage behavior.

(ii) ~~The committee is composed, at a minimum,~~ has a minimum of three members composed of, at least:

(a) Two clinicians, one of whom is a psychologist currently licensed in New York State or an applied behavioral sciences specialist; and

~~(b) Either:~~

(b) A party with no ownership, employment relationship, or other interest in the agency/facility which would compromise his or her objectivity in decision-making who may be, but is not limited to:

(1) Someone to advocate for the rights of persons with developmental disabilities; or

(2) Someone with a developmental disability(ies), and/or a parent or guardian of someone with a developmental disability; or

(iii) Record keeping. OMRDD shall verify that, when any plan of services has a behavior management plan that incorporates the use of a restrictive/intrusive behavior management intervention, there is documentation of the following:

(a) The behavior management plan was developed and approved by the person's program planning team.

(b) The behavior management plan was sanctioned by the committee, and, except for aversive conditioning, the maximum length of time the plan can be in effect does not exceed one year.

(c) If That the behavior management plan, if is still being implemented, it is still within the period sanctioned by the committee.

(d) Written notification, including the right to object, was made, prior to implementation, to the person and/or parent, guardian, or correspondent if they did not participate in the program planning meeting(s) at which the decision to use the technique was made. If there is no parent, guardian or

correspondent, notification was made to MHLS. The exception is when a capable adult objects to such notification being made. For aversive conditioning, the additional requirements of paragraph (6) below apply.

- (e) ~~There is a~~ behavior management plan that includes:
  - (1) A description of the behavior that justifies the incorporation ~~or~~ use of the restrictive/intrusive intervention in the plan.
  - (2) Information on positive approaches that have been tried, whether at this facility or elsewhere.
  - (3) Records of use, including a description of the antecedent behavior, time of initiation, time of termination, and name(s) of staff implementing the intervention.
- (f) Staff, graduate level interns, or family care providers implementing the intervention have been trained in its use.

(2) Personal Intervention

- (i) There is documentation that those staff, volunteers, ~~interns~~, or family care providers who implemented a personal intervention technique(s) ~~as specified in a plan of services~~ have been trained in accordance with:
  - (a) The OMRDD training curriculum, or
  - (b) A training curriculum approved by OMRDD; and there is documentation that OMRDD did approve the curriculum.
- (ii) If a restrictive personal intervention is designated for use in a behavior management plan, neither volunteers nor undergraduate interns are designated to implement the restrictive technique.
- (iii) If a restrictive personal intervention method was used more than two times in a 30-day period or four times in a six month period (other than when used in a behavior management plan,) there is documentation that the program planning team reviewed the need for a behavior management plan, the need for modifying an existing plan, or established criteria for determining if a plan may be needed in the future.

(3) Time-Out Room - Where Normal Egress is Prevented by Someone's Direct and Continuous Physical Action

- (i) If there is a room designated for time-out purposes and it is of the type whereby egress is prevented by someone's direct and continuous action, there is documentation that there was approval from:
  - (a) The governing body.
  - (b) The commissioner.
- (ii) OMRDD shall verify that, for such a room designated for time-out:
  - (a) If locked while not in use, the room can be opened, at will, from the inside.
  - (b) A securing mechanism used to confine a person can only be activated or held in place by the continuous action of a staff member.
  - (c) Constant auditory and visual contact can be maintained.

(4) Mechanical Restraining Devices

- (i) OMRDD shall verify that the mechanical restraining devices which are used are either those approved by or in conformance with this section; or those which have been approved for specific use for a given person and situation by the committee; or those authorized by the commissioner; and there is documentation of committee approval or commissioner authorization, if necessary.
- (ii) When a mechanical restraining device has been used in an emergency, there is documentation that:
  - (a) The person was engaging in an episodic emotional or behavioral disturbance that presented an immediate danger to himself, herself or others.
  - (b) ~~The~~ An order was written by a physician; or there were written instructions from the head-of-shift senior staff member present, if a physician was not available.
  - (c) ~~An~~ The order or instructions was written for such use, and the order:
    - (1) Set forth the facts justifying the use of the device.
    - (2) Specified the nature of the device and conditions for continuing/discontinuing use of the device.

- (3) Set forth the time of expiration of the order.
- (d) No order was written for a period in excess of four hours (unless the order was imposed after 9:00 p.m., in which case use did not extend beyond 9:00 a.m. the next day).
- (e) If a mechanical restraining device was ordered by the head-of shift senior staff member present, a physician was summoned. If the physician did not arrive within 30 minutes there is a written explanation, by the physician, of the delay; and the head-of shift senior staff member obtained further instructions from the program facility administrator or designee.
- (f) The person was monitored at least every 30 minutes to assess physical needs, comfort, and safety, and any identified needs were addressed.
- (g) The person, unless asleep, was released from the mechanical restraining device at least once every two hours for no less than ten minutes.
- (h) If removed before the expiration of the order, reapplication of a mechanical restraining device was based on:
  - (1) A physician's instructions; or
  - (2) Continued behavior that presented an immediate danger to the person or others.
- (i) If a mechanical restraining device was used on a person more than two times in a 30-day period or four times in a six month period, the program planning team reviewed the need for a behavior management plan, the need to revise an existing plan, or established criteria for determining if a plan may be needed in the future.
- (iii) When a mechanical restraining device was/is used as a medical safeguard, there is documentation that:
  - (a) The device was/is necessary to facilitate healing of a specific health problem.
  - (b) There was/is a current prescription for its use.
  - (c) A physician, dentist, physician's assistant, or registered nurse has supervised the use of the device.
  - (d) The person's safety and comfort were checked as ordered by the physician.

- (e) The party responsible for coordinating a person's plan of services was notified when a physician ordered the use of a mechanical restraining device as a medical safeguard.
  - (f) The person's program planning team considered the need for developing a program to assist the person to cope with the healing process if the person's maladaptive behavior caused the damage.
  - (g) If the device was/is used after healing, this was/is done only as part of a behavior management plan addressing the person's maladaptive behavior.
- (iv) When a mechanical restraining device was used in a facility as part of a medical procedure, there is documentation of the following:
- (a) The medical procedure performed.
  - (b) That there was a need for the use of a mechanical device to perform the medical procedure.
  - (c) That the benefit to the patient outweighed the potential for harm for that person.
  - (d) That the program planning team evaluated the need to modify the person's behavior or to desensitize the person to the situation to avoid further use of such a device.
- (5) Medication
- (i) When there is a behavior management plan that incorporates the use of medication to modify or control maladaptive or inappropriate behavior, the person's plan contains:
    - (a) Documentation of the approval of development of the plan by the program planning team.
    - (b) Documentation of written notification to the person and/or to the parent, guardian, or correspondent if they did not participate in the program planning meeting(s) at which the decision to use medication was made. If there is no parent, guardian, or correspondent, notification was made to MHLS. The exception is when a capable adult objects to such notification being made.
    - (c) A description of the person's maladaptive or inappropriate behavior, which necessitates the use of such medication.

- (d) A description of how the maladaptive or inappropriate behavior for which the medication has been prescribed will be reduced or eventually eliminated.
  - (e) Information on positive interventions that have been tried, and those that will be/are being implemented in conjunction with the medication.
  - (f) Justification as to why the use of medication is necessary to achieve the objective.
  - (g) The potential side effects which are to be monitored, and documentation of such monitoring.
  - (h) Records of use.
  - (i) Documentation that the medication was prescribed.
- (ii) When medication was/is being used on a short-term basis to modify or control maladaptive behavior, there is documentation that:
- (a) The medication was prescribed.
  - (b) The party designated with responsibility for coordinating a person's plan of services was notified within 24 hours, or on the next business day, of the need to prescribe medication; or, for a newly admitted person, of the need to continue an already prescribed medication regimen.
  - (c) Within five working days of the prescribing of the medication or the admission of a person with such a medication regimen, the program planning team reviewed the situation and determined if there was a need to develop a behavior management plan, to modify an existing plan, or established the criteria for determining if a plan would be needed in the future; and/or to develop a plan that will address the reduction of the medication.
  - (d) The medication was not used in excess of 30 days, with or without interruption within a six month period.
- (iii) When medication was used on an emergency basis to control maladaptive or inappropriate behavior, there is documentation that:
- (a) The medication was prescribed.
  - (b) Medication prescribed for this purpose was not administered beyond a 24-hour period unless a physician personally examined the person before medication was administered for an additional ~~another~~ 24-hour period.

- (c) The party designated with responsibility for coordinating a client's plan of services was notified of the administration of the medication.
- (d) If medication has been used on an emergency basis more than two times in a 30-day period or four times in a six month period, the program planning team determined if there was a need to develop a behavior management plan, a need to modify an existing plan, or to establish the criteria for determining if a plan would be needed in the future.
- (iv) When medication has been used to treat a psychiatric disorder, there is documentation that:
  - (a) There is a diagnosis of the disorder.
  - (b) There is a plan for monitoring the efficacy of the medication.
- (v) When medication has been used to facilitate a medically necessary procedure, there is documentation that reasonable efforts were or are being made to modify the person's behavior or desensitize the person to the situation.
- (6) Aversive Conditioning
  - (i) If aversive conditioning has been used, there was/is a behavior management plan in the person's clinical record specifying such use.
  - (ii) If an aversive conditioning technique is designated for use in a behavior management plan, there is documentation that:
    - (a) The person's program planning team ~~approved the use of such an aversive conditioning technique~~ participated in the development of the plan.
    - (b) The committee sanctioned the behavior management plan for no more than 60 calendar days.
    - (c) The committee included a second psychologist currently licensed in New York State, who does not have any ownership, employment relationship, or other interest in the agency/facility which would compromise his or her objectivity in decision making.
    - (d) Consent was received from a capable adult person; if the person is not a capable adult, consent was received from a parent or guardian; or there is a court order.

- (e) The person's self-injurious or abusive behavior was/is severe enough to warrant the use of such an aversive conditioning technique.
  - (f) The decision to incorporate the aversive conditioning technique in a behavior management plan was made only after positive approaches or plans to modify or control behavior had been implemented and were unsuccessful.
  - (g) Aversive conditioning was employed only after receipt of the commissioner's approval.
  - (h) The maximum duration of ~~per~~ application is specified.
  - (i) Staff to implement the aversive conditioning technique are designated by name.
  - (j) Staff employing such aversive conditioning techniques have received training in their use.
  - (k) Application was contingent upon the exhibition of the self-injurious or abusive behavior which is addressed by the plan.
  - (l) The aversive conditioning technique has not been employed longer than ~~three months~~ 60 calendar days from the date of the commissioner's approval.
  - (m) A psychologist currently licensed in New York State has reviewed progress on no less than a monthly basis, and has, no less than monthly, reported to the committee.
  - (n) ~~The committee submitted a report to the commissioner on no less than a monthly basis while the aversive conditioning technique is being/was used.~~
- (ii) OMRDD shall verify that there are records documenting ~~use each time an aversive conditioning technique is used~~, which includes:
- (a) The time of initiation.
  - (b) Frequency of use.
  - (c) The name of the staff member who applied the aversive conditioning technique.
  - (d) An evaluation of the effectiveness of the aversive conditioning technique.

633.99 Glossary (Please note that these definitions will be added in alphabetical order to the existing Glossary in Part 633)

Analysis, Functional - An assessment process for gathering information to identify the conditions that are maintaining the behavior and must be considered when building an effective behavioral plan.

Behavior, Modifying or Controlling Maladaptive or Inappropriate - "Modifying" means using behavioral or other psychological treatment approaches that are expected to result in the development of new adaptive behaviors, increasing or maximizing existing adaptive behaviors, or ameliorating behaviors that are undesirable. "Controlling" means using techniques in a behavioral crisis to deal with an out-of-control behavior so as to constrain, restrain or otherwise limit or restrict that behavior.

Clinician - As used in section 633.16, specifically in relation to those selected to sit on a committee to protect the rights of persons whose behavior management plans incorporate the use of restrictive/intrusive interventions, someone currently licensed, certified, or registered in New York State as one of the following: social worker, psychologist, physician, physician's assistant, ~~nurse-practitioner, registered nurse,~~ speech pathologist, occupational therapist, or physical therapist, or pharmacist.

Committee - As used in Section 633.16, those parties, designated as members, who protect the rights of persons with developmental disabilities, as related to the use of restrictive/intrusive interventions to manage behavior (see subparagraph 633.16(a)(2)(iv)).

Conditioning, Aversive - ~~Contingent upon a person's behavior,~~ the contingent application to a person's body of a physical stimulus to modify or change behavior with such stimulus being ~~reasonably considered~~ extremely uncomfortable or painful, or which may be noxious to the person. Examples of such stimuli include, but are not limited to: water and other mists or sprays, noxious odors (e.g., ammonia), noxious tastes (e.g., Tabasco), corporal punishment (e.g., slapping, spanking, hitting, or pinching), air blasts, blindfolds, white noise helmets, and electric shock.

Correspondent - Someone, not on the staff of the facility, who assists a person to obtain necessary services, participates as a member of that person's program planning process, and who receives notification of certain significant events in the life of that person. The fact that someone is providing advocacy for an individual as a correspondent does not endow that party with any legal authority over the person's affairs. For those enrolled in the Home and Community-Based Services Waiver (HCBS), this party is referred to as the "advocate," and is defined in 14 NYCRR Part 635-99.1

Device, Mechanical Restraint - Any apparatus or equipment, the application of which restricts the free movement or normal functioning of, or normal access to a portion or portions of a person's body, ~~or which totally immobilizes (see Glossary) a person,~~ and from which a person cannot remove or free him/herself easily (see paragraph 633.16(a)(5)).

Emergency - As used in section 633.16, a situation that is unexpected, unforeseen, or unanticipated and thus, no provision has been made in a person's plan of services through the development of a behavior management plan to address how it is to be handled by staff.

**Immobilize, Totally** - The use of a restraining sheet or the complete curbing of the movement of both arms or both legs by such things as (but not limited to):

- (1) Securing arms or legs directly to another object;
- (2) Four point restraint;
- (3) A bed sheet, towel, or similar item wrapped around a person.

**Intervention** - For the purposes of Section 633.16, a clinically acceptable approach to modify or control maladaptive or inappropriate behavior (also see "technique." For purposes of Section 633.16, it includes, but is not necessarily limited to the following:

- (1) Any restrictive personal intervention technique.
- (2) The use of a time-out room from which a person's normal egress is prevented by someone's direct and continuous physical action.
- (3) The use of any mechanical restraining device.
- (4) The use of any aversive conditioning technique.

**Intervention, Personal** - An approach to behavior management in which a person is manually protected, constrained, or held by another party or parties to interrupt or control behavior (see paragraph 633.16(a)(3)).

**Intervention, Restrictive Personal** - Those specific techniques of personal intervention which have as their purpose intent, bringing a person from a standing position down to the floor (or other surface) for the temporary immobilization of a person when he or she displays potentially dangerous behavior. Examples of restrictive personal intervention techniques include a takedown and those commonly referred to as a basket hold, lying wrap-up, and prone or supine containment.

**Plan, Behavior Management** - The total approach, in writing, that will be used to modify or control a person's behavior. A behavior management plan is a component of a person's overall plan of services.

**Record, Clinical** - Any collection of information concerning or relating to the examination or treatment of a person, and which includes individually developed plans of services. This shall include any elements of an education record that are possessed by the facility and kept with, or as a part of the plan of services. For the purposes of this Part, the following are not considered part of this record:

- (1) Incident reports or abuse allegations, along with any related documentation.
- (2) Data disclosed to a practitioner in confidence by other parties on the basis of an express condition that it would never be disclosed to the person or other parties, provided that such data has never been disclosed by the practitioner or a facility to any other party. For purposes of this Part, "disclosure to any other party" shall not include disclosures made pursuant to section 33.13 of

the Mental Hygiene Law; to practitioners as part of a consultation or referral during the treatment of the person; to the statewide planning and research cooperative system; to the committee or a court pursuant to the provisions of Section 33.16 of the Mental Hygiene Law; or, to an insurance carrier insuring, or an attorney consulted by a facility.

**Room, Time-Out** - As used in section 633.16, a room so designed that a person's normal egress is prevented by someone's direct and continuous physical action.

**Sanction, Sanctioning** - As used in section 633.16, the determination by the committee that it has no objection to the implementation of a behavior management plan, or any other plan, presented to it for review.

**Services, Plan of** - A records system, by whatever name known, maintained in accordance with the regulations applicable to the facility class in question, which documents the process of developing, implementing, coordinating, reviewing, and modifying the plan developed for a specific person, it is maintained as the functional record indicating all planning as well as all services and interventions provided to that person. It contains, at a minimum, identification data, ~~diagnostic reports~~, assessment information, service plans, appropriate health information, a general description of activities, program planning team minutes and reports, staff action records, and information on efforts to place people in a less restrictive level of programming. ~~It may frequently be referred to as an Individual Program Plan (IPP).~~

**Specialist, Applied Behavioral Sciences** - For the purposes of this Part, ~~a person~~ ~~someone~~ with a master's degree from an accredited program in a field of psychology, who has training in assessment methodology and behavioral programming, who has had experience working with persons with developmental disabilities, and who works under the supervision of a psychologist currently licensed in New York State.

**Shift, Head of Staff, Senior Member of the** - As used in section 633.16, that staff member, by whatever title he or she may be known, who is immediately in charge of a ~~facility~~, ~~or of a designated area (e.g., head of shift, unit supervisor)~~, and who has had appropriate training in the use and application of mechanical restraining devices in an emergency.

**Team, Program Planning** - Those, acting as a unit, responsible for identifying a person's needs; for developing, implementing and evaluating the plan of services for that person; and ensuring that he or she is appropriate to remain in the current setting. Regulations for a specific class of facility are to be referenced for specific details. For those enrolled in the Home and Community-Based Waiver (HCBS), the program planning team is defined as the person (consumer) and the waiver case manager, and the advocate (if appropriate) as well as any other party or parties considered, at any given time, as being appropriate for participation by that group.

**Techniques** - As used in Section 633.16, those methods used to implement an intervention (e.g., a wrap-up can be the "technique" to be used when personal intervention is necessary).

**Techniques, Restrictive/Intrusive** - Any specific method of an intervention that is intended to modify or control a behavior, that impose risks to a person's protection or rights, and which impose extreme limitations on a person or which encroaches unduly on a person's normal activities.

Time-Out - A behavior management intervention in which a person is temporarily removed from or denied the opportunity to obtain reinforcement, and during which the person is under visual or auditory contact and supervision. The only form of time-out that is controlled addressed by section 633.16 is that which incorporates the use of a room from which normal egress from that room is prevented by someone's direct and continuous physical action. The placement of a person in a secured room or area from which he or she cannot leave at will, for other than the purpose of time-out, is prohibited and is considered to be a form of abuse, in conformance with Part 624.