

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES
Behavioral and Physical Health and Aging Services
Administration

TECHNICAL REQUIREMENT FOR BEHAVIOR TREATMENT PLANS

Application:

Prepaid Inpatient Health Plans (PIHPs)

Community Mental Health Services Programs (CMHSPs)

Public mental health service providers

Exception: State operated or licensed psychiatric hospitals or units when the individual's challenging behavior is due to active symptoms of a substantiated serious mental illness or serious emotional disturbance as defined in sec. 100d of PA 258 of 1974.

Preamble:

It is the expectation of the Michigan Department of Health and Human Services (MDHHS) that all public mental health agencies protect and promote the dignity and respect of all individuals receiving public mental health services. All public mental health agencies shall have policies and procedures for intervening with an individual receiving public mental health services who exhibits seriously aggressive, self-injurious, or other challenging behaviors that place the individual or others at imminent risk of physical harm. These policies and procedures shall include protocols for using the least intrusive and restrictive interventions for unprecedented and unpredicted crisis or emergency occurrences of such behaviors. For all other non-emergent or continuing occurrences of these behaviors, the public mental health service agency will first conduct appropriate assessments and evaluations to rule out physical, medical, and environmental (e.g., trauma, interpersonal relationships) conditions that might be the cause of the behaviors.

MDHHS will not tolerate violence perpetrated on the individuals served by the public mental health system in the name of intervening when individuals exhibit certain potentially harmful behaviors. If and when interventions are to be used for the purpose of treating, managing, controlling, or extinguishing predictable or continuing behaviors that are seriously aggressive, self-injurious, or that place the individual or others at risk of harm, the public mental health agency shall develop an individual behavior treatment plan to ameliorate or eliminate the need for the restrictive or intrusive interventions in the future (R. 330.7199[2]) [g]) and that:

- Adheres to any legal psychiatric advance directive that is present for an adult with serious mental illness;
- Employs positive behavior supports and interventions, including specific interventions designed to develop functional abilities in major life activities as the first and preferred approaches;

- Considers other kinds of behavior treatment or interventions that are supported by peer-reviewed literature or practice guidelines in conjunction with behavior supports and interventions, if positive behavior supports and interventions are documented to be unsuccessful; or
- As a last resort, when there is documentation that neither positive behavior supports nor other kinds of less restrictive interventions were successful, proposes restrictive or intrusive techniques, described herein, that shall be reviewed and approved by the Behavior Treatment Plan Review Committee.

MDHHS requires that any individual receiving public mental health services has the right to be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation, as required by the 1997 federal Balanced Budget Act (BBA) at 42 CFR 438.100 and Sections 740 and 742 of the Michigan Mental Health Code.

I. POLICY

It is the policy of MDHHS that all publicly supported mental health agencies shall use a specially constituted committee, often referred to as a “behavior treatment plan review committee,” called for the purposes of this policy the “Committee.” The purpose of the Committee is to review and approve or disapprove any plans that propose to use restrictive or intrusive interventions, as defined here in section IV, with individuals served by the public mental health system who exhibit seriously aggressive, self-injurious, or other challenging behaviors that place the individual or others at imminent risk of physical harm. The Committee shall substantially incorporate the standards herein, including those for its appointment, duties, and functions.

II. COMMITTEE STANDARDS

- A. Each CMHSP shall have a Committee to review and approve or disapprove any plans that propose to use restrictive or intrusive interventions. A psychiatric hospital or psychiatric unit licensed under 1974 PA 258, MCL 330.1137, that receives public funds under contract with the CMHSP and does not have its own Committee, must also have access to and use of the services of the CMHSP Committee regarding a behavior treatment plan for an individual receiving services from that CMHSP. If the CMHSP delegates the functions of the Committee to a contracted mental health service provider, the CMHSP must monitor that Committee to assure compliance with these standards.
- B. The Committee shall be comprised of at least three individuals, one of whom shall be a board-certified behavior analyst or licensed behavior analyst, and/or licensed psychologist as defined in Section 2.4, Staff Provider Qualifications, in the Medicaid Provider Manual (MPM), Behavioral Health and Intellectual and Developmental Disabilities Chapter, with the specified training; and at least one member shall be a licensed physician/psychiatrist as defined in the Mental Health

Code at MCL 330.1100c(10). A representative of the Office of Recipient Rights (ORR) shall participate on the Committee as ex-officio, non-voting member in order to provide consultation and technical assistance to the Committee. Other non-voting members may be added at the Committee's discretion and with the consent of the individual whose behavior treatment plan is being reviewed, such as an advocate or Certified Peer Support Specialist.

- C. The Committee and Committee chair shall be appointed by the agency for a term of not more than two years. Members may be re-appointed to consecutive terms.
- D. The Committee shall meet as often as needed.
- E. Expedited Review of Proposed Behavior Treatment Plans:

Each Committee must establish a mechanism for the expedited review of proposed behavior treatment plans in emergent situations. "Expedited" means the plan is reviewed and approved in a short time frame such as 24 or 48 hours.

The most frequently occurring example of the need for expedited review of a proposed plan in emergent situations occurs as a result of the following Adult Foster Care (AFC) Licensing Rule:

Adult Foster Care Licensing R 400.14309 – Crisis Intervention

(1) Crisis intervention procedures may be utilized only when a person has not previously exhibited the behavior creating the crisis, or there has been insufficient time to develop a specialized intervention plan to reduce the behavior causing the crisis. If the [individual] requires the repeated or prolonged use of crisis intervention procedures, the licensee must contact the [individual's] designated representative and the responsible agency... to initiate a review process to evaluate positive alternatives or the need for a specialized intervention plan. (Emphasis added)

Expedited plan reviews may be requested when, based on data presented by the professional staff (Psychologist, RN, Supports Coordinator, Case Manager), the plan requires immediate implementation. The Committee Chair may receive, review, and approve such plans on behalf of the Committee. The ORR must be informed of the proposed plan to assure that any potential rights issues are addressed prior to implementation of the plan. Upon approval, the plan may be implemented. All plans approved in this manner must be subject to full review at the next regular meeting of the Committee.

- F. The Committee shall keep all its meeting minutes and clearly delineate the actions of the Committee.
- G. A Committee member who has prepared a behavior treatment plan to be reviewed by the Committee shall recuse themselves from the final decision-making.

H. The functions of the Committee shall be to:

1. Disapprove any behavior treatment plan that proposes to use aversive techniques, physical management, seclusion, or restraint in a setting where it is prohibited by law or regulations.
2. Expeditiously review, in light of current peer-reviewed literature or practice guidelines, all behavior treatment plans proposing to utilize intrusive or restrictive techniques [see definitions].
3. Determine whether causal analysis of the behavior has been performed, whether positive behavioral supports and interventions have been adequately pursued, and, where these have not occurred, disapprove any proposed plan for utilizing intrusive or restrictive techniques.
4. For each approved plan, set and document a date to re-examine the continuing need for the approved procedures. This review shall occur at a frequency that is clinically indicated for the individual's condition or when the individual requests the review as determined through the person-centered planning (PCP) process. Plans with intrusive or restrictive techniques require minimally, a quarterly review. The committee may require behavior treatment plans that utilize more frequent implementation of intrusive or restrictive interventions to be reviewed more often than the minimal quarterly review, if deemed necessary.
5. Assure that inquiry has been made about any known medical, psychological, or other factors that the individual has, which might put him/her at high risk of death, injury, or trauma if subjected to intrusive or restrictive techniques.
6. As part of the PIHPs Quality Assessment and Performance Improvement Program (QAPIP), or the CMHSPs Quality Improvement Program (QIP), arrange for an evaluation of the Committee's effectiveness by stakeholders, including individuals who had approved plans, as well as family members and advocates. De-identified data shall be used to protect the privacy of the individuals served.

Once a decision to approve a behavior treatment plan has been made by the Committee and written special consent to the plan (see limitations in definition of special consent) has been obtained from the individual, the legal guardian, the parent with legal custody of a minor, or a designated patient advocate, it becomes part of the person's written Individual Plan of Service (IPOS). The individual, legal guardian, parent with legal custody of a minor child, or designated patient advocate has the right to request a review of the written IPOS, including the right to request that PCP be re-convened, in order to revisit the behavior treatment plan. (MCL 330.1712 [2])

- I. On a quarterly basis, track and analyze the use of all physical management and involvement of law enforcement for emergencies and the use of intrusive and restrictive techniques by each individual receiving the intervention, as well as:
 1. Dates and numbers of interventions used.
 2. The settings (e.g., individual's home or work) where behaviors and interventions occurred.
 3. Observations about any events, settings, or factors that may have triggered the behavior.
 4. Behaviors that initiated the techniques.
 5. Documentation of the analysis performed to determine the cause of the behaviors that precipitated the intervention.
 6. Description of positive behavioral supports used.
 7. Behaviors that resulted in termination of the interventions.
 8. Length of time of each intervention.
 9. Staff development, training, and supervisory guidance to reduce the use of these interventions.
 10. Review and modification or development, if needed, of the individual's behavior plan.

The data on the use of intrusive and restrictive techniques must be evaluated by the PIHPs QAPIP or the CMHSPs QIP and be available for MDHHS review. Physical management and/or involvement of law enforcement, permitted for intervention in emergencies only, are considered critical incidents that must be managed and reported according to the QAPIP standards. Any injury or death that occurs from the use of any behavior intervention is considered a sentinel event.

- J. In addition, the Committee may:
 1. Advise and recommend to the agency the need for specific staff or home-specific training in positive behavioral supports, other evidence based and strength-based models, and other individual-specific non-violent interventions.
 2. Advise and recommend to the agency acceptable interventions to be used in emergency or crisis situations when a behavior treatment plan does not exist for an individual who has never displayed or been predicted to display seriously aggressive, self-injurious or other behaviors that place the individual or others at risk or harm.

3. At its discretion, review other formally developed behavior treatment plans, including positive behavioral supports and interventions, if such reviews are consistent with the agency's needs and approved in advance by the agency.
4. Advise the agency regarding administrative and other policies affecting behavior treatment and modification practices.
5. Provide specific case consultation as requested by professional staff of the agency.
6. Assist in assuring that other related standards are met, e.g., positive behavioral supports.
7. Serve another service entity (e.g., subcontractor) if agreeable between the involved parties.

II. BEHAVIOR TREATMENT PLAN STANDARDS

- A. The PCP process used in the development of a written IPOS will identify when a behavior treatment plan needs to be developed and where there is documentation that functional behavioral assessments have been conducted to rule out physical, medical, or environmental causes of the target behavior, and that there have been unsuccessful attempts, using positive behavioral supports and interventions, to prevent or address the target behavior.
- B. Behavior treatment plans must be developed through the PCP process and written special consent must be given by the individual, or his/her guardian on his/her behalf if one has been appointed, or the parent with legal custody of a minor prior to the implementation of the behavior treatment plan that includes intrusive or restrictive interventions.
- C. Behavior treatment plans that propose to use physical management and/or involvement of law enforcement in a non-emergent situation; aversive techniques; or seclusion or restraint in a setting where it is prohibited by law shall be disapproved by the Committee.

Utilization of physical management or requesting law enforcement may be evidence of treatment/supports failure. Should use occur more than 3 times within a 30-day period, the written IPOS must be revisited through the PCP process and modified accordingly, if needed. MDHHS Administrative Rules prohibit emergency interventions from inclusion as a component or step in any behavior plan. The plan may note, however, that should interventions outlined in the plan fail to reduce the imminent risk of serious or non-serious physical harm to the individual or others, approved emergency interventions may be implemented.

- D. Behavior treatment plans that propose to use restrictive or intrusive techniques as defined by this policy shall be reviewed and approved (or disapproved) by the Committee.

- E. Plans that are forwarded to the Committee for review shall be accompanied by:
 - 1. Results of assessments performed to rule out relevant physical, medical and environmental causes of the challenging behavior.
 - 2. A functional behavioral assessment.
 - 3. Results of inquiries about any medical, psychological or other factors that might put the individual subjected to intrusive or restrictive techniques at high risk of death, injury or trauma.
 - 4. Evidence of the kinds of positive behavioral supports or interventions, including their amount, scope and duration that have been used to ameliorate the behavior and have proved to be unsuccessful.
 - 5. Evidence of continued efforts to find other options.
 - 6. Practice guidelines that support the proposed restrictive or intrusive intervention.
 - 7. References to peer reviewed literature should be included on new procedures, and where the intervention has limited or no support in the literature, why the plan is the best option available. Citing of common procedures that are well researched and utilized within most behavior treatment plans is not required.
 - 8. The plan for monitoring and staff training to assure consistent implementation and documentation of the intervention(s).

IV. DEFINITIONS

TERM	DEFINITION
Anatomical support	Body positioning or a physical support ordered by a physical or occupational therapist for the purpose of maintaining or improving a recipient's physical functioning.
Aversive techniques	Techniques that require the deliberate infliction of unpleasant stimulus (a stimulus that would be unpleasant and may often generate physically painful responses in the average person or would have a specific unpleasant effect on a particular person) by staff to a recipient to achieve the management or control of the target behavior. Examples of such techniques include electric shock, foul odors, loud noises, mouthwash, water mist, or other noxious substance to consequence target behavior or to accomplish a negative association with a target behavior. NOTE: Clinical techniques and practices established in the peer-reviewed literature that are prescribed in the behavior treatment plan and are voluntary and self-administered (e.g. exposure therapy for anxiety, taking a prescription medication to help quit smoking) are not considered aversive techniques for the purpose of this technical requirement.
Bodily function	The usual action of any region or organ of the body.
Emotional harm	Impaired psychological functioning, growth, or development of a significant nature as evidenced by observable physical symptomatology or as determined by a mental health professional.
Consent	A written agreement signed by the individual, the parent of a minor, or an individual's legal representative with authority to execute consent, or a verbal agreement of an individual that is witnessed and documented by someone other than the service provider.
Facility	A residential facility for the care or treatment of individuals with serious mental illness, serious emotional disturbance, or developmental disability that is either a state facility or a licensed facility. Facility includes a preadmission screening unit established under section 409 that is operating a crisis stabilization unit.

Functional Behavioral Assessment (FBA)	An approach that incorporates a variety of techniques and strategies to determine the pattern and purpose or “function” of a particular behavior and guide the development of an effective and efficient behavior treatment plan. The focus of an FBA is to identify social, affective, environmental, and trauma-based factors or events that initiate, sustain, or end a target behavior. A physical examination must be done by a MD or DO to identify biological or medical factors related to the target behavior. The FBA should integrate medical conclusions and recommendations. This assessment provides insight into the function of a behavior, rather than just focusing on the target behavior
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	itself so that a new behavior or skill will be developed to provide the same function or meet the identified need of the recipient. Functional assessments should also identify situations and events that precede positive adaptive behavior to provide more information for a positive behavior support plan.
Emergency interventions	There are only two emergency interventions approved by MDHHS for implementation in crisis situations when all other supports and interventions fail to reduce the imminent risk of harm: physical management and the request for law enforcement intervention. Each agency shall have protocols specifying what physical management techniques are approved for use.
Imminent risk	An event/action that is about to occur that will likely result in the serious physical harm of oneself or others.
Intrusive techniques	Those techniques that encroach upon the bodily integrity or the personal space of the individual for the purpose of achieving management or control of a seriously aggressive, self-injurious, or other behavior that places the individual or others at risk of physical harm. Examples of such techniques include the use of a medication or drug when it is used to manage or control an individual's behavior or restrict the individual's freedom of movement and is not a standard treatment or dosage for the individual's condition. Use of intrusive techniques as defined here requires the review and approval by the Committee.
Medical and dental procedures restraints	The use of mechanical restraint or drug-induced restraint ordered by a physician or dentist to render the individual quiescent for medical or dental procedures. Medical restraint shall only be used as specified in the written IPOS for medical or dental procedures.
Physical management	A technique used by staff as an emergency intervention to restrict the movement of a recipient by direct physical contact to prevent the recipient from seriously harming himself, herself, or others. NOTE: Physical management shall only be used on an emergency basis when the situation places the individual or others at imminent risk of serious physical harm. To ensure the safety of each consumer and staff, each agency shall designate emergency physical management techniques to be utilized during emergency situations.
Practice or treatment guidelines	Guidelines published by professional organizations such as the American Psychiatric Association, or the federal government.

Prone immobilization	Extended physical restraint of an individual in a face down (prone) position, usually on the floor, where force is applied to his/her body in a manner that prevents him/her from moving out of the prone position for the purpose of control. NOTE: PRONE IMMOBILIZATION IS PROHIBITED UNDER ANY CIRCUMSTANCES
Positive Behavior Support (PBS)	A set of research-based strategies used to increase opportunities for an enhanced quality of life and decrease seriously aggressive, self-injurious, or other targeted behaviors that place the individual or others at risk of physical harm by conducting a functional assessment, teaching new skills, and making changes in a person's environment. PBS combines valued outcomes, behavioral, and biomedical science, validated procedures, and systems change to enhance quality of life and reduce behaviors such as self-injury, aggression, and property destruction. PBSs are most effective when they are implemented across all environments, such as home, school, work, and in the community.
Protective device	A device or physical barrier to prevent the recipient from causing serious self-injury associated with documented and frequent incidents of the behavior. A protective device, as defined in this subdivision and incorporated in written IPOS, shall not be considered a restraint as defined below. Use of protective devices/physical barriers to prevent a recipient from causing serious self-injury associated with documented and/or frequent incidents of behavior requires BTPRC review/approval. (See section II. Behavior Treatment Plan Standards, for all required elements)
Provider	The department, each community mental health service program, each licensed hospital, each psychiatric unit, and each psychiatric partial hospitalization program licensed under section 137 of the act, their employees, volunteers, and contractual agents.
Psychotropic drug	Any medication administered for the treatment or amelioration of disorders of thought, mood, or behavior.
Request for Law Enforcement intervention	Calling 911 and requesting law enforcement assistance as a result of an individual exhibiting seriously aggressive, self-injurious, or other behavior that places the individual or others at risk of physical harm. Law enforcement should be called for assistance only when : caregivers are unable to remove other individuals from the hazardous situation to assure their safety and protection, safe implementation of physical management is impractical, and/or approved physical management techniques have been attempted but have been unsuccessful in reducing or eliminating the imminent risk of harm to the individual or others

Restraint	The use of physical device to restrict an individual's movement. Restraint does not include the use of a device primarily intended to provide anatomical support
Restrictive Techniques	Those techniques which, when implemented, will result in the limitation of the individual's rights as specified in the Michigan Mental Health Code and the federal BBA. Examples of such techniques as limiting or prohibiting communication with others when that communication would be harmful to the individual; access to personal property when that access would be harmful to the individual; or any limitation of the freedom of movement of an individual for behavior control purposes. Use of any restrictive techniques for behavior control purposes requires the review and approval of the Committee (see Section II. Behavior Treatment Plan Standards for all required elements).
Serious emotional disturbance	<p>a diagnosable mental, behavioral, or emotional disorder affecting a minor that exists or has existed during the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits the minor's role or functioning in family, school, or community activities. The following disorders are included only if they occur in conjunction with another diagnosable serious emotional disturbance:</p> <ul style="list-style-type: none"> (a) A substance use disorder. (b) A developmental disorder. (c) "V" codes in the Diagnostic and Statistical Manual of Mental Disorders.
Serious mental illness	<p>a diagnosable mental, behavioral, or emotional disorder affecting an adult that exists or has existed within the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities. Serious mental illness includes dementia with delusions, dementia with depressed mood, and dementia with behavioral disturbance but does not include any other dementia unless the dementia occurs in conjunction with another diagnosable serious mental illness. The following disorders also are included only if they occur in conjunction with another diagnosable serious mental illness:</p> <ul style="list-style-type: none"> (a) A substance use disorder. (b) A developmental disorder. (c) A "V" code in the Diagnostic and Statistical Manual of Mental Disorders.

Serious physical harm	Physical damage suffered by a recipient that a physician or registered nurse determines caused or could have caused the death of a recipient, caused the impairment of his/her bodily functions, or caused the permanent disfigurement of a recipient.
Special consent	Obtaining the written consent of the individual, the legal guardian, the parent with legal custody of a minor child, or a designated patient advocate prior to the implementation of any behavior treatment intervention that includes the use of intrusive or restrictive interventions or those which would otherwise entail violating the individual's rights. The general consent to the written IPOS and/or supports is not sufficient to authorize implementation of such a behavior treatment intervention. Implementation of a behavior treatment intervention without the special consent of the individual, guardian, or parent of a minor may only occur when the individual has been adjudicated pursuant to the provisions of section 469a, 472a, 473, 515, 518, or 519 of the Mental Health Code.
Therapeutic de-escalation	An intervention, the implementation of which is incorporated in the written IPOS, wherein the recipient is placed in an area or room accompanied by staff who shall therapeutically engage the recipient in behavioral de-escalation techniques and debriefing as to the cause and future prevention of the target behavior.
Time out	A voluntary response to the therapeutic suggestion to a recipient to remove himself/herself from a stressful situation to prevent a potentially hazardous outcome.

Unreasonable force	<p>Physical management or force that is applied by an employee, volunteer, or agent of a provider to a recipient in one or more of the following circumstances:</p> <ol style="list-style-type: none"> 1. There is no imminent risk of serious or non-serious physical harm to the recipient, staff, or others. 2. The physical management used is not in compliance with techniques approved by the provider and the responsible mental health agency. 3. The physical management used is not in compliance with the emergency interventions authorized in the recipient's written IPOS. 4. The physical management or force is used when other less restrictive measures were possible, but not attempted, immediately before the use of physical management or force.
Person-centered planning (PCP)	<p>A process for planning and supporting the individual receiving services that builds upon the individual's capacity to engage in activities that promote community life and honors the individual's preferences, choices, and abilities. The PCP process involves families, friends, and professionals as the individual desires or requires.</p>
Seclusion	<p>The temporary placement of a recipient in a room, alone, where egress is prevented by any means. NOTE: Seclusion is prohibited except in a hospital operated by the department, a hospital licensed by the department, or a licensed child caring institution licensed under 1973 PA 116, MCL 722.111 to 722.128.</p>
Support plan	<p>A written plan that specifies the personal support services or any other supports that are to be developed with and provided for a recipient.</p>
Treatment plan	<p>A written plan that specifies the goal-oriented treatment or training services, including rehabilitation or habilitation services, which are to be developed with and provided for a recipient.</p>

V. LEGAL REFERENCES

MCL 722.111 to 722.128.

1997 federal Balanced Budget Act at 42 CFR 438.100

MCL 330.1700, Michigan Mental Health Code

MCL 330.1704, Michigan Mental Health Code

MCL 330.1712, Michigan Mental Health Code

MCL 330.1740, Michigan Mental Health Code

MCL 330.1742, Michigan Mental Health Code

MCL 330.1744, Michigan Mental Health Code

MDHHS Administrative Rule 7001(l)

MDHHS Administrative Rule 7001(r)

MDHHS Administrative Rule 7199(2)(g)