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MEMORANDUM

To: DBHDS Operated Facilities

From: Taneika Goldman, State Human Rights Director

Date: July 20, 2022, Updated March, 27, 2023

RE: Uses of Behavioral Treatment Plans in state operated facilities

The following guidance should be used as a measuring stick to help subject matter experts and clinicians in state operated facilities in respecting the rights of individuals when making the decision to implement a Behavioral Treatment Plan (BTP), and specifically those with restraint or timeout as an intervention. It is important to acknowledge that although the facility setting is fundamentally restrictive, and a BTP can be used to reduce challenging behaviors, alleviate symptoms of psychopathology and help maintain a safe and orderly environment, this is secondary to assisting the individual to develop adaptive behaviors across multiple settings in order to improve participation in normal activities and conditions of everyday living.

Definitions

Behavioral Treatment Plan also referred to as a “functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting an individual to achieve the following:

1. Improved behavioral functioning and effectiveness;
2. Alleviation of symptoms of psychopathology; or
3. Reduction of challenging behaviors

Independent Review Committee or “IRC” means a committee appointed or accessed by a provider to review and approve the clinical efficacy of the provider's behavioral treatment plans and associated data collection procedures. An independent review committee shall be composed of professionals with training and experience in behavior analysis and interventions who are not involved in the development of the plan or directly providing services to the individual.

Individualized Services Plan or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet

the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care.

Restriction means anything that limits or prevents an individual from freely exercising his rights

"SCC" means a specially constituted committee serving an intermediate care facility for individuals with intellectual disabilities as described in the Centers for Medicare and Medicaid Services (CMS) Conditions of Participation (42 CFR 483.440(f)(3)).

Development of a Behavioral Treatment Plan

Behavioral Treatment Plans (BTP) should only be identified as such if there has been a functional analysis of the individual's behavior, treatment is implemented per the plan, and data is being collected to monitor effectiveness of the plan. Revisions to a BTP must be based on data observed and/or collected related to the effectiveness of the BTP. A BTP is based on a functional analysis of behavior, regardless of the type of intervention used.

Examples of interventions that could be part of an over-arching clinical treatment plan or ISP, but would NOT in themselves make the plan a "BTP" are as follows:

For an individual with dementia, his ISP may read as follows:

1. *To help motivate him to take his medications, he will be offered a cup of caffeinated coffee after he takes his morning medications. The coffee is in the med cabinet.*
2. *Staff may remind him that he can have his coffee after he takes his medications.*
3. *Staff will remind him of unit rules and routines*
4. *Staff will redirect him to his bedroom when he becomes loud or threatening.*
5. *Staff will allow him space and time after giving him a direction.*

For an individual who has an eating disorder and self-induces vomiting, his ISP may read as follows:

1. *If he refrains from self-injury (including vomiting) for 1 week, he may go to themusic room with rehab staff.*

For an individual who frequently exhibits threatening, aggressive, and uncooperative behavior on the treatment mall, her ISP may read as follows:

1. *She will gradually be reintegrated into the mall based on her ability to tolerate group assignments.*
2. *Group treatment will continue focusing on improving frustration tolerance through building adaptive coping skills, social skills, and problem solving skills so that she may refrain from aggressive and threatening behaviors. She will be assigned to groups that focus on these areas while fitting her cognitive abilities and degree of engagement.*
3. *When she maintains safe and appropriate behavior in the smaller sized groups, she may earn the privilege* to have lunch in the cafeteria and attend preferred groups on the PSR Mall.*
4. *She may earn additional free time according her level, if she maintains safe and appropriate behavior during PSR Mall.*

*Privileges are not assured and are not the same as rights; therefore, this would not be subject to the same process outlined for "restrictions".

Example of the documented process that elevates an overarching plan to a BTP is as follows:

For an individual with intellectual difficulties and severe mental illness that predisposes him to behave aggressively without being able to communicate reasons for his aggression:

A behavioral assessment has determined that Mr. Doe is more likely to behave aggressively when overstimulated by the presence of other patients. Charting of his behavior has determined that aggressive behavior occurs most frequently during the hours of 5:30-9:30 am and 2:30-8:00pm, when there is a lot of activity on the unit. The team hopes to help Mr. Doe become better able to communicate why he feels frustrated, and ultimately predict and/or understand the antecedents and purposes of his aggressive behaviors. Mr. Doe's BTP may read as follows:

1. *Due to his frequent tendency to charge at others aggressively, nursing staff will ensure thatwhenever other patients are on the unit, 2 staff will sit near the red-line on his hallway and serve as dedicated staff. The primary roles of the dedicated staff are to listen to Mr. Doe if he wishes to converse, redirect him back to his room should he attempt to leave the hallway (unless he is going on approved supervised outings with staff), and, if he becomes aggressive, to assist other staff with maintaining safety for him and other patients. Dedicated staff are expected to only converse with others for brief periods, and only for the purpose of maintaining safety.*
2. *During morning hours when many patients are about (5:30am - 9:30am): Mr. Doe must remain in his bedroom hallway where he will have access to his bedroom, the shower, the small day room, and the hallway with staff supervision. He may not cross the red line onthe floor at the end of the hallway without permission and supervision from staff.*
3. *Between 9:30 am and 2:30 pm: Mr. Doe may leave his side of the hallway and go to other areas of the unit (NOT other patient bedroom areas) with staff supervision.*
4. *During afternoon/early evening hours when many patients are about (2:30pm - 8:00pm): Mr. Doe must remain in his bedroom hallway where he will have access to his bedroom, the shower, the small day room, and the hallway with staff supervision. He may not cross the red line on the floor at the end of the hallway without permission and supervision from staff.*
5. *After 8pm until bedtime: Mr. Doe may leave his side of the hallway and go to other areasof the unit (NOT other patient bedroom areas) with staff supervision.*
6. *Staff will monitor the frequency of aggressive behaviors and modify the plan, reducing or increasing restriction as necessary.*

Review of Behavioral Treatment Plans

When a facility identifies the need for and has completed the assessment in order to implement a BTP, it must have the plan reviewed and approved by an Independent Review Committee (IRC). If the BTP involves the use of restraint or timeout, that BTP also needs to be reviewed by the Local Human Rights Committee (LHRC) *prior to implementation* [see Human Rights Regulations 12VAC35-115-105.E and G].

If the facility is an Intermediate Care Facility (ICF), the LHRC review is replaced by a review from the Specially Constituted Committee (SCC).

The IRC reviews a BTP in order to approve the potential clinical efficacy of the facility's plan and associated data collection procedures. The IRC needs to consist of at least 3 members familiar with behavioral analysis. The IRC can be internal or external to the facility. It is allowed to consider and develop a system-wide IRC. Oversight of the IRC is not the responsibility of the Office of Human Rights.

The LHRC, or SCC, reviews BTPs that include restraint or time out only. This review is to determine whether or not the following procedural steps have occurred:

1. The BTP has been approved by an IRC,
2. A licensed professional or licensed behavioral analyst per 12VAC35-115-105(B) has conducted an assessment,
3. The lack or probable lack of success with less restrictive procedures is documented in the individuals services record, and
4. The facility has determined and documented that the risk of not treating the behavior is greater than those associated with the restriction.

If these procedural steps have not occurred, the LHRC will make a recommendation to the Facility Director and the Office of Human Rights Facility Advocate may issue a Notice of Violation Letter.

Restrictions may be included in a BTP, and may be implemented per policy immediately with an appropriate order. The requirements are that:

1. The patient needs to be made aware of the restriction,
2. the patient needs to be informed of discontinuation criteria, and
3. the Office of Human Rights Facility Advocate needs to be informed.

Any restriction of an assured right, whether in a BTP or not, needs to be reviewed by the LHRC when the restriction exceeds 7 days or occurs 3 or more times during a 30 day time period, [see Human Rights Regulations 12VAC35-115-270(A)(1)]. This includes a facilities identified as an ICF.

Frequently Asked Questions

Q1 Can seclusion be used in a BTP?
A1 No. Per 12VAC35-115-105.H. "Providers shall not use seclusion in a behavioral treatment plan."

Q2: Does the facility need an LHRC review if the BTP contains a restriction?
A2: Yes, for those restrictions that last longer than 7 days or occur 3 or more times in a 30 day period, per 12VAC35-115-270(A)(1)., but the LHRC review does not need to occur prior to implementation if the "restriction" is not restraint or time out (or seclusion if a variance is in place).

Q3: Can there be a temporary or emergency approval for a BTP until the LHRC or Specially Constituted Committee (SCC) can review it?
A3: No. There is nothing in the Human Rights Regulations that currently allows this.

Q4: Can the facility add something to a BTP that is in conflict with regulation?
A4: No. Unless a variance has been approved, no deviations from the Human Rights Regulations can be approved by the Advocate, the LHRC, or the SCC. See 12VAC35-115-220 for an explanation of the process for requesting a variance to the Human Rights Regulations.

Q5: Can the time limits and requirements for renewal of restraint (or seclusion if a variance was in place to allow this) outlined in 12VAC35-115-110 be extended or changed in a BTP, per LHRC/SCC-approval?
A5: No. The LHRC, or SCC, does not have the authority to approve actions, processes or Plans that contradict the Human Rights Regulations. Specifically, per 12VAC35-115-110.C.9. "Providers shall comply with all applicable state and federal laws and regulations, certification and accreditation standards, and third party requirements as they relate to seclusion and restraint."

Q6: Can a BTP be used to operationalize a transitional or gradual release from restraint?
A6: Yes, but a systematic collection of data must demonstrate clear evidence, while in services, that imminent harm to self or others is more than likely to occur if there is not a transitional or gradual release from restraint. The BTP must also include how this will be decreased and ultimately stopped over time. The systematic collection of data and the proposed BTP should be provided to the Advocate for technical assistance and consultation prior to submission for an LHRC (or SCC) review.

Individual's Right to Complain

In any instance described herein, any individual or Authorized Representative, if applicable, who believes their rights have been violated can make a complaint directly with the facility or through the Human Rights Office of Human Rights Facility Advocate. If you have questions regarding the information in this memo, please contact your assigned Office of Human Rights Facility Advocate.