Rule 40

A Brief Summary of Issues and Options

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A little background

- This process
  - we reviewed every state rule that has been posted at the NASDDDS website
  - we completed the paper that has been distributed to the members

A quick summary…

- Every state and the District of Columbia (herein after "states") currently have laws, rules, or policies that guide and restrict the use of restraints and all other aversive approaches.
- Federal government restrictions and concerns – *e.g., Insure, prior to the use of more restrictive techniques, that the client's record documents that programs incorporating the use of less intrusive or more positive techniques have been tried systematically and demonstrated to be ineffective… (42 CFR 483.450 (b)(1)(iii))*

The courts…

- The paramount legal case, *Wyatt v. Stickney* affirms that residents have the right to be free from restraint and isolation, in addition to establishing several other functional rights of individuals with intellectual and developmental disabilities.
  - (Ruling issued in 1971. The 1972 Court Order identified 35 standards for adequate treatment).

- ***The court ruled that those interventions may be used only when the resident might otherwise cause harm to himself or others and there is no less restrictive way to prevent such harm.***

Across almost every state…

- there is a general stated intention to limit seclusion, restraint and aversive procedures and to manage PRN medications for behavioral control.
- unplanned procedures that involve restraint should be for emergencies only and never for punishment or as a consequence for behavioral problems.

Every state…

- has a rule to govern "the prohibition of certain practices"
- a list of prohibited practices
  - including restraints and aversives
  - largely prohibits punishment in any form
- requires agreement that the intervention proposed is the least intrusive/restrictive approach

Practices recommended to prohibit:

- Overcorrection
- Psychological, mental, or emotional harm caused by…intimidation, humiliation, harassment, threats of punishment, or deprivation.
- The implementation of a behavior plan by someone not specifically trained and having demonstrated competency
- Use of any reactive strategy on a "PRN" or "as required" basis

Practices recommended to severely limit via extensive review

- Any plan that includes a technique involving force or forced compliance
- Any plan that includes a delay of basic human need or which may otherwise infringe on the rights of the individual according to state and federal rules and laws, including but not limited to food
- Any plan involving response cost
- Protective devices used to prevent an individual from sustaining injury as a result of the individual's self-injurious behavior
- Any restriction of visitors and/or phone privileges

Every state…

has a definition of emergency, there are slight variations

- need for safety intervention to prevent dire consequences – episodic and not planned.
- imminent threat of bodily harm to self or others where there is the present ability to effect such bodily harm
- unanticipated and already occurring
- risk of criminal detention or arrest may constitute an emergency

Every state…

- outlines at least a basic procedure on what to do if there is an emergency
- Require use positive approaches first, etc.
- Arizona is a good example

Arizona:

Imminent and immediate need for safety intervention to prevent dire consequences – episodic and not planned.

- *Physical management techniques employed in an emergency to manage a sudden, intense, or out-of-control behavior shall:*
  - *Use the least amount of intervention necessary to safely physically manage an individual.*
  - *Be used only when less restrictive methods were unsuccessful or are inappropriate.*

Arizona…

- *Be used only when necessary to prevent the individual from harming self or others or causing severe damage to property.*
- *Be used concurrently with the uncontrolled behavior*
- *Be continued for the least amount of time necessary to bring the individual's behavior under control.*
- *Be appropriate to the situation to ensure safety.*

From the recommendations

- After the first emergency, and/or before the implementation of a behavior plan, rule out the potential effects of existing medical conditions on behavior.
- Per *Wyatt v. Stickney*, no individual "shall be subjected to a behavior modification program designed to eliminate a particular pattern of behavior without prior certification by a physician that he has examined the resident in regard to behavior to be extinguished and finds that such behavior is not caused by a physical condition which could be corrected by appropriate medical procedures."

From the recommendations

- After the first emergency, determine if there are any medical conditions which make an emergency restraint contraindicated, and if so, develop person specific responses. This shall at the least require an analysis of cardiac and respiratory function and a bone density test to determine if the individual can withstand typical emergency restraint techniques. (Connecticut)

- Any time an emergency procedure is used two or more times in a six-month period, the team must meet to review the plan, including the behavior support plan.
- Required debriefing after an emergency with the intention of using that information, via to reduce the likelihood of future emergencies

- Within three working days of an emergency incident, the interdisciplinary team, including the physician, shall review the client and his or her environment to determine if changes in the plan including continued use of the emergency procedures are required.

Some things to consider

- Required that the *"state establishes best practice for the benefit of the individuals served".*
- Specifically prohibit behavior plans and behavior change efforts which attempt to extinguish typical adult/socially appropriate behavior or to develop new behavior patterns when such behavior modifications serve only organizational or program convenience. (also per *Wyatt v. Stickney*)

Nevada

Policy: The Division of Mental Health and Developmental Services (MHDS) no longer recognizes the use of seclusion and restraint as treatment options but as treatment failure. If seclusion and restraint are used on MHDS consumers they are to be used only as last resort and only if there is no alternative measure available to staff to maintain safety in the face of imminent harm

Nevada continued…

Purpose: The goal of the Division of MHDS is to prevent, reduce, and ultimately eliminate the use of seclusion and restraint and to ensure that when such interventions are used, they are administered in as safe and humane a manner as possible by appropriately trained staff.

Nevada continued…

I. Philosophy of Care:

The Division of MHDS recognizes that seclusion and restraint are safety interventions of last resort and are not therapeutic treatment interventions. Seclusion and restraint will never be used for the purposes of discipline, coercion, active treatment, staff convenience, or as a replacement for adequate levels of staff.

Nevada continued…

The use of seclusion and restraint create significant risk for people with psychiatric disorders and developmental disabilities. These risks may include physical injury, including death, and the re-traumatization of people who have a history of trauma, loss of dignity, and other psychological harm. In light of these potential serious consequences, seclusion and restraint will be used only when there exists an imminent risk of danger to the individual or others and no other safe and effective intervention is possible.

Briefly - how Minnesota compares to other states

- Programmatic use of controlled procedures (e.g., restraints, seclusion)
- Emergency use and definition
- Positive behavior supports and plans

How to change the culture

- Establish clear expectations, rules, and consequences
- Have the discussions
- Provide the training
- Provide the modeling
- Reward the excellence
- Punish non-compliance

Common challenges across states

- When establishing the infrastructure
- When initiating the implementation
- Ideas for how MN proactively could overcome those challenges

Implementation across disciplines

- Do other states statutes/rules apply to both disciplines?
- Service philosophy conflicts between developmental disability and other disciplines?
- Other

Abbreviated from recommendations

- Engage in a careful review of the Arizona DES, Division of Developmental Disabilities, Policies and Procedures Manual, Policy 1600, Managing Inappropriate Behavior
- Consider incorporating significant elements of the document "Guidelines for Supporting Adults with Challenging Behaviors in Community Settings" from Georgia.
- Apply all related rules to all settings that are designated for the support of people who have IDD (many states).

- Require any behavior plan to have active positive behavioral and social supports to teach alternative and replacement behaviors.
- Mandate the use of all relevant Positive Behavior Support approaches
- Establish minimum initial and ongoing training requirements – including crisis (emergency) interventions that utilize alternatives to restraint.
- Create technical assistance and training network

- Verify that all potential positive approaches have been correctly attempted
- Create a robust approval and review mechanism …Agency driven processes are insufficient.
- Conduct a prompt and thorough review of every restraint
- Ensure ongoing data collection and analysis
- Establishing strict enforcement methods and reporting requirements for all behavior plans that involve anything other than distinctly positive efforts

- Require plan changes only within the formal person centered behavior support planning process…
- Require that any practice/behavior support technique be supportable by contemporary evidence of efficacy in peer reviewed publications, in addition to compliance with rule and law.
- Carefully describe brief manual holds. Georgia specifies that it is 10 seconds or less.

- Establish minimum supervision and monitoring of staff who may be required to provide emergency behavioral supports.
- Prior to implementation of a behavior plan, require the use of adequate alternative treatment options, including environmental enhancements and alternatives to traditional treatment methods, such as the use of comfort rooms, sensory integration tools, and creative calming approaches.

Proposed plans involving any restricted practice shall be investigated to assure:

- The technique is supportable by evidence of efficacy in peer reviewed publications, in addition to compliance with rule and law
- That alternative methods not involving these techniques have been appropriately attempted and were not successful

- That there is agreement that the interventions approved are the least intrusive/restrictive approach
- Any such plan must be reviewed not less than monthly for continuation
- The restrictive review committee shall include a majority of persons who do not provide services to the individual