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Ohio Administrative Code

Rule 5123-2-06 Development and implementation of behavioral support strategies.

Effective: October 1, 2022

(A) Purpose

This rule sets forth requirements for development and implementation of behavioral support strategies including both positive measures and restrictive measures for the purpose of ensuring:

(1) Individuals with developmental disabilities are supported in a caring and responsive manner that promotes dignity, respect, and trust and with recognition that they are equal citizens with the same rights and personal freedoms granted to Ohioans without developmental disabilities;

(2) An individual's services and supports are based on an understanding of the individual and the reasons for the individual's actions;

(3) Effort is directed at creating opportunities for individuals to exercise choice in matters affecting their everyday lives and supporting individuals to make choices that yield positive outcomes; and

(4) Restrictive measures are used only when necessary to keep people safe and always in conjunction with positive measures.

(B) Scope

(1) This rule applies to persons and entities that provide specialized services regardless of source of payment, including but not limited to:

(a) County boards of developmental disabilities and entities under contract with county boards;

(b) Residential facilities licensed pursuant to section 5123.19 of the Revised Code, including intermediate care facilities for individuals with intellectual disabilities;

(c) Providers of supported living certified pursuant to section 5123.161 of the Revised Code; and

(d) Providers of services funded by medicaid home and community-based services waivers administered by the department pursuant to section 5166.21 of the Revised Code.

(2) Individuals receiving services in a setting governed by the Ohio department of education shall be supported in accordance with rule 3301-35-15 of the Administrative Code.

(C) Definitions

For the purposes of this rule, the following definitions apply:

(1) "Chemical restraint" means the use of medication in accordance with scheduled dosing or pro re nata ("PRN" or as needed) for the purpose of causing a general or non-specific blunt suppression of behavior (i.e., the effect of the medication results in a noticeable or discernible difference in the individual's ability to complete activities of daily living) or for the purpose of treating sexual offending behavior.

(a) A behavioral support strategy may include chemical restraint only when an individual's actions pose risk of harm or an individual engages in a precisely-defined pattern of behavior that is very likely to result in risk of harm.

(b) A medication prescribed for the treatment of a physical or psychiatric condition in accordance with the standards of treatment for that condition and not for the purpose of causing a general or non-specific blunt suppression of behavior, is presumed to not be a chemical restraint.

(c) "Chemical restraint" does not include a medication that is routinely prescribed in conjunction with a medical procedure for patients without developmental disabilities.

(2) "County board" means a county board of developmental disabilities.

(3) "Department" means the Ohio department of developmental disabilities.

(4) "Director" means the director of the Ohio department of developmental disabilities.

(5) "Emergency" means an individual's behavior presents an immediate danger of physical harm to the individual or another person or the individual being the subject of a legal sanction and all available positive measures have proved ineffective or infeasible.

(6) "Human rights committee" means a standing committee formed by a county board or an intermediate care facility for individuals with intellectual disabilities to safeguard individuals' rights and protect individuals from physical, emotional, and psychological harm. At an intermediate care facility for individuals with intellectual disabilities, the human rights committee may also be referred to as a "specially constituted committee" as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.

(7) "Individual" means a person with a developmental disability.

(8) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual and includes an "individual program plan" as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.

(9) "Informed consent" means a documented written agreement to allow a proposed action, treatment, or service after full disclosure provided in a manner an individual or the individual's guardian, as applicable, understands, of the relevant facts necessary to make the decision. Relevant facts include the risks and benefits of the action, treatment, or service; the risks and benefits of the alternatives to the action, treatment, or service; and the right to refuse the action, treatment, or service. An individual or guardian, as applicable, may withdraw informed consent at any time.

(10) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.

(11) "Manual restraint" means use of a hands-on method, but never in a prone restraint, to control an identified action by restricting the movement or function of an individual's head, neck, torso, one or more limbs, or entire body, using sufficient force to cause the possibility of injury and includes holding or disabling an individual's wheelchair or other mobility device.

(a) A behavioral support strategy may include manual restraint only when an individual's actions pose risk of harm.

(b) An individual in a manual restraint shall be under constant visual supervision by staff.

(c) Manual restraint shall cease immediately once risk of harm has passed.

(d) "Manual restraint" does not include a method that is routinely used during a medical procedure for patients without developmental disabilities.

(12) "Mechanical restraint" means use of a device, but never in a prone restraint, to control an identified action by restricting an individual's movement or function.

(a) A behavioral support strategy may include mechanical restraint only when an individual's actions pose risk of harm.

(b) Mechanical restraint shall cease immediately once risk of harm has passed.

(c) "Mechanical restraint" does not include:

(i) A seatbelt of a type found in an ordinary passenger vehicle or an age-appropriate child safety seat;

(ii) A medically-necessary device (such as a wheelchair seatbelt or a gait belt) used for supporting or positioning an individual's body; or

(iii) A device that is routinely used during a medical procedure for patients without developmental disabilities.

(13) "Precisely-defined pattern of behavior" means a documented and predictable sequence of actions that if left uninterrupted, will very likely result in physical harm to self or others.

(14) "Prohibited measure" means a method that shall not be used by persons or entities providing

specialized services. "Prohibited measures" include:

(a) Prone restraint.

(b) Use of a manual restraint or mechanical restraint that has the potential to inhibit or restrict an individual's ability to breathe or that is medically contraindicated.

(c) Use of a manual restraint or mechanical restraint that causes pain or harm to an individual.

(d) Disabling an individual's communication device.

(e) Denial of breakfast, lunch, dinner, snacks, or beverages (excluding denial of snacks or beverages for an individual with primary polydipsia or a compulsive eating disorder attributed to a diagnosed condition such as "Prader-Willi Syndrome," and denial is based on specific medical treatment of the diagnosed condition and approved by the human rights committee).

(f) Placing an individual in a room with no light.

(g) Subjecting an individual to damaging or painful sound.

(h) Application of electric shock to an individual's body (excluding electroconvulsive therapy prescribed by a physician as a clinical intervention to treat a diagnosed medical condition and administered by a physician or a credentialed advanced practice registered nurse).

(i) Subjecting an individual to any humiliating or derogatory treatment.

(j) Squirting an individual with any substance as an inducement or consequence for behavior.

(k) Using any restrictive measure for punishment, retaliation, convenience of providers, or as a substitute for specialized services.

(15) "Prone restraint" means a method of intervention where an individual's face and/or frontal part of an individual's body is placed in a downward position touching any surface for any amount of

time.

(16) "Provider" means any person or entity that provides specialized services.

(17) "Qualified intellectual disability professional" has the same meaning as in 42 C.F.R. 483.430 as in effect on the effective date of this rule.

(18) "Restrictive measure" means a method of last resort that may be used by persons or entities providing specialized services only when necessary to keep people safe and with prior approval in accordance with paragraph (H) of this rule. "Restrictive measures" include:

(a) Chemical restraint;

(b) Manual restraint;

(c) Mechanical restraint;

(d) Rights restriction; and

(e) Time-out

(19) "Rights restriction" means restriction of an individual's rights as enumerated in section 5123.62 of the Revised Code.

(a) A behavioral support strategy may include a rights restriction only when an individual's actions pose risk of harm or are very likely to result in the individual being the subject of a legal sanction such as eviction, arrest, or incarceration.

(b) Absent risk of harm or likelihood of legal sanction, an individual's rights shall not be restricted (e.g., by imposition of arbitrary schedules or limitation on consumption of tobacco products).

(20) "Risk of harm" means there exists a direct and serious risk of physical harm to an individual or another person. For risk of harm:

(a) An individual must be capable of causing physical harm to self or others; and

(b) The individual must be causing physical harm to self or others or very likely to begin doing so.

(21) "Service and support administrator" means a person, regardless of title, employed by or under contract with a county board to perform the functions of service and support administration and who holds the appropriate certification in accordance with rule 5123:2-5-02 of the Administrative Code.

(22) "Specialized services" means any program or service designed and operated to serve primarily individuals with developmental disabilities, including a program or service provided by an entity licensed or certified by the department. If there is a question as to whether a provider or entity under contract with a provider is providing specialized services, the provider or contract entity may request that the director make a determination. The director's determination is not subject to appeal.

(23) "Team," as applicable, has the same meaning as in rule 5123-4-02 of the Administrative Code or means an "interdisciplinary team" as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.

(24) "Time-out" means confining an individual in a room or area and preventing the individual from leaving the room or area by applying physical force or by closing a door or constructing another barrier, including placement in such a room or area when a staff person remains in the room or area.

(a) A behavioral support strategy may include time-out only when an individual's actions pose risk of harm.

(b) Time-out shall not exceed thirty minutes for any one incident nor one hour in any twenty-four hour period.

(c) A time-out room or area shall not be key-locked, but the door may be held shut by a staff person or by a mechanism that requires constant physical pressure from a staff person to keep the mechanism engaged.

(d) A time-out room or area shall be adequately lighted and ventilated and provide a safe environment for the individual.

(e) An individual in a time-out room or area shall be protected from hazardous conditions including but not limited to, sharp corners and objects, uncovered light fixtures, or unprotected electrical outlets.

(f) An individual in a time-out room or area shall be under constant visual supervision by staff.

(g) Time-out shall cease immediately once risk of harm has passed or if the individual engages in self-abuse, becomes incontinent, or shows other signs of illness.

(h) "Time-out" does not include periods when an individual, for a limited and specified time, is separated from others in an unlocked room or area for the purpose of self-regulation of behavior and is not physically restrained or prevented from leaving the room or area by physical barriers.

(D) Development of a behavioral support strategy

(1) The focus of a behavioral support strategy is the proactive creation of supportive environments that enhance an individual's quality of life by understanding and respecting the individual's needs and expanding opportunities for the individual to communicate and exercise choice and control through identification and implementation of positive measures such as:

(a) Emphasizing alternative ways for the individual to communicate needs and to have needs met;

(b) Adjusting the physical or social environment;

(c) Addressing sensory stimuli;

(d) Adjusting schedules; and

(e) Establishing trusting relationships.

(2) A behavioral support strategy that includes restrictive measures requires:

(a) Documentation that demonstrates that positive measures have been employed and have been determined ineffective.

(b) An assessment conducted within the past twelve months that clearly describes:

(i) The behavior that poses risk of harm or likelihood of legal sanction or the individual's engagement in a precisely-defined pattern of behavior that is very likely to result in risk of harm;

(ii) The level of harm or type of legal sanction that could reasonably be expected to occur with the behavior;

(iii) When the behavior is likely to occur;

(iv) The individual's interpersonal, environmental, medical, mental health, communication, sensory, and emotional needs; diagnosis; and life history including traumatic experiences as a means to gain insight into origins and patterns of the individual's actions; and

(v) The nature and degree of risk to the individual if the restrictive measure is implemented.

(c) A description of actions to be taken to:

(i) Mitigate risk of harm or likelihood of legal sanction;

(ii) Reduce and ultimately eliminate the need for restrictive measures; and

(iii) Ensure environments where the individual has access to preferred activities and is less likely to engage in unsafe actions due to boredom, frustration, lack of effective communication, or unrecognized health problems.

(3) A behavioral support strategy shall never include prohibited measures.

(4) Persons who conduct assessments and develop behavioral support strategies that include restrictive measures shall:

(a) Hold a valid license issued by the Ohio board of psychology;

(b) Hold a valid license issued by the Ohio counselor, social worker and marriage and family therapist board;

(c) Hold a valid physician license issued by the state medical board of Ohio; or

(d) Hold a bachelor's or graduate-level degree from an accredited college or university and have at least three years of paid, full-time (or equivalent part-time) experience in developing and/or implementing behavioral support and/or risk reduction strategies or plans.

(5) A behavioral support strategy that includes restrictive measures shall:

(a) Be designed in a manner that promotes healing, recovery, and resilience;

(b) Have the goal of helping the individual to achieve outcomes and pursue interests while reducing or eliminating the need for restrictive measures to ensure safety;

(c) Describe tangible outcomes and goals and how progress toward achievement of outcomes and goals will be identified;

(d) Recognize the role environment has on behavior;

(e) Capitalize on the individual's strengths to meet challenges and needs;

(f) Delineate restrictive measures to be implemented and identify those who are responsible for implementation;

(g) Specify steps to be taken to ensure the safety of the individual and others;

(h) As applicable, identify needed services and supports to assist the individual in meeting court-ordered community controls such as mandated sex offender registration, drug-testing, or participation in mental health treatment; and

(i) As applicable, outline necessary coordination with other entities (e.g., courts, prisons, hospitals, and law enforcement) charged with the individual's care, confinement, or reentry to the community.

(6) A behavioral support strategy that includes chemical restraint, manual restraint, or time-out will specify when and how the provider will notify the individual's guardian when such restraint is used.

(7) When a behavioral support strategy that includes restrictive measures is proposed by an individual and the individual's team, the qualified intellectual disability professional or the service and support administrator, as applicable, shall:

(a) Ensure the strategy is developed in accordance with the principles of person-centered planning and trauma-informed care and incorporated as an integral part of the individual service plan.

(b) When indicated, seek input from persons with specialized expertise to address an individual's specific support needs.

(c) Secure informed consent of the individual or the individual's guardian, as applicable.

(d) Submit to the human rights committee the strategy and documentation, including the record of restrictive measures described in paragraph (F)(4) of this rule, based upon an assessment that clearly indicates:

(i) The justification for the proposed restrictive measure, that is:

(A) When manual restraint, mechanical restraint, or time-out is proposed -- risk of harm;

(B) When chemical restraint is proposed -- risk of harm or how the individual's engagement in a precisely-defined pattern of behavior is very likely to result in risk of harm; or

(C) When rights restriction is proposed -- risk of harm or how the individual's actions are very likely to result in the individual being the subject of a legal sanction.

(ii) The nature and degree of risk to the individual if the restrictive measure is implemented.

(e) Ensure the strategy is reviewed and approved in accordance with paragraph (H) of this rule prior to implementation and whenever the behavioral support strategy is revised to add restrictive measures.

(f) Ensure the strategy is reviewed by the individual and the individual's team at least every ninety calendar days or more frequently when specified by the human rights committee to determine and document the effectiveness of the strategy and whether the strategy should be continued, discontinued, or revised.

(i) The review shall consider:

(A) Numeric data on changes in the severity or frequency of behaviors that had been targeted for reduction due to a threat to safety or wellbeing;

(B) New skills that have been developed which have reduced or eliminated threats to safety or wellbeing;

(C) The individual's self-report of overall satisfaction in achieving desired outcomes and pursuing interests; and

(D) Observations by paid staff and/or natural supports as they relate to safety or wellbeing and the individual's achievement of desired outcomes and pursuit of interests.

(ii) When a manual restraint has been used in the past ninety calendar days, the review shall include seeking the perspective of the individual and at least one direct support professional involved in use of the manual restraint regarding the reason the manual restraint occurred and what could be done differently in the future to avoid manual restraint.

(iii) A decision to continue the strategy shall be based upon review of up-to-date information justifying the continuation of the strategy.

(E) Reconsideration of a medication initially presumed to not be a chemical restraint

(1) When administration of a medication initially presumed to not be a chemical restraint in accordance with paragraph (C)(1)(b) of this rule actually results in a general or non-specific blunt suppression of behavior, the provider is to alert the individual's qualified intellectual disability professional or service and support administrator, as applicable. The qualified intellectual disability professional or the service and support administrator is to ensure the prescriber of the medication and the individual's team are notified.

(a) The prescriber of the medication may adjust the medication (type or dose) in an effort to abate the general or non-specific blunt suppression of behavior.

(b) When the prescriber of the medication is not inclined to adjust the medication, the individual's team is to meet to consider what actions may be necessary (e.g., seeking an opinion from a different prescriber or introducing activities that may mitigate the impact of the medication on the individual's ability to complete activities of daily living).

(2) When a medication (as originally administered or as adjusted) continues to cause a general or non-specific blunt suppression of behavior beyond thirty calendar days, the medication is to be regarded as a chemical restraint and submitted to the human rights committee in accordance with paragraph (H) of this rule.

(F) Implementation of behavioral support strategies with restrictive measures

(1) Restrictive measures shall be implemented with sufficient safeguards and supervision to ensure the health, welfare, and rights of individuals receiving specialized services.

(2) Each person providing specialized services to an individual with a behavioral support strategy that includes restrictive measures shall successfully complete training in the strategy prior to serving the individual.

(3) After each incidence of manual restraint, a provider shall take any measures necessary to ensure the safety and wellbeing of the individual who was restrained, individuals who witnessed the manual restraint, and staff and minimize traumas for all involved.

(4) Each provider shall maintain a record of the date, time, and antecedent factors regarding each event of a restrictive measure other than a restrictive measure that is not based on antecedent factors (e.g., bed alarm or locked cabinet). The record for each event of a manual restraint or a mechanical restraint will include the duration. The provider will share the record with the individual or the individual's guardian, as applicable, and the individual's team whenever the individual's behavioral support strategy is being reviewed or reconsidered.

(G) Establishment of human rights committees

(1) Each county board and each intermediate care facility for individuals with intellectual disabilities shall actively participate in an established human rights committee. A human rights committee may be established by a county board or an intermediate care facility for individuals with intellectual disabilities acting independently or jointly in collaboration with one or more other county boards and/or intermediate care facilities for individuals with intellectual disabilities. The human rights committee shall:

(a) Be comprised of at least four persons;

(b) Include at least one individual who receives or is eligible to receive specialized services;

(c) Include qualified persons who have either experience or training in contemporary practices for behavioral support; and

(d) Reflect a balance of representatives from each of the following two groups:

(i) Individuals who receive or are eligible to receive specialized services or family members or guardians of individuals who receive or are eligible to receive specialized services; and

(ii) County boards, intermediate care facilities for individuals with intellectual disabilities or other providers, or other professionals.

(2) All information and documents provided to the human rights committee and all discussions of the committee are confidential and shall not be shared or discussed with anyone other than the individual, the individual's guardian, and the individual's team.

(3) Members of the human rights committee shall receive department-approved training within three months of appointment to the committee in:

(a) Rights of individuals as enumerated in section 5123.62 of the Revised Code;

(b) Person-centered planning;

(c) Informed consent;

(d) Confidentiality; and

(e) The requirements of this rule.

(4) Members of the human rights committee shall annually receive department-approved training in relevant topics which may include but are not limited to:

(a) Self-advocacy and self-determination;

(b) Role of guardians and section 5126.043 of the Revised Code;

(c) Effect of traumatic experiences on behavior; and

(d) Court-ordered community controls and the role of the court, the county board or intermediate care facility for individuals with intellectual disabilities, and the human rights committee.

(H) Review of behavioral support strategies that include restrictive measures

There are two distinct processes for review of behavioral support strategies that include restrictive measures based on the nature of the request:

(1) Emergency request.

(a) An emergency request for a behavioral support strategy that includes restrictive measures shall consist of:

(i) A description of the restrictive measures to be implemented;

(ii) Documentation of risk of harm or legal sanction which demonstrates the situation is an emergency;

(iii) A description of positive measures that have been implemented and proved ineffective or infeasible;

(iv) Any medical contraindications; and

(v) Informed consent by the individual or the individual's guardian, as applicable.

(b) Prior to implementation of a behavioral support strategy submitted via the emergency request process, the strategy must be approved by:

(i) A quorum of members of the human rights committee in accordance with 42 C.F.R. 483.440 as in effect on the effective date of this rule for an individual who resides in an intermediate care facility for individuals with intellectual disabilities; or

(ii) The superintendent of the county board or the superintendent's designee for an individual who does not reside in an intermediate care facility for individuals with intellectual disabilities.

(c) A behavioral support strategy approved via the emergency request process may be in place for a period not to exceed forty-five calendar days. Continuation of the strategy beyond the initial forty-

five calendar days requires approval by the human rights committee in accordance with the process for a routine request described in paragraph (H)(2) of this rule.

(2) Routine request.

(a) Absent an emergency, a human rights committee shall review a request to implement a behavioral support strategy that includes restrictive measures.

(b) An individual or the individual's guardian, as applicable, is to be notified at least seventy-two hours in advance of the date, time, and location of the human rights committee meeting at which the individual's behavioral support strategy will be reviewed. The individual or guardian has the right to attend to present related information in advance of the human rights committee commencing its review.

(c) In its review of an individual's behavioral support strategy, the human rights committee is to:

(i) Ensure that the planning process outlined in this rule has been followed and that the individual or the individual's guardian, as applicable, has provided informed consent.

(ii) Ensure that the proposed restrictive measures are necessary to reduce risk of harm or likelihood of legal sanction.

(iii) When indicated, seek input from persons with specialized expertise to address an individual's specific support needs.

(iv) Ensure that the overall outcome of the behavioral support strategy promotes the physical, emotional, and psychological wellbeing of the individual while reducing risk of harm or likelihood of legal sanction.

(v) Ensure that a restrictive measure is temporary in nature and occurs only in specifically-defined situations based on:

(A) Risk of harm for manual restraint, mechanical restraint, or time-out;

(B) Risk of harm or an individual's engagement in a precisely-defined pattern of behavior that is very likely to result in risk of harm for chemical restraint; or

(C) Risk of harm or likelihood of legal sanction for a rights restriction.

(vi) Verify that any behavioral support strategy that includes restrictive measures also incorporates positive measures designed to enable the individual to feel safe, respected, and valued while emphasizing choice, self-determination, and an improved quality of life.

(vii) Determine the period of time for which a restrictive measure is appropriate and may approve a strategy that includes restrictive measures for any number of days not to exceed three hundred sixty-five.

(viii) Approve in whole or in part, reject in whole or in part, monitor, and when indicated, reauthorize behavioral support strategies that include restrictive measures.

(ix) Communicate the committee's determination including an explanation of its rejection of a strategy in writing to the qualified intellectual disability professional or service and support administrator that submitted the request for approval.

(d) The qualified intellectual disability professional or service and support administrator shall communicate in writing to the individual or the individual's guardian, as applicable, the determination of the human rights committee including an explanation of rejection of a strategy as well as the individual's or guardian's right to seek reconsideration when the human rights committee rejects a strategy.

(e) An individual or the individual's guardian, as applicable, may seek reconsideration of rejection by the human rights committee of a strategy that includes restrictive measures by submitting the request for reconsideration with additional information provided as rationale for the request to the qualified intellectual disability professional or service and support administrator, as applicable, in writing within fourteen calendar days of being informed of the rejection. The qualified intellectual disability professional or service and support administrator is to forward the request to the human rights

committee within seventy-two hours. The human rights committee will consider the request for reconsideration and respond in writing to the individual or guardian within fourteen calendar days of receiving the request.

(f) An individual who resides in an intermediate care facility for individuals with intellectual disabilities or the individual's guardian, as applicable, may appeal to the facility's specially constituted committee in accordance with the facility's procedure if the individual or guardian, as applicable, is dissatisfied with the strategy or the process used for development of the strategy.

(g) An individual who does not reside in an intermediate care facility for individuals with intellectual disabilities or the individual's guardian, as applicable, may seek administrative resolution in accordance with rule 5123-4-04 of the Administrative Code if the individual or guardian is dissatisfied with the strategy or the process used for development of the strategy.

(I) Use of a restrictive measure without prior approval

(1) Nothing in this rule shall be construed to prohibit or prevent any person from intervening in a crisis situation as necessary to ensure a person's immediate health and safety.

(2) Use of a restrictive measure, including use of a restrictive measure in a crisis situation (e.g., to prevent an individual from running into traffic), without prior approval in accordance with paragraph (H) of this rule shall be reported as an "unapproved behavioral support" in accordance with rule 5123-17-02 of the Administrative Code.

(J) Reporting of behavioral support strategies that include restrictive measures

Each county board and each intermediate care facility for individuals with intellectual disabilities shall enter information regarding behavioral support strategies that include restrictive measures in the department's restrictive measures notification system. Corresponding entries are to be made:

(1) After securing approval in accordance with paragraph (H) of this rule and prior to implementation of a behavioral support strategy that includes restrictive measures; and

(2) When a restrictive measure is discontinued.

(K) Analysis of behavioral support strategies that include restrictive measures

(1) Each county board and each intermediate care facility for individuals with intellectual disabilities shall annually compile and analyze aggregate data extracted from the department's restrictive measures notification application regarding behavioral support strategies that include restrictive measures and furnish the data and analyses to the human rights committee by March fifteenth of each year for the preceding calendar year. Data compiled and analyzed shall include, but are not limited to:

(a) Nature and frequency of risk of harm or likelihood of legal sanction that triggered development of strategies that include restrictive measures;

(b) Number of strategies that include restrictive measures by type of restrictive measure (i.e., chemical restraint, manual restraint, mechanical restraint, rights restriction, and time-out) reviewed, approved, rejected, and reauthorized in accordance with paragraph (H) of this rule;

(c) Number of restrictive measures by type of restrictive measure (i.e., chemical restraint, manual restraint, mechanical restraint, rights restriction, and time-out) implemented;

(d) Number of strategies that include restrictive measures that have been discontinued and the reasons for discontinuing the strategies; and

(e) An in-depth review and analysis of either:

(i) Trends and patterns regarding strategies that include restrictive measures for purposes of determining methods for enhancing risk reduction efforts and outcomes, reducing the frequency of restrictive measures, and identifying technical assistance and training needs; or

(ii) A sample of implemented strategies that include restrictive measures for purposes of ensuring that strategies are developed, implemented, documented, and monitored in accordance with this rule.

(2) County boards and intermediate care facilities for individuals with intellectual disabilities shall make the data and analyses available to the department upon request.

(L) Department oversight

(1) The department will take immediate action as necessary to protect the health and welfare of individuals which may include, but is not limited to:

(a) Suspension of a behavioral support strategy not developed, implemented, documented, or monitored in accordance with this rule or where trends and patterns of data suggest the need for further review;

(b) Provision of technical assistance in development or redevelopment of a behavioral support strategy; and

(c) Referral to other state agencies or licensing bodies, as indicated.

(2) The department will compile and analyze data regarding behavioral support strategies for purposes of determining methods for enhancing risk reduction efforts and outcomes, reducing the frequency of restrictive measures, and identifying technical assistance and training needs. The department will make the data and analyses available.

(3) The department may periodically select a sample of behavioral support strategies for review to ensure that strategies are developed, implemented, documented, and monitored in accordance with this rule.

(4) The department will conduct reviews of county boards and providers as necessary to ensure the health and welfare of individuals and compliance with this rule. Failure to comply with this rule may be considered by the department in any regulatory capacity, including certification, licensure, and accreditation.

(M) Waiving provisions of this rule

For good cause, the director may waive a condition or specific requirement of this rule except that the director shall not permit use of a prohibited measure as defined in paragraph (C)(14) of this rule. The director's decision to waive a condition or specific requirement of this rule shall not be contrary to the rights, health, or safety of individuals receiving services. The director's decision to grant or deny a request is not subject to appeal.