212-RICR-10-05-1

TITLE 212 – DEPARTMENT OF BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES, AND HOSPITALS

CHAPTER 10 – LICENSING AND GENERAL ADMINISTRATION

SUBCHAPTER 05 – DEVELOPMENTAL DISABILITY ORGANIZATIONS

PART 1 – Rules and Regulations for Developmental Disability Organizations

1.1 Authority, Purpose, and Applicability

A. These regulations are promulgated pursuant to the authority conferred under R.I. Gen. Laws §§ 23-17.8-9(6), 40.1-1-13(a)(12), 40.1-2-2, 40.1-21-12, 40.1-22-4, 40.1-24-9, 40.1-24.5-2(c), 40.1-26-11, and 40.1-27-3(6).and are established for the purpose of adopting prevailing standards for the licensure and operation of facilities and programs providing rehabilitation, support, and guidance for individuals with developmental disabilities or cognitive disabilities.

B. It the expectation of the Department that each person's array of supports and services be customized to meet the individual needs and desires in the least restrictive environment.

C. These Rules and Regulations apply to any licensed developmental disability organization under Subchapter 10 Part 1 of this Chapter.

D. These Rules and Regulations do not apply to the following:

1. Health care facilities licensed by the Rhode Island Department of Health pursuant to R.I. Gen. Laws Chapter 23-17;

2. Assisted living facilities licensed by the Rhode Island Department of Health pursuant to R.I. Gen. Laws Chapter 23-17.4;

3. Facilities and programs licensed by the Rhode Island Department of Children, Youth and Families pursuant to R.I. Gen. Laws Chapter 42-72.1;

4. Facilities, programs, or organizations already licensed or certified by any other appropriate state agency, pursuant to R.I. Gen. Laws.

1.2 Definitions

A. Wherever used in this Part, the following terms shall be construed to mean:

1. "Abuse" means the treatment or act toward any person with developmental disabilities, as defined in R.I. Gen. Laws § 40.1-27-1 on the

part of anyone, including an employee, intern, volunteer, consultant, contractor, visitor, family member, caregiver, neighbor, citizen or other person with a disability, whether or not the person is or appears to be injured or harmed. The failure to exercise one's responsibility to intercede on behalf of a person receiving services also constitutes abuse. Abuse includes:

a. "Physical abuse" may include, but is not limited to: physical assault, battery and/or actions such as: hitting, kicking, biting, pinching, burning, strangling, shoving, shaking, dragging, yanking, punching, slapping, pulling hair, grabbing or pushing, or using more force than is necessary for the safety of the person.

(1) For incidents involving a caregiver, abuse is defined as the willful subjection of an adult with developmental disabilities to willful infliction of physical pain, willful deprivation of services necessary to maintain physical or mental health, or to unreasonable confinement.

(2) For incidents of physical abuse involving two people with disabilities, only an attack resulting in injury in which one person needs medical care beyond routine first aid or a series of deliberate acts (i.e., hitting, kicking, slapping, pulling hair, etc.) displayed by one person with a disability towards another person with a disability should be reported to the Office of Quality Assurance. Other incidents should be documented and handled by the agency's internal Incident Management Committee.

b. "Sexual abuse" means any sexual contact, consensual or otherwise, between a person receiving services and a paid employee, consultant or contractor of the DDO. Any sexual contact between a person receiving services and an immediate blood relative is incest and is sexual abuse. Any non-consensual sexual contact between a person with a disability and another person with a disability is also sexual abuse. This includes but is not limited to oral/genital contact, sexual penetration or fondling and any other assault as defined in R.I. Gen. Laws § 11-37-1 *et seq*.

c. "Sexual contact" means the touching, fondling or intrusion of the genitals or other intimate parts of the person or offender directly or through clothing for the purpose of sexual arousal or gratification.

d. "First degree sexual assault" means any forced or coerced intrusion, however slight, of the vagina, anus, or mouth, by part of another person's body or by an object including cunnilingus, or fellatio.

e. "Second degree sexual assault" means any forced or coerced or intentional touching or sexual contact (not penetration) clothed or unclothed, with a person's genital area, anal area, groin, buttocks, or the breasts of a female for the purpose of sexual arousal, gratification or assault.

f. "Third degree sexual assault" means penetration where one person is 18 years of age or older and the other is over the age of 14 years, but under the age of consent (age 16 years).

g. "Sexual exploitation" may also include, but is not limited to, causing a person to expose or touch themselves or anyone else for the purpose of demeaning the person, for the sexual arousal or personal gratification, taking sexually explicit photographs, forcing or encouraging a person to view pornographic materials encouraging a person to use sexually explicit language which he/she may not fully understand, the use of harmful genital practices such as creams, enemas, etc. to meet the idiosyncratic needs of an offender, etc.

h. "Psychological/verbal abuse" means intentionally engaging in a pattern of harassing conduct which causes or is likely to cause emotional harm. This includes the use of verbal or non-verbal expression that subjects a person to ridicule, humiliation, contempt, manipulation, or is otherwise threatening, socially stigmatizing and fails to respect the dignity of the participant including name-calling or swearing at a person, intimidating or condescending actions, behaviors, or demeaning tone of voice or any other pattern of harassing conduct.

i. "Material abuse" means the illegal or improper use or exploitation of the participant and his/her funds, personal property or other resources.

j. "Mistreatment" means the inappropriate use of medications, isolation, or use of physical or chemical restraints as punishment, for staff convenience, as a substitute for treatment or care, in conflict with a physician's order, or in quantities, which inhibit effective care or treatment, which harms or is likely to harm the participant.

k. "Neglect" means the failure of a person to provide treatment, care, goods and services necessary to maintain the health and safety of the participant, as defined in R.I. Gen. Laws § 40.1-27-1. For the purposes of this Part, "Neglect" shall also include the failure to report or act on health problems of the person or changes in his/her health conditions as indicated within a plan approved by the

Department. Neglect also includes lack of attention to the physical needs of the person including personal care, cleanliness and personal hygiene, meals and/or failure to provide appropriate nutrition or a safe and sanitary environment; failure to carry out a plan of treatment or care prescribed by a physician and/or other health care professional; failure to provide services/supports as indicated within an ISP approved by the Department; and failure to provide proper supervision to the persons as required within an ISP or by a court.

l. "Financial exploitation" means the use of funds, personal property or resources of a person receiving services by an individual for their own monetary or personal benefit, profit or gain with or without the informed consent of the person including, but not limited to, the coercion or manipulation of a person to spend their own personal funds for something they may or may not have use for or soliciting of gifts, funds or favors. This also includes any suspected theft of or missing property or funds of a person. For incidents involving a caregiver, financial exploitation is defined as an act or process of taking pecuniary advantage of a person with a developmental disability by use of undue influence, harassment, duress, deception, false misrepresentation, false pretenses, or misappropriation of funds.

2. "Administer" means the direct application of a medication, whether by injection, inhalation, ingestion, or any other means, to the body of an individual by:

a. a licensed and authorized agent and under his or her direction; or

b. the individual at the direction and in the presence of the licensed and authorized agent.

3. "Advocate" means a:

a. legal guardian or

b. an individual acting in support of or on behalf of a person in a manner consistent with the interests of the person.

4. "Assessment" means the process of testing, gathering information, and making a diagnostic judgment to determine an individual's health or behavioral health status, functional capability, and need for services, conducted by a qualified person.

5. "Authorization" means the service approved by BHDDH for each participant based upon the ISP.

~~6.~~ “Aversive” means a procedure that is painful, or unpleasant to the participant ~~and results in a reduction of problematic behavior.~~

7. “Aversive techniques” are a class of stimuli that are followed by an escape or avoidance response.

8. "Annual accounting summary of participant funds" means documentation required by Social Security for Representative Payees.

9. “Behavioral supports” means services provided to a participant who has a behavioral treatment plan in place which was developed in cooperation with professional staff to address chronic and severe behavioral problems and concerns that severely and persistently interfere with the participant’s and/or others’ health and safety. The implementation of behavioral supports requires behavioral professional staff to provide additional training and supervision to direct support professionals that is more extensive than the training and supervision required in the provision of Core Residential Support Services or Day Program Services.

10. “Behavioral treatment” means any intervention or treatment to develop and strengthen adaptive, appropriate behaviors through the application of behavioral interventions, and to simultaneously reduce the frequency of maladaptive or inappropriate behaviors. Behavioral interventions encompass behavioral analysis, psychotropic medication, or other similar interventions that refer to purposeful, clinical manipulation of behavior.

11. "Best practice" means a procedure that has been shown by research and experience to produce optimal results and that is established or proposed as a standard suitable for widespread adoption.

12. “Board” means the Board of Directors of the organization and/or the Advisory Board of a local DDO that is:

    a. A for-profit entity or

    b. A not-for-profit entity providing services in Rhode Island.

13. “Career development plan” means a person-centered plan that identifies the Participant’s employment goals and objectives, the services and supports needed to achieve those goals, the persons, agencies, and providers assigned to assist the person attain those goals, and the obstacles to the Participant working in an individualized job in an integrated community-based employment setting at competitive wages, and seeks to identify the appropriate services and supports necessary to overcome those obstacles.

14. "Caregiver" means a person who provides care for a person with disabilities without payment, and is a natural support.

15. “Certified services” means services operated by a DDO which the Department has evaluated and recognized as having met predetermined requirements or standards in order to demonstrate competence in a specialty program or service area.

16. “Communicable disease” means an illness due to a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal or inanimate reservoir to a susceptible host. This includes, but is not limited to, sexually transmitted diseases.

17. "Controlled medications" or "Controlled substances" means substances pursuant to R.I. Gen. Laws Chapter 21-28 that have a high potential for abuse which may lead to severe psychological or physical dependence.

18. “DDO health care manual” means the repository for all agency policies and procedures relating to health care practices. These manuals are developed by the agency with the input of nursing and other clinical staff and are intended to serve as a guide for health care practice within the agency. Each agency shall ensure that the DDO Health Care Manual is reviewed and approved by a Professional Nurse (R.N.) on an annual basis and when any changes are made to it. For the purposes of these regulations, “DDO Health Care Manual” can be used interchangeably with “Agency Health Care Manual.”

19. "Department” means the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH).

20. “Delegation” means the transferring to a competent individual the authority to perform a selected nursing activity in a selected situation. The nurse retains the accountability for the delegation.

21. “Developmental disability organizations” or “DDOs” means an organization licensed by BHDDH to provide services to adults with disabilities, as provided herein. As used herein, DDOs shall have the same meaning as “providers” or “Organizations."

22. “Director” means the Director of the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH), his/her agents or assigns.

23. “Dispense” means the preparation, administration, or delivery of a medication pursuant to the lawful order of a licensed healthcare prescriber.

24. “Distribute” means to deliver a medication, other than by administering or dispensing.

25. “Evaluation” means the Professional Nurse (R.N.) will evaluate and document the person’s response to interventions outlined in the plan of care; revise the plan as necessary; and, identify the degree to which the expected outcomes have been achieved.

26. "Fiscal intermediary" means a licensed DDO authorized to receive and distribute support funds or participant directed goods or services on behalf of a participant in accordance with the participant’s Individualized Service Plan.

27. “Functional behavioral assessment" means a process to identify the function of a person’s behavior. The information collected during the assessment should be used to develop effective behavior supports and plans.

28. “Household” means and includes any person, whether a family member or not, who sleeps within the home full or part-time.

29. "Human rights committee” or “HRC" means any duly constituted group of people with developmental disabilities, advocates, volunteers, and professionals who have training or experience in the area of behavioral treatment, and other citizens who have been appointed to a provider’s human rights committee for the purposes of:

    a. Promoting human rights;

    b. Reviewing, approving and monitoring individuals’ plans designed to modify behavior which utilize aversive techniques or impair the participant’s liberty, or other plans and procedures that involve risks to the person’s protection and rights; and

    c. Participating in the provider’s participant grievance procedures.

30. “Incident” means a situation in which a person with a developmental disability is harmed, or is involved in an event, which causes concern for the person’s health, safety and/or welfare. This includes individuals who receive services from the Department and/or a DDO licensed by the Department.

31. "Individual service plan” or “ISP" means the annual document derived from a person-centered plan which details the services for an individual supported.

32. “Informed consent” means the permission given by a person who has the legal capacity to give consent to or to authorize treatment. Such person:

a. Is able to exercise free power of choice without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other form of constraint or coercion; and

b. Has been given sufficient information about the risks and benefits of the proposed treatment or procedure and the elements involved to be able to make a knowledgeable and enlightened decision.

33. "Integration" means:

a. The use by individuals with developmental disabilities of the same community resources that are used by and available to other persons in the community;

b. Participation in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

c. Individuals with developmental disabilities who live in homes that are in proximity to community resources and foster contact with persons in their community.

34. “Investigation” means a systematic review and search for facts. It is objective in nature and is intended to identify facts, sequence and chronology of events, active failure(s), latent failure(s) and assessment of risk as pertinent to a specific adverse event. An investigation may be undertaken as a result of a complaint, an adverse event or incident report, or other information that comes to the attention of the Department or the organization.

35. “Medication error(s)” means incidents involving medications which may or may not cause harm to a person’s health and welfare. By way of example, and not in limitation, medication errors include: omission of a dosage(s) or failure to administer, incorrect dosage(s), incorrect medication(s), medication(s) given by incorrect administration route, medication(s) given by incorrect time, medication(s) given to wrong person, any inappropriate use of medications, failure to follow agency procedures for medication administration, and medication or treatment given without an order from a prescriber.

36. “Nursing diagnosis” means concise statements of conclusions derived from assessment data collected and include the presenting medical diagnoses and the person's unique nursing and health care needs. Nursing diagnoses are recorded in a manner that facilitates the nursing process.

37. “Nursing plan of care” means the Professional Nurse (R.N.) will develop a plan of care based upon the data obtained during the assessment. The

elements of the plan of care will reflect data obtained as part of the person's initial health care screen as well as subsequent assessments, and shall be congruent with the person's unique health care needs. The plan of care provides guidance for support staff in the provision of health care activities. Nursing plans of care are recorded, communicated to others, and revised as necessary according to the provider's written policy and procedure.

38. "Nursing process" means a process by which nurses deliver care to patients. The nursing process is comprised of the following essential elements: assessment/data collection; nursing diagnosis; nursing planning; intervention; and evaluation.

39. "Office of Quality Assurance" or "OQA" shall have the same meaning as the office described in RI Gen. Laws 40.1-26-10.

40. "Office of Licensure and Standards" means the unit within BHDDH that is responsible for licensing provider organizations and programs.

41. "Outcome" means the result(s) of the performance or the non-performance of a function or process.

42. "Participant" means an adult who has a developmental disability as defined herein. As used in this Part, "participant" and "individual" shall have the same meaning.

43. "Person" means any individual, governmental unit, corporation, company, association, or joint stock association and the legal successor thereof.

44. "Person-centered" means the formal process that organizes services and supports around a self-directed, self-determined and goal-directed future, and includes the process by which a participant identifies the direction of his/her future activities, including future vocational and employment related activities, based on his/her skills, interests, strengths, and abilities, regardless of whether the participant has the verbal ability to express such information.

45. "Positive behavioral supports" is a systematic, person-centered approach to understanding the reasons for behavior and applying evidence-based practices for prevention, proactive intervention, teaching and responding to behavior, with the goal of achieving meaningful social outcomes, increasing learning and enhancing the quality of life across the lifespan.

46. "Practical nurse" means Practical Nursing as defined in R.I. Gen. Laws § 5-34-3.

47. "Professional nursing" means Professional Nursing as defined in R. I. Gen. Laws Chapter 5-34-3.

48. “Program” means a planned structured service delivery system structured to provide specific components that are responsive to the needs of the persons served.

49. “Residential settings subject to licensure” means any residential setting with three (3) or more unrelated participants receiving Supplemental Security Income including any category of institutions, foster homes, or group living arrangements in compliance with 42 U.S.C. §1382(e) of the Social Security Act. Such standards shall be appropriate to the needs of such participants and the character of the facilities involved, and shall govern such matters as admission policies, safety, sanitation, and protection of civil rights.

50. “Respite care service” means direct support to participants furnished on a short-term basis because of the absence or need for relief of those persons who normally provide care for the participant. Respite care services may be provided in the participant’s home or private place of residence or at the location of a respite care provider or in the community.

51. “Restraint” means restricting the movement of the whole or a portion of a person's body as a means of controlling a person's physical activity to protect the person or others from injury.

    a. “Chemical or pharmacological restraint” means medication that is given for the emergency control of behavior when the medication is not standard treatment for the individual's medical or psychiatric condition.

    b. “Mechanical restraint” means the use of an approved mechanical device that restricts the freedom of movement or voluntary functioning of a limb or a portion of a person's body as a means to control his or her physical activities.

    c. “Physical restraint” means the use of approved physical interventions or "hands on" holds to prevent an individual from moving his or her body to engage in a behavior that places him, her or others at risk of physical harm.

52. "Restrictive intervention" means a procedure that does one or more of the following:

    a. Limits an individual’s movement, activity or function;

    b. Interferes with an individual’s ability to acquire positive reinforcement;

    c. Results in the loss of objects or activities that an individual values;

d. Requires an individual to engage in a behavior that the individual would not engage in given freedom of choice.

53. "Serious reportable incident" means any situation involving a person with developmental disabilities in which the person has:

a. Had an injury that requires medical care or treatment beyond routine first aid;

b. Been involved in an unexplained absence and whose whereabouts are unknown to anyone;

c. Died;

d. Been personally involved (is the alleged victim or perpetrator) in a serious criminal act;

e. Been involved in an event in which law enforcement has been contacted or in an event in which first responders, including, but not limited to, law enforcement, fire, and/or emergency medical personnel, have participated;

f. Been the subject of a serious or repeated medication error; or

g. Had any of his/her civil or human rights violated.

54. "Shared living arrangement contractor" means the adult who is not a participant's household member who has contracted with a DDO to provide core residential support services in his/her home to a Participant.

55. "Staff" includes but is not limited to any employee, intern, trainee, or volunteer performing a service or activities for the organization and for meeting the needs of individuals served for which competent performance is expected.

56. "Supervision" means the provision of guidance by a Professional Nurse (RN) for the accomplishment of a nursing task or activity with initial direction of the task or activity and periodic inspection and documentation of the actual act of accomplishing the task or activity. Total nursing care of an individual remains the responsibility and accountability of the licensed nurse.

57. "Support coordinator" means the individual employed by the DDO who delivers Support Coordination services. The term is synonymous with "Case Manager" in these regulations and includes, but is not limited to, the external coordination and monitoring of the Shared Living Arrangements.

58. "Violation of human rights" means any action or inaction which deprives a participant of any of his or her civil rights, as articulated in law or in this Part.

1.3 Handling and Managing Participants' Money and Benefits

1.3.1 Fiduciary Duties for the Management of Participants' Funds

A. The Organization shall have and implement written policies and procedures for the handling and management of participants' money and benefits. Such policies and procedures shall contain provisions related to the following:

1. Allow and support the participant to manage and have access to his/her own funds and/or benefits unless the ISP annually documents and justifies limitations to self-management;

2. A participant's funds and benefits are to be safeguarded;

3. Participants receive and spend their money and benefits at their direction in consideration of their preferences;

4. Participants are to have access to their money and benefits considering choice and development of skills; and

5. Funds shall be managed in compliance with all federal and state statutes, rules, and regulations.

B. If assisting with management of funds, the DDO shall have and implement policies and procedures related to the oversight of the participant's financial resources that include:

1. Procedures that prohibit inappropriately expending a participant's personal funds, theft of a participant's personal funds, using a participant's funds for staff's own benefit, co-mingling participant's personal funds with the DDO or another participant's funds, or the DDO becoming a participant's legal representative; and

2. The DDO's reimbursement to the participant of any funds that are missing due to theft or mismanagement on the part of any staff of the DDO, or of any funds within the custody of the DDO that are missing. Such reimbursement must be made within ten (10) business days of the verification that funds are missing.

C. For those participants not yet capable of managing their own money or benefits, and for whom the agency is the representative payee as annually determined by the ISP and/or legal guardian, the DDO shall prepare and maintain an accurate written record for each participant of all money and benefits received or disbursed on behalf of or by the participant. The record shall include:

1. The date, amount and source of income and/or benefits received;

2. The date, amount and purpose of funds disbursed;

3. Signature of the staff making each entry in the participant's record; and

4. Annual Accounting Summary of Participant Funds.

1.3.2 Earned Income Reporting

A. If the Organization is managing a participant's funds on his/her behalf, and the participant earns income from employment, the DDO shall be required to report this earned income to the Medicaid Authority (Executive Office of Health and Human Services) pursuant to federal and state Medicaid requirements on behalf of the participant.

B. If the Organization is not managing a participant's funds, the Organization shall regularly offer the participant financial support and guidance or as requested by the participant.

1.4 Human Rights Committee

A. The human rights committee shall have input on all the Organization's policies pertaining to human rights consistent with the provisions of R.I. Gen. Laws § 40.1-26-4.

B. Members of the human rights committee shall receive training in the areas of human rights and their role as committee members and the role and responsibilities of the Office of Quality Assurance and other state agencies with respect to monitoring or investigating human rights violations.

C. Organizations shall have written policies addressing procedures for informing the human rights committee of any circumstances involving an alleged or possible violation of human rights of any person receiving support or services from the provider.

D. The human rights committee shall be informed of any investigation and shall receive, upon request, copies of final investigation reports from the Organization and/or the Department, including notification of any administrative action taken by the Organization regarding a human rights violation of a participant receiving support or services from the Organization.

E. The human rights committee shall meet a minimum of six (6) times per calendar year. The human rights committee shall keep minutes for each meeting.

1.5 Grievance Procedure

A. Every Organization shall establish an accessible grievance procedure.

B. The grievance procedure shall be presented to every participant in a manner consistent with the participant's or applicant's learning style and be conspicuously posted in each Organization. The notice of grievance procedure shall include the name and contact information for Organizations that provide free legal assistance.

C. The participant or advocate shall be entitled to initiate a grievance. It shall be the duty of each Organization to encourage and assist the participant or applicant in exercising his or her rights without threat of discrimination or recrimination.

D. The participant, or advocate, shall initiate the process by filing for a grievance with the executive director of the Organization, the human rights committee or with the Department. The recipient of the grievance shall forthwith forward a copy of the grievance form to the chair of the human rights committee.

E. The executive director of the Organization, or his or her designee, with the assistance of the chair of the human rights committee or his or her designee, shall investigate the grievance and issue a written decision to the participant, or advocate, within ten (10) business days of receipt of the grievance. The written decision shall include a copy of the grievance, a list of persons interviewed in the investigation, the steps taken to resolve the grievance, and the conclusion of the Organization's executive director or his or her designee.

F. The chair of the human rights committee or his or her designee shall, if necessary, assist the participant in requesting a review.

1.6 Participants' Appeals Procedure

If the participant is not satisfied with the outcome of the grievance proceedings, the participant may file for an administrative hearing in accordance with the Appeals Process and Procedures for EOHHS Agencies and Programs, 210-RICR-10-05-2.

1.7 Termination of Services

A. The Organization shall immediately provide the participant, legal guardian, family and/or advocate and the Department with a written thirty (30) day notice subject to approval by the Department that clearly describes the clinical basis for the Organization's decision to terminate services and all reasonable efforts made by the Organization to work with the participant, legal guardian and/or advocate to maintain such services.

B. If a participant is to be either transferred or discharged, the Organization must have documentation in the participant's record that transfer or discharge is for good cause. The Organization must provide a reasonable time to prepare the client and his or her parents or guardian for the transfer or discharge (except in emergencies).

C. At the time of the discharge, the Organization must develop a final summary of the participant's developmental, behavioral, social, health and nutritional status and, with the consent of the participant, parents or legal guardian, provide a copy to authorized persons and agencies; and provide a post-discharge plan of care that will assist the client to adjust to the new living environment.

D. If a participant leaves the Organization and/or refuses all services from the Organization, the Organization shall document the refusal, conduct outreach efforts to the participant, legal guardian, family and advocate and immediately notify the Department. The Organization shall provide transitional discharge information to the Department and/or subsequent Organizations upon request.

E. The participant may appeal the Organization's decision to terminate services by filing an appeal in accordance with the Appeals Process and Procedures for EOHHS Agencies and Programs, 210-RICR-10-05-2.

1.8 Transitions

If the participant chooses to receive services from a different Organization, the transferring and receiving Organizations shall cooperate fully. The participant shall be afforded the opportunity to have input regarding the transition plan. The Department shall review and approve the transition plan.

1.9 Development of an Individualized Service Plan (ISP)

A. DDOs must respect and support each participant's control over their own ISP and the ISP meeting, including participant choice of plan writer, selection of whom to invite to the plan meeting, choice of time and location, decision on how to conduct and who will conduct the ISP meeting, and setting of goals and objectives meaningful to the participant.

B. The DDO's support coordinator is responsible for ensuring that a plan is person-centered, includes a Career Development Plan, agreed to and signed by the participant, amended as needed or requested, and for the ongoing monitoring of how the DDO is meeting the ISP goals and objectives.

C. All Participants receiving services from DDOs shall have an annual ISP submitted and approved before the individual's anniversary date. Late submissions will cause authorizations to be suspended until a new plan is accepted. DDOs cannot retroactively bill for time when an authorization is suspended.

D. Any modification of the participants' rights must be supported by a specific assessed need and justified in the ISP including but not limited to:

1. Identification of a specific and individualized assessed need.

2. Documentation of the positive interventions and supports used prior to any modifications of the ISP.

3. Documentation of less intrusive methods of meeting the need that have been tried but did not work.

4. Inclusion of a clear description of the condition that is directly proportionate to this assessed need.

5. Inclusion of regular collection and review of data to measure the ongoing effectiveness of the modification.

6. Inclusion of established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.

7. Inclusion of the informed consent of the participant.

8. Inclusion of an assurance that the interventions and supports will not cause harm to the participant.

1.10 Service Provision

A. The DDO ensures that the provision of all certified services is in accordance with the goals of the ISP.

B. The DDO must have adequate staffing as identified for each participant and as documented in the ISP.

C. The DDO ensures all communication is in a format and language accessible to participants and families in a clear, accurate and consistent manner wherein special communication needs are identified and addressed.

1.10.1 Health Education

A. Organizations shall develop human sexuality policies and health education policies that reflect the philosophy that people with developmental disabilities are people with sexual identities, feelings and needs.

B. Organizations shall offer training in human sexuality and/or health education to educate persons with disabilities to protect themselves from sexual abuse, sexual exploitation, pregnancy, sexually transmitted diseases and other areas pertaining to sexuality.

1.10.2 Shared Living Arrangement (SLA)

A. In contracting with a Shared Living Arrangement (SLA) contractor, a DDO shall:

1. Have the ability to respond twenty-four (24) hours a day, every day, to support the provider and participant as problems arise;

2. Have a respite procedure for safely accommodating a participant who requires emergency removal from the SLA home;

3. Have a policy to define its SLA oversight plan that includes face-to-face visitation, commensurate with the needs of the provider and the needs and preferences of the participant.

4. Notifies the Department of any change in the household composition.

5. Establishes policies and procedures for the termination of an SLA contract if the participant chooses to leave or if the shared living contractor of any member of the household has:

   a. Been charged with or convicted of a crime as defined under Subchapter 00 § 1.21(D) of this Chapter;

   b. Abused, neglected, mistreated or exploited a child or adult;

   c. Suffered serious illness, injury or stressful situation that impacts delivery of service to the participant;

   d. Failure to comply with any of the requirements of the SLA contractor contained herein; or, Subchapter 00 §1.21 of this Chapter.

   e. A current or untreated substance use disorder. The DDO shall notify the Department immediately upon discovery. The DDO may continue with the SLA upon written approval of the Department.

6. Require that the SLA contractor is not named as the beneficiary of any insurance policy held by the participant or testamentary instrument and/or document or gift executed by the participant or named on any bank account or as Representative Payee.

B. The DDO and its agents are not to be the participant's legal guardian or Power of Attorney.

C. The DDO ensures that there is a legally enforceable written agreement that includes, at minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant laws of the state, county, city or other designated entity.

1.10.3 Fiscal Intermediary Services

A. The Fiscal Intermediary shall ensure that no person shall be hired by an individual prior to the completion of a Bureau of Criminal Identification (BCI) check; prior to the verification of all needed licenses, including a driver's license, proof of insurance, and proof of vehicle inspection certificate.

B. The Fiscal intermediary shall document that employment and reference checks were completed by the individual for potential employees.

1. Said documentation shall include, but not be limited to: the name of the person called for a reference, the telephone number, the date called, the company name, and the reference provided.

C. The Fiscal Intermediary shall obtain assurances from the individual that any non-related person or agency providing supports is not named as a beneficiary on the life insurance policy(ies) of the individual with developmental disabilities.

D. The Fiscal Intermediary shall maintain a record of any formal connections an employee or potential employee has with any entity(ies) providing services to the individual with developmental disabilities.

1. If there is a formal relationship (i.e., board member or an employee of an agency providing support to the individual with developmental disabilities), then this relationship should be stated in writing by the potential employee at the time of the interview, or when such relationship begins (subsequent to employment).

2. In addition, the Fiscal Intermediary shall obtain, from the individual, notice of any family relationship with any potential employee to be hired by the individual prior to the actual hiring.

E. Develop and implement a timesheet for direct support professionals.

F. Distribute, collect, and process direct support professionals' timesheets based upon an agreed-upon period (i.e., weekly, bi-weekly, semi-monthly, monthly).

G. Ensure that the individual’s direct support professionals are paid hourly rates and overtime pay, when applicable, in accordance with Federal and State Department of Labor FLSA rules and regulations.

H. Compute, withhold, file and deposit federal and state income tax, if requested by the individual's direct support professional and agreed to by individual employers in compliance with IRS rules.

I. Compute, withhold, and deposit FICA and FUTA taxes using the IRS Form 940; Employer's Annual Federal Unemployment (FUTA) Tax Return and IRS Form 941; Employer's Quarterly Federal Tax Return (filing in the aggregate under the Fiscal Intermediaries separate FEIN) in accordance with IRS Notice 95-18.

Compute, withhold, and deposit any state taxes and unemployment insurance taxes in accordance with State policies and procedures,

J. Ensure that FICA and FUTA withholdings are done appropriately in accordance with IRS rules and regulations when family members are direct support professionals.

K. Prepare and distribute payroll checks for direct support professionals in accordance with the agreed upon time frame with the individual employer. The payroll checks shall include a pay stub that reports the hours worked, gross wages, withholdings by type, and net salary for the current period and year-to-date. The payroll check will be sent to the individual employer or the direct support professional, as agreed to by the individual and the Fiscal Intermediary. The Fiscal Intermediary shall offer direct support professionals the option of having their paychecks directly deposited in their bank.

L. Inform direct support professionals of the availability of receiving advanced Federal Earned Income Credit (EIC) payments and process advanced payments when applicable (i.e., include IRS Notice 797 in the Employee Start-up Packet).

M. File and distribute IRS Forms W-2 and Forms W-3 on behalf of individuals for each of their direct support professionals who have earned the cash wage thresholds for employment taxes (FICA and possibly FUTA) and/or had federal and state income taxes withheld in the calendar year per the IRS rules/instructions for employer agents. Ensure that these forms are completed in accordance with IRS rules for agents.

N. Establish and implement a process for identifying, computing and issuing refunds to direct support professionals (for the employee contribution) and the individual's budget (for the employer contribution) of any over collection of federal employment taxes (FICA and/or FUTA) for direct support professionals who do not earn the federal cash wage threshold amounts from a single employer during the calendar year.

O. Process all judgments, garnishments, tax levies, or any related holds on an employee's funds, as may be required by state or federal laws. The Fiscal Intermediary shall comply with all federal and state income and employment taxes, statutory benefits, and labor laws related to the employment of their direct support professionals. All tasks and responsibilities shall be performed by the Fiscal Intermediary, in accordance with all applicable federal and state laws, rules and/or regulations.

P. Determine the requirements for workers compensation for household employees in the state and facilitate the purchase of worker's compensation insurance for individuals' direct service professionals and process invoices for premium payments. The Fiscal Intermediary shall verify and document that all individual

employers have sufficient workers' compensation coverage for all the direct support professionals that they hire.

Q. Develop and implement a process of documenting any relevant training that the direct support professional has at the time of hire, and any additional training that the direct support professional completes after the date of hire.

R. The Fiscal Intermediary shall monitor the expenses reported by the individual to ensure that funds will be available for the full-time frame of the quarterly authorization. Should the Fiscal Intermediary find that funds are being expended at an accelerated pace, it will notify the individual/responsible person of this finding and work with the individual to stay within his/her budgeted resource allocation.

S. The Fiscal Intermediary shall keep an accounting of all services received by the individual, including the dates and types of service.

T. On a quarterly basis, the Fiscal Intermediary shall prepare a report for the individual as to the individual's financial status.

U. The Fiscal Intermediary shall submit to the Department annual audited financial statements, audit findings and any recommendations, including corrective action plans, and any supplemental schedules, as may be required by the Department. The Fiscal Intermediary shall disclose all Related Party Transactions in the notes to the annual audited Financial Statements.

V. The Fiscal Intermediary shall be required to report earned income to the Medicaid Authority (Executive Office of Health and Human Services) pursuant to federal and state Medicaid requirements on behalf of a participant who earns income from employment.

W. Should the individual subcontract with an Organization/business that should be licensed by the federal or state government, the Fiscal Intermediary shall verify that the Organization/business has the necessary license.

X. The Fiscal Intermediary shall account for any corrected or previously omitted services/encounters reported and process a recoupment to correct payment(s).

Y. The Department shall have the right to request any and all information pertaining to assets, liabilities, revenue, expenditures, records, contracts and any other financial, program, personnel, or administrative data. The Fiscal Intermediary shall submit the information requested to the Department within the time frame specified.

Z. The Department, EOHHS, DHS, CMS and its designated representatives shall have the authority to review all Fiscal Intermediary records, reports of financial data, at any time. The Department, EOHHS, DHS, CMS, or its designated

representatives shall have the right at all times to inspect the work performed or being performed under the DDO's license.

AA. The Fiscal Intermediary shall not undertake any work that represents a legally cognizable conflict of interest or is otherwise contrary to State and Federal law or regulation. The Fiscal Intermediary shall fully and completely disclose any situation and/or relationship that may present a legally cognizable conflict of interest at the time of applying for licensure and/or as such situations occur.

1.10.4 Respite

A. Respite care services may be provided to participants on a short-term basis in the participant's home, private place of residence, the private residence of a respite care provider, a licensed residence, or at a licensed day program.

B. Respite care services provides for a participant who requires support and/or supervision in his/her day-to-day life, in the absence of his/her primary care giver.

C. Respite care services maintain the participant's routine while receiving respite care services to attend school, work, or other community activities/outings. Community outings shall be included in the supports provided and shall include school attendance, other school activities, or other activities the participant would receive if they were not in a center-based respite center.

D. Respite care services includes transportation for community outings (included in reimbursement).

E. A respite care service provider who provides services in a participant's home, private place of residence, or the private residence of a respite care provider:

1. Shall be at least eighteen (18) years old, have a high school diploma or GED certification;

2. Shall complete training and certification as defined by the state to provide the service, that includes criminal, abuse/neglect registry and professional background checks, and completion of the following trainings:

a. Roles and responsibilities of the respite care provider;

b. Human Rights of Adults with Developmental Disabilities;

c. Mandatory reporting of abuse, neglect and mistreatment of adults with developmental disabilities to the Department and appropriate law enforcement agencies;

d. Code of Ethical Conduct;

e. Current valid certification in cardiopulmonary resuscitation (CPR), annual refresher training in CPR, and annual first aid training;

f. Access to medical and psychiatric supports; and

g. Confidentiality.

h. Should have one year of related experience (preferred);

i. May be members of the participant's family, provided the participant does not live in the family member's residence and the family member meets the same standards described above.

j. The DDO shall ensure that health care services are provided and documented for the participant in accordance with the requirements contained herein.

F. A respite care service provider who is also an employee of the DDO respite agency shall be compensated in accordance with state and federal tax and labor laws.

1.11 Residential Settings Subject to Licensing

The DDO ensures that there is a legally enforceable written agreement that includes, at minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant laws of the state, county, city or other designated entity.

1.11.1 Health Care Services

A. DDOs shall maintain written health care and nursing policies and procedures in a "DDO Health Care Manual," that addresses all the areas indicated and outlined in this Part.

1. Each agency shall ensure that the DDO Health Care Manual is reviewed and approved by a Professional Nurse on an annual basis and when any changes are made to it.

2. Each agency shall maintain documentation to support the annual, and as needed, approvals of the DDO Health Care Manual by a Professional Nurse.

B. Influenza, pneumococcal, and other adult vaccination policies and protocols shall be developed and implemented by the DDO in accordance with the most current recommendations of The Advisory Council on Immunization Practices (ACIP) Guidelines for these vaccinations, and as recommended and ordered by the person's physician or other licensed health care provider.

C. The DDO shall have written policies to be followed for health care communication with family members and/or legal guardians regarding significant changes in medication and/or medical status of the person with developmental disabilities.

1.11.2 Medical Care

A. The DDO shall ensure that each participant has the opportunity for an annual physical examination. Components of the physical exam shall include a review of prescribed medication, over-the-counter medication and herbal/homeopathic supplements, completion of accepted primary care screenings. If routine screening is deferred by the participant, or their physician or other licensed health care provider, documentation as to the reason for the deferral must be included in the participant's health care record.

B. Any physician, dietician, or other licensed health care provider's prescribed diet order shall be implemented and a copy of the diet is kept the person's health care record.

C. Dental examinations and cleanings shall be performed as recommended by the American Dental Association, unless otherwise determined by the participant or their licensed health care provider.

D. Vision, Audiology, or Speech consults, orthopedic, physical therapy, and/or occupational therapy examinations shall be performed if indicated.

E. The DDO shall assist in obtaining adaptive or assistive equipment as needed and is kept in good repair. Regular assessment for proper fit and usage shall also be completed. The individual shall receive support to utilize and maintain assistive equipment.

F. The DDO shall document an individual’s refusal of tests, exams, procedures or other health care recommendations in the individual’s plan. Necessity of said procedures will be periodically reviewed and ongoing efforts shall be made to achieve the desired health care goals. Documentation will be maintained in the individual’s health care record.

1.11.3 Documentation Standards and Maintenance of Health Care Records

A. Health care records shall include all pertinent health care related documents including physician or health care provider assessments and orders.

B. Documentation and corrections in health care information shall be made in accordance with standard nursing practice.

C. All health care information shall be placed in the individual’s record in reverse chronological order.

D. Health care records shall be kept for a minimum of ten (10) years following the cessation of services.

E. The Professional Nurse shall complete and document the findings of a nursing assessment on a minimum of an annual basis.

1. The nursing assessment shall include, but not be limited to, a deliberate and systematic collection of data to determine a person's current health status; including physical assessment, data analyses, problem identification, and development of a plan of care.

2. The Professional Nurse will complete a nursing assessment when nursing services are deemed appropriate and per the individual plan as determined by the Professional Nurse based on the person's health care needs.

3. An assessment shall be completed and documented whenever there is a significant change in the individual's health status.

4. The professional nurse shall complete nursing progress notes as determined by the nature and scope of the individual's health care needs, and the DDO's policy and procedure for documentation.

1.11.4 Medication Administration and Treatment

A. The DDO shall have written policies and procedures for medication administration, including protocols for documentation and contact with the DDO professional nurse and/or licensed health care provider in the event of a medication error and/or medication reaction.

1. The DDO shall have a written policy and procedure describing medication safeguards and support protocols for participants who self-administer their medications.

B. Medications shall only be administered by support staff who have:

1. Received documented training in medication administration by a professional nurse;

2. Displayed appropriate competency to carry out said procedure and has been documented by the professional nurse;

3. Received annual training and competency assessment by the professional nurse with appropriate documentation retained in the personnel file.

C. Medications and treatments shall be stored safely, securely and properly, following manufacturer's recommendations and the DDO's written policy.

1. The dispensing pharmacy shall dispense medications in containers that meet legal requirements. Medications shall be kept stored in those containers. An exemption from storage in original containers is permitted if using a pre-poured packaging distribution system packaged by a pharmacy or professional nurse.

2. A corrected label shall be provided by the pharmacist or noted to indicate change by the professional nurse, correspond to the medication administration sheet, and shall be completed for any medication change orders.

3. Unless otherwise outlined in the individual's health care plan, medications:

   a. shall be stored in a locked area;

   b. shall be stored separately from non-medical items;

   c. shall be stored under proper conditions of temperature, light, humidity, and ventilation;

   d. requiring refrigeration shall be stored in a locked container within the refrigerator; and

   e. internal and external medications shall be stored separately;

   f. Potentially harmful substances shall be clearly labeled and stored in an area separate and apart from medications.

D. A licensed health care provider and/or nurse shall review the medication sheets monthly and shall sign and date the medication sheets at the time of the review. The medication record shall have a signature sheet of all staff authorized to administer medications, which includes the staff's signature and the initials he/she will be using on the medication sheet.

E. Medication sheets shall be maintained by the DDO for all persons who do not self-administer their medications. Medication sheets will include:

1. name of the person to whom the medication is being administered;

2. medication(s) name;

3. dosage;

4. frequency;

5. route of administration;

6. date of administration;

7. time of administration;

8. any known medication allergies or other undesirable reaction;

9. any special consideration in taking the medication;

10. the signature and initials of the person(s) administering the medication.

F. All prescriptions shall be reviewed and renewed annually at the time of the annual physical or as indicated by a physician or other licensed health care provider. All medication changes require a new prescription.

G. "PRN" medications are medications administered on an "as needed" basis and shall be specifically prescribed by a physician or other licensed health care prescriber and include specific parameters and rationale for use.

H. All PRN medications shall be documented on medication administration sheets. The documentation shall include:

1. the name of the person to whom the medication is being administered;

2. the name, dosage, and route of the medication;

3. the date, time(s) and reason for administration;

4. the effect of the medication; and

5. the initials of the person(s) administering the medication.

I. The name and dosages of PRN medications administered for behavioral intervention shall be documented per the written policy and procedures of the DDO and as part of an approved plan in accordance with this Part.

J. Medication checks for anyone taking psychotropic medications shall include contact on a regular basis between the person for whom the medications are prescribed and the physician, psychiatrist, or other licensed health care prescriber. The effectiveness of the medication shall be assessed on a regular basis by the multi-disciplinary clinical team.

1.11.5 Monitoring of Controlled Medications

A. Medications listed in Schedules II, III, IV, and V pursuant to R.I. Gen. Laws Chapter 21-28, shall be appropriately stored, documented, and accurately reconciled.

B. Schedule II medications shall be stored separately from other medications in a double locked drawer or compartment, or in a separate storage location which is locked, has additional security restrictions such as a combination lock, and has been designated solely for that purpose.

C. A controlled medication accountability record shall be completed when receiving a Schedule II, III, IV, or V medication.

1. The following information shall be included:

a. name of the person for whom the medication is prescribed;

b. name, dosage, and route of medication;

c. dispensing pharmacy;

d. date received from pharmacy;

e. quantity received; and

f. name of person receiving delivery of the medication.

2. All controlled medications shall be counted and signed for at the end of each shift, or in accordance with the DDO's written policy and procedure.

3. The DDO shall maintain signed controlled medication accountability records for all persons to whom medications are administered by DDO personnel.

D. When a controlled medication is administered, the person administering the medication shall immediately verify and/or enter all the following information on the accountability record and/or the medication sheet:

1. name of the person to whom the medication is being administered;

2. name of the medication, dosage, and route of administration;

3. amount used;

4. amount remaining;

5. date and time of administration; and,

6. signature of the person administering the medication.

1.11.6 Disposal of Medications

A. DDOs shall have a written policy and procedure for the disposal of damaged, excess, discontinued and/or expired controlled substances. The policy and procedure shall outline the DDO's protocol for the inventory and disposal of all such controlled medications in accordance with federal Drug Enforcement Administration (DEA) regulations and all other applicable federal, state, and local regulations.

B. Agencies shall have a written policy and procedure for the disposal of all non-controlled medications.

1.11.7 Transcription of Medication Orders

A. The DDO shall have a written policy and procedure describing the conditions under which the support staff may copy a new written medication order from the pharmacy prescription label onto the appropriate documentation form. At a minimum, the procedure shall require the following:

1. Identification of and training requirements for DDO personnel who shall be permitted to copy the medication order from the pharmacy prescription label onto the appropriate documentation form.

2. Safeguards for ensuring that the information has been accurately copied.

3. Protocols for verification by a Professional Nurse per DDO policy.

1.11.8 Individualized Procedures

A. The DDO, in conjunction with the physician, the professional nurse, the individual and his or her family/advocate, shall develop the plan for supporting the individual if they require an individualized procedure to maintain or improve their health status. This procedure is necessary for the health maintenance of the participant and one that the individual is unable to do for themselves. Appropriate training and documentation of competency in performing an individualized procedure shall be specific to the needs, risks and individual characteristics of the person and shall be completed before a support staff performs said task. The fact that a support staff may have been approved to perform an individualized procedure for one person does not create or imply approval for that support staff to perform similar procedures for another individual. When such a procedure is required the following standard for delegation of nursing activities shall apply.

1. Prior to the implementation of an individualized procedure, the RN shall assess the individual's condition as to whether or not it is of a stable and predictable nature.

2. All training of support staff on the individualized procedure shall be completed by a professional nurse or licensed health care provider.

3. The professional nurse shall assess support staff for their knowledge and demonstrated competency prior to delegating the task for that person to that support staff and communicate and document approval.

4. The professional nurse shall reassess support staff's competency on an annual basis at a minimum or as the individualized procedures change.

5. The professional nurse shall provide ongoing monitoring of the individual's health care needs and of the support staff's skills.

B. If a professional nurse determines that a task or individualized procedure cannot be safely delegated, she/he shall follow DDO policy for communication and resolution while ensuring the health and safety of the individual.

1.11.9 Support Staff Training

A. DDOs shall have written policies and procedures for ongoing health care training as outlined in the DDO Health Care Manual for all support staff.

1. Specific health care related training shall be conducted or supervised by a licensed nurse or a qualified instructor as specified in the DDO's policies.

2. Professional nursing staff shall delegate tasks only to support staff that have received training commensurate with the DDO's protocols and have demonstrated competencies in each area of training.

3. Support staff shall be deemed competent upon documentation of satisfactory completion of training. Satisfactory completion and documentation of training shall include knowledge and demonstration of the delegated task.

4. A competency training checklist shall be completed by a professional nurse prior to the delegation of any health care task, including medication administration. The intent of the competency check is to ensure for the delegating nurse that the staff person has satisfactorily completed all required elements of the training program and has satisfactorily demonstrated skills and competencies in the designated areas.

B. Support staff shall receive annual training and a competency evaluation in health care/health and life education areas. Support staff shall demonstrate a working knowledge of comprehensive health care principles and procedures and shall demonstrate the ability to assist individuals to understand their health care needs more fully. The following Core Curriculum is the standardized guideline of minimum expectations for staff training and shall be followed by DDO specific policies, procedures and protocols.

1. Universal Precautions: The support staff shall demonstrate the ability to apply measures to prevent communicable diseases, to recognize and report the presence or onset of communicable disease, and to carry out the recommended procedures.

a. Communicable Diseases;

b. Infection Control; and

c. Exposure Control Plan (OSHA).

2. Wellness & Prevention of Illness: The support staff shall demonstrate an understanding of a comprehensive, holistic approach to health care and positive, healthy behaviors which will enhance the individuals' overall physical and mental health.

a. Nutrition/Food Handling;

b. Personal Hygiene;

c. Sexual & Reproductive Health; and

d. Healthy Lifestyle

3. Signs & Symptoms of Illness & Injury: The support staff shall be able to recognize the signs and symptoms of illness and injury and take appropriate action.

4. Emergency Care: The support staff shall demonstrate an understanding of how to identify and respond to emergency situations and when to seek outside help

a. Basic First Aid; and

b. Cardio-Pulmonary Resuscitation. All staff who work with individuals supported shall maintain current CPR Certification and documentation of such shall be maintained in the employee's personnel file.

5. Communication: The support staff shall understand and demonstrate the importance of clear communication and the compliance with DDO policy regarding health care issues.

6. Medication Administration: The support staff shall safely administer, completely document and communicate appropriately on issues related to medication administration per acceptable standards in accordance with this Part.

7. Agency Specific Policy, Procedures and Protocols: The support staff shall demonstrate a working knowledge of the DDO's specific policies, procedures and protocols regarding healthcare.

8. Individualized Procedures: The support staff shall demonstrate competency in the provision of any individualized procedure as detailed in this Part prior to implementing the procedure.

1.11.10 Professional Nursing

A. The Professional Nurse shall maintain compliance with the RI Department of Health's "Rules and Regulations for the Licensing of Nurses and Standards for the Approval of Basic Nursing Education Programs" regarding delegation to unlicensed assistive personnel, including the criteria for appropriate delegation to support staff.

B. The DDO shall have written policy and procedures regarding nursing support protocols for evening, weekend, and holiday coverage.

1.12 Behavioral Supports and Treatment

A. Behavioral Supports are interventions to develop and strengthen adaptive and appropriate behaviors through the application of behavioral interventions, and to simultaneously reduce the frequency of inappropriate behaviors. Behavioral Supports and interventions encompass behavioral analysis and other similar interventions that refer to purposeful, clinical support of behavior.

1. All behavioral supports and treatment shall conform to and abide by R.I. Gen. Laws § 40.1-26 entitled "Rights for Persons with Developmental Disabilities."

2. Participants shall give written informed consent prior to the imposition of any plan designed to modify behavior including, but not limited to, those plans which utilize aversive techniques or impairs the participant's liberty.

a. A guardian, family member or advocate can provide written informed consent if the participant is not competent to do so.

b. If a participant is competent to provide informed consent, but cannot provide written consent, the agency shall accept an alternate form of consent, such as verbal agreement obtained and witnessed, and document in the participant's record how such consent was obtained.

(1) A person can only be determined "not competent" by a court, at which time decisions by a guardian must be respected.

(2) Persons deemed "not competent" by a court may give power of attorney to family, friend or advocate not associated with their provider.

B. Behavioral Supports shall be developed and implemented in accordance with Positive Behavioral Intervention and Supports as an evidence-based approach to individual behavior and behavior interventions.

1.12.1 Behavioral Intervention Policy and Procedure Manual

A. In accordance with best practices, each Organization shall develop Behavioral Intervention Policies and Procedures. Such policies, at a minimum, shall include staff training requirements, positive clinical strategies, crisis prevention and intervention procedures to be used to keep participants and others safe. Staffing levels will be addressed in a person-centered manner by identifying needs in the ISP.

B. The Behavioral Intervention Policies and Procedures shall utilize evidence-based positive strategy and intervention to reduce the ongoing use of emergency restraints or restrictions on a participant's rights. Such policies shall also include clear guidelines for:

1. Determining the need to develop a behavior support plan; and

2. How changes shall be made to the Behavioral Support plan.

1.12.2 Staff Training and Support

A. There shall be documentation available in each Organization for inspection and review by the Department related to the following requirements:

1. A description of the specific training (type, content, number of hours, frequency) required of staff to assure that staff are competent to apply each behavioral intervention used, and to apply the provider emergency behavioral crisis prevention and intervention procedures;

2. Listing of staff trained in prevention and intervention techniques;

3. Staff who teach behavioral intervention procedures and techniques, as well as emergency crisis prevention and intervention, shall do so in accordance with the prevailing evidence-based practice;

4. Method to assess staff competency in behavioral intervention and crisis prevention procedures;

5. Monitoring and ongoing support in evidence-based and positive behavioral support plans;

6. Supervision will occur to ensure that the requirements are implemented and documented.

1.12.3 Development of a Behavioral Support Plan

A. Any intervention to alter a participant's behavior must be based on positive behavioral supports and intervention and practice and must be:

1. Annually approved in writing by the participant, Legal Guardian, family and/or advocate where appropriate; and

2. Shall be made by the appropriate member of the ISP team with the informed consent of the participant and described in detail in the participant's record and ISP.

B. A decision to develop a plan to teach alternative skills or alter a person's behavior shall be made by the appropriate members of the ISP team. Behavioral plans shall be developed by the clinician based on assessed clinical needs and are generally to develop and strengthen adaptive, socially appropriate behaviors, and to facilitate communication, community integration, and social interactions. The plans shall be clinically approved and reviewed at least annually by the ISP team and the HRC, as needed.

1.12.4 Functional Behavioral Assessment Required

A. A functional behavioral assessment, performed by the DDO, shall inform the basis for the behavioral support plan which includes restrictive procedures. The functional behavioral assessment shall include:

1. A clear, measurable description of the behavior which includes (as applicable) frequency, antecedents, duration and intensity of the behavior;

2. A clear description and justification of the need to alter the behavior;

3. An assessment of the meaning of the behavior, which accepts that all behavior is communicable in nature and includes the possibility that the behavior is one (1) or more of the following:

a. The result of medical conditions;

b. The result of psychiatric conditions;

c. The result of environmental causes or other factors;

d. The results of the person's inability to communicate emotions or concerns.

4. A description of the context in which the behavior occurs; and

5. A description of what currently maintains the behavior.

1.12.5 Behavioral Support Plans

A. Behavioral Support Plans shall be approved in accordance with all applicable requirements of these regulations, to ensure that the predictable risks, as weighed against the benefits of the procedure, would not pose an unreasonable degree of intrusion, restriction of movement, physical or psychological harm. No Behavioral Support Plans shall be administered to any person in the absence of a written behavioral support plan.

1. All procedures designed to decrease inappropriate behaviors may be used only in conjunction with positive reinforcement programs.

2. Restrictive behavioral interventions shall be used only to address specifically identified extraordinarily difficult or dangerous behavioral problems that significantly interfere with appropriate behavior and/or the learning of appropriate and useful skills, and/or that have seriously harmed or are likely to seriously harm, the individual or others.

3. Behavioral Support Plans written by the clinicians that serve as intervention guidelines, simple problem-solving strategies, or teaching recommendations do not fall within the scope of Behavioral Support Plans to ameliorate negative behavior.

4. All behavioral intervention plans shall conform to and abide by R.I. Gen. Laws § 40.1-26.

B. Any behavioral intervention procedures that are restrictive should be used only as a last resort, subject to the most extensive safeguards and monitoring contained herein.

C. The Behavioral Support Plan shall include:

1. Strategies that are related to the function(s) of the behavior and are expected to be effective in reducing problem behaviors, as included in the functional behavioral assessment;

2. Specific instructions for staff to implement the strategies of the plan;

3. Positive behavioral supports that include the least intrusive intervention possible;

4. Early warning signals or predictors that may indicate a potential behavioral episode and a clearly defined plan of response and de-escalation;

5. Teaching functional behavioral replacement for the behavior targeted for reduction;

6. A procedure for evaluating the effectiveness of the plan, which includes a method of collecting and reviewing data on frequency, duration and intensity of the behavior. Staffing levels will be addressed in a person-centered manner by identifying the staffing needs via an ISP review to determine that appropriate staff levels are maintained; and

7. Adjusting environments to decrease the probability of occurrence of the undesirable behavior.

D. Behavioral Support Plans shall be formalized and written to include the following:

1. Specified, measurable target behaviors;

2. Specified, measurable baseline information;

3. Specified, measurable goals and objectives;

4. Specified, measurable intervention strategies and tactics;

5. A procedure for evaluating the effectiveness of the plan, which include a method of collecting and reviewing data on frequency, duration and intensity of the behavior and for reviewing and reporting progress;

6. Sufficient, qualified, trained staff to implement the behavior plan;

7. Specified named staff to implement and monitor the plan; and

8. Length of time of each program component or intervention.

1.12.6 Notification of Policies and Procedures

The participant, family, legal guardian/advocate will receive a copy of the Behavioral Support Plan.

1.12.7 Use of Restrictive Intervention

A. Restrictive Intervention may be used in such exceptional circumstances that shall meet the heaviest burden of review among all treatments. The use of such procedures will be allowed for a particular person only after a review and approval by clinicians, families, guardians and the Human Rights Committee. This process shall ensure that before the participant can be subjected to this type of procedure, that clinicians have exhausted other less restrictive interventions, and further, that the likely benefit of the procedure to the participant outweighs its apparent risk of life safety.

B. The application of an approved restrictive intervention shall be strictly monitored by the DDO, clinician and the Human Rights Committee.

C. All behavioral interventions, programs, methodologies and applications which utilize any interventions shall be implemented only under the following conditions:

1. At the time of the initial approval of any restrictive behavioral intervention, and at least annually, signature is required for both initial and annual plans from:

   a. The participant with the participant's informed consent;

   b. Family or advocate or legal guardian (as appropriate);

   c. Medical professional;

d. Executive director, authorized representative;

e. Support coordinator;

f. Supervising clinician; and

g. Chair or designee of the human rights committee.

D. Procedures shall include safeguards to be implemented including but not limited to medical supervision, proposed and expected duration, frequency, and precautions to prevent injury. If the person with developmental disabilities shows symptoms of physical injury or distress during the use of any behavioral treatment procedure, the physical injury or distress shall be alleviated. Staff and the person's responses shall be documented.

E. A statement of possible risk, possible side effects, benefits, cautions, and precautions shall be documented, and shall be described to and discussed with the participant and/or parents, guardian, or advocate, prior to gaining their authorization signatures.

F. Staff shall also have access to a supervisor to determine whether to continue the intervention.

G. Any person receiving behavioral treatment shall have his/her health monitored by a physician or registered nurse over the course of behavioral treatment, as medically indicated. The physician or registered nurse shall document their monitoring activity.

H. Individual records pertaining to the use of behavioral interventions shall be made available for review by the executive director, or equivalent position of the DDO, representatives of the Department, the human rights committee, the participant and/or parent, advocate, or guardian (as appropriate).

I. Any use of restrictive intervention techniques that result in injury to either the participant or any other individual is reportable to the Department.

1.12.8 Prohibited Restrictive intervention

A. In addition to those prohibited under R.I. Gen. Laws §§ 40.1-26-3, 40.1-26-4.1, and 42-158-4, the following procedures shall be specifically prohibited from use under any circumstances:

1. Utilizing law enforcement in lieu of a clinically approved therapeutic emergency intervention or behavioral treatment program.

2. Utilization of behavioral interventions for the convenience of the staff.

3. Utilization of behavioral interventions for any reason except for emergency protocol.

1.12.9 Crisis Prevention and Intervention

A. Restraints shall not be employed as punishment, for the convenience of the staff, or as a substitute for an individualized plan. Restraints shall impose the least possible restrictions consistent with their purpose and shall be removed when the emergency ends. Restraints shall not cause physical injury to the participant and shall be designed to allow the greatest possible comfort, pursuant to R.I. Gen. Laws § 40.1-26-3(8). Restraints shall be subject to the following conditions:

1. Physical restraint shall be used to protect the participant or others from imminent injury;

2. Chemical or mechanical restraint shall only be used when prescribed by a physician in extreme emergencies in which physical restraint is not possible and the harmful effects of the emergency clearly outweigh the potential harmful effects of the chemical restraints; and

3. Any restraint that is conducted shall be in accordance with state statute and federal statutes 42 U.S.C. § 290ii(b) and 42 U.S.C. § 15009(a)(3)(B).

4. Any restraint that is conducted shall also be in accordance with federal regulations 42 C.F.R. § 483.420(a); 42 C.F.R. § 483.450(d); and 45 C.F.R. § 1326.19, incorporated herein by reference pursuant to R.I. Gen. Laws § 42-35-3.2, as were in effect in June 2018 and not including later amendments thereof.

1.12.10 Physical Intervention Techniques in Emergency Situations

A. In the DDO's Behavioral Intervention Policy and Procedure Manual, methods of dealing with behavioral crisis within the DDO shall be developed and documented. Emergency behavioral crisis prevention and intervention procedures, including any provision for individualized techniques or methods shall be documented.

B. In the event that only one (1) staff person is available during a restraint or a hold, that individual is responsible to act as both the lead person, as well as the observer.

C. Use of physical intervention techniques that are not part of an approved plan of behavior support in emergency situations must:

1. Be reviewed by the DDO's executive director, or equivalent position (or designee) within one (1) hour of resolution of the emergency;

2. Be used only until the participant is no longer an immediate threat to self or others;

3. Prompt an ISP team meeting if an emergency intervention is used more than three (3) times in a six (6) month period or at the request of the participant, their designee, or guardian; and

4. Immediate verbal notification will be provided to the participant's designee or guardian.

D. Description of the application of all approved physical and/or mechanical restraints and holds, must be detailed in writing in the ISP. The following procedural stipulations must be strictly adhered to and specifically stated:

1. One (1) qualified and trained person must be designated the lead person on site for each hold situation, with primary responsibility for directing any other person(s) who is (are) involved in the restraint.

2. No staff can lay across the back of a participant in a hold.

a. The participant shall not be placed in a prone restraint, as prohibited by R.I. Gen. Laws § 42-158-4.

3. One (1) person should have responsibility for observing the participant involved in the hold to watch for any problems that may be a signal of a life-threatening situation. The lead person should determine who shall have this responsibility.

E. Documentation of all physical/mechanical behavioral interventions, both behavior treatment and crisis, shall include, but shall not be limited to:

1. Signs and symptoms of physical condition during all behavioral interventions; and,

2. Specific outcomes of behavioral interventions.

1.12.11 Restraint Report

A. Any use of physical intervention(s) shall be documented in a restraint report which is received by the treating clinician, the participant, their designee and guardian within seventy-two (72) hours of the incident and shall be made available to the Department upon request, consistent with R.I. Gen. Laws § 40.1-26-4(d). The reports shall be kept on file for ten (10) years. The incident report shall include:

1. The name of the participant to whom the physical or mechanical intervention was applied;

2. The date, type, and length of time the restraint;

3. A description of the antecedent incident precipitating the need for the use of the physical or mechanical intervention;

4. Documentation of any injury;

   a. Signs and symptoms of physical condition during all behavior interventions.

   b. Specific signs of behavioral intervention.

5. The name and position of the staff member(s) applying restraint;

6. The name(s) and position(s) of the staff witnessing the restraint; and

7. The name of the lead person providing the initial review of the use of the restraint.

1.12.12 DDO Annual Restraint Report

All physical and mechanical restraints that are used to control acute, episodic behavior of participants shall be reported to the Department on an annual basis. All DDOs shall submit an Agency Annual Restraint Report during an annual timeframe specified by DDD.