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<b>Title</b>	<b>Northern Lakes CMH Policies</b>
<b>Part 106</b>	<b>Supports and Services – NLCMH Provided and Contract</b>
<b>Subpart J</b>	<b>Mental Health Code Protected Recipient Rights</b>
<b>Policy No.</b>	<b>106.1004</b>
<b>Subject</b>	<b>Treating Problem Behaviors (RR)</b>

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### **Applicability**

Policy applies to all NLCMH activities, operations and sites and to all Workforce Members except members of the governing body. Policy also applies to any Network Provider and its employees, volunteers, or agents that has elected to adopt and adhere to NLCMH policies and procedures pertaining to Recipient Rights under the terms of its Participating Provider Agreement.

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### **Policy**

A Workforce Member of Northern Lakes CMH or of contract provider shall not intervene with recipients who exhibit seriously aggressive, self-injurious or other behaviors that place the individual or others at risk of harm in a manner that violates the recipient's rights pursuant to 42 CFR 438.100 and the Michigan Mental Health Code to be free from restraint, seclusion, abuse, neglect, discipline, punishment, convenience, retaliation, coercion, or unjustified intrusion of privacy or restriction or limitation of freedoms and liberties.

#### **I. STANDARDS**

- A. Northern Lakes CMH will not tolerate violence perpetrated on recipients or the imposition of unjustified restrictions or limitations on the rights of recipients in the name of intervening when individuals exhibit or are potentially at risk of harmful behaviors.
- B. In an unprecedented or unpredicted crisis or emergency safety situation, providers shall employ the least intrusive or restrictive interventions using approved techniques.
- C. Before considering the use of intrusive or restrictive interventions for the purpose of treating, managing, controlling, or extinguishing predictable or continuing behaviors that are seriously aggressive, self-injurious, or that place the individual or others at risk of harm, providers shall first conduct appropriate assessments and evaluations to rule out physical, medical, and environmental, trauma, interpersonal relationships or other conditions that might be the cause of the behaviors.

- D. If a functional assessment of the recipient's behaviors results in a determination that additional mental health treatment interventions are appropriate to the recipient's condition, the recipient's individual plan of services shall be reviewed through a person-centered planning process for possible modification.
- E. In accordance with Administrative Rule 330.7199(2)(g) if the recipient's individual plan of services proposes to include intrusive interventions or interventions that restrict or limit the recipient's rights, the plan must be reviewed and approved by the Northern Lakes CMH Behavior Treatment Committee and receive the Special Consent of the recipient or the recipient's legally empowered representative prior to implementation. It is preferred that plans utilizing intrusive or restrictive interventions be developed as a formal behavior treatment plan.
- F. Such plans shall:
  - 1 Adhere to a recipient's psychiatric advance directive, if the recipient has created one and it is in effect;
  - 2 Employ positive behavior supports and other specific interventions designed to develop the recipient's functional abilities in major life activities as the first and preferred approaches;
  - 3 Only include a hierarchy of lesser restrictive or intrusive interventions appropriate to the recipient's clinical condition as a last resort if there is sufficient documentation to justify that positive behavior supports have been unsuccessful.
  - 4 Be supported by peer-reviewed literature or practice guidelines.
- G. Any plan that uses intrusive or restrictive interventions shall include documentation of all of the following:
  - a. Attempts to ameliorate or eliminate the need for the restrictive or intrusive interventions in the future.
  - b. Documentation of how each intervention is clinically and legally justified;
  - c. Time-limits for the implementation of each restriction or limitation.
- H. A plan may not use aversive techniques or use physical management as a component intervention.

## II. BEHAVIOR TREATMENT COMMITTEE STANDARDS

- A. By this policy, Northern Lakes CMH creates a specially-constituted committee, referred to as the "behavior treatment committee" to review and approve or disapprove any plan that proposes to use restrictive or intrusive interventions with individuals served by the public mental health system who exhibit seriously aggressive, self-injurious or other behaviors that place the individual or others at risk of physical harm.

- B. A contract provider may develop it's own Behavior Treatment Committee but all plans approved by that committee are subject to final review and approval by the Northern Lakes CMH Behavior Treatment Committee.
- C. A psychiatric hospital, psychiatric unit or psychiatric partial hospitalization program licensed under 1974 PA 258, MCL 330.1137, under contract with Northern Lakes CMH that does not have its own Behavior Treatment Committee shall be given access to and use the services of the Northern Lakes CMH Behavior Treatment Committee regarding a behavior treatment plan for Northern Lakes CMH recipients.
- D. The Behavior Treatment Committee shall be comprised of at least three individuals, one of whom shall be a licensed psychologist with the specified training and experience in applied behavior analysis; and at least one member shall be a licensed physician/psychiatrist as defined in the Mental Health Code at MCL 330.1100c(10). A representative of the Office of Recipient Rights shall participate on the Committee as an ex-officio, non-voting member in order to provide consultation and technical assistance to the Committee. Other nonvoting members may be added at the Committee's discretion, and with the consent of the individual whose behavior treatment plan is being reviewed, such as an advocate or Certified Peer Support Specialist.
- C. The Committee, and Committee chair, shall be appointed by the agency for a term of not more than two years. Members may be re-appointed to consecutive terms.
- D. The Committee shall meet as often as needed.
- E. The Committee shall keep all its meeting minutes, and clearly delineate the actions of the Committee.
- F. The Committee shall ask that a Committee member who has prepared a behavior treatment plan to be reviewed by the Committee recuse themselves from the final decision-making.
- G. The functions of the Committee shall be to:
  - 1. Disapprove any behavior treatment plan that proposes to use aversive techniques, physical management, or seclusion or restraint in a setting where it is prohibited by law or regulations.
  - 2. Expeditiously review, in light of current peer reviewed literature or practice guidelines, all behavior treatment plans proposing to utilize intrusive or restrictive techniques [see definitions].
  - 3. Determine whether causal analysis of the behavior has been performed; whether positive behavioral supports and interventions have been adequately pursued; and, where these have not occurred, disapprove any proposed plan for utilizing intrusive or restrictive techniques.
  - 4. For each approved plan, set and document a date to re-examine the continuing need for the approved procedures. This review shall occur no less than monthly from the

date of the last review, or more frequently if clinically indicated for the individual's condition, or when the individual requests the review as determined through the person-centered planning process. The more intrusive or restrictive the interventions, or the more frequently they are applied, the more often the entire behavior treatment plan should be reviewed by the Committee.

5. Assure that inquiry has been made about any medical, psychological or other factors that the individual has which might put him/her at high risk of death, injury or trauma if subjected to intrusive or restrictive techniques.
  6. Arrange for an evaluation of the committee's effectiveness by stakeholders, including individuals who had approved plans, as well as family members and advocates. Once a decision to approve a behavior treatment plan has been made by the Committee and written special consent to the plan (see limitations in definition of special consent) has been obtained from the individual, the legal guardian, the parent with legal custody of a minor or a designated patient advocate, it becomes part of the person's written IPOS. The individual, legal guardian, parent with legal custody of a minor child, or designated patient advocate has the right to request a review of the written IPOS, including the right to request that person-centered planning be re-convened, in order to revisit the behavior treatment plan. (MCL 330.1712 [2])
- H. On a quarterly basis track and analyze the use of all physical management for emergencies, and the use of intrusive and restrictive techniques by each individual receiving the intervention, as well as:
1. Dates and numbers of interventions used;
  2. The settings (e.g., group home, day program) where behaviors and interventions occurred;
  3. Behaviors that initiated the techniques;
  4. Documentation of the analysis performed to determine the cause of the behaviors that precipitated the intervention;
  5. Attempts to use positive behavioral supports;
  6. Behaviors that resulted in termination of the interventions;
  7. Length of time of each intervention;
  8. Staff development and training and supervisory guidance to reduce the use of these interventions.
- I. The data on the use of intrusive and restrictive techniques must be evaluated by the PIHP's Quality Assessment and Performance Improvement Program or the CMHSP's Quality Improvement Program, and be available for MDCH review. Physical management, permitted for intervention in emergencies only, is considered a critical incident that must be analyzed by the Committee and the QAPIP or QIP and reported to

MDCH on a quarterly basis per mutually-agreed upon data elements. Any injury or death that occurs from the use of any behavior intervention is considered a sentinel event that must be reported to MDCH on a quarterly basis.

J. In addition, the Committee may:

1. Advise and recommend to the agency the need for specific staff training in positive behavioral supports and other interventions.
2. Advise and recommend to the agency acceptable interventions to be used in emergency or crisis situations when a behavior treatment plan does not exist for an individual who has never displayed or been predicted to display seriously aggressive, self-injurious or other behaviors that place the individual or others at risk or harm. In addition, the Committee might recommend a limit for the number of emergency interventions that can be used with an individual in a defined period before the mandatory initiation of a process that includes assessments and evaluations, and possible development of a behavior treatment plan, as described in this requirement.
3. At its discretion, review other formally developed behavior treatment plans, including positive behavioral supports and interventions, if such reviews are consistent with the agency's needs and approved in advance by the agency.
4. Advise the agency regarding administrative and other policies affecting behavior treatment and modification practices.
5. Provide specific case consultation as requested by professional staff of the agency.
6. Assist in assuring that other related standards are met, e.g., positive behavioral supports.
7. Serve another service entity (e.g., subcontractor) if agreeable between the involved parties.

### III. BEHAVIOR TREATMENT PLAN STANDARDS

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

by law, shall be disapproved by the Committee.

- D. Behavior treatment plans that propose to use restrictive or intrusive techniques as defined by this policy shall be reviewed and approved (or disapproved) by the Committee.
- E. Plans that are forwarded to the Committee for review shall be accompanied by:
  - 1. Results of assessments performed to rule out relevant physical, medical and environmental causes of the problem behavior.
  - 2. A functional assessment.
  - 3. Results of inquiries about any medical, psychological or other factors that might put the individual subjected to intrusive or restrictive techniques at high risk of death, injury or trauma.
  - 4. Evidence of the kinds of positive behavioral supports or interventions, including their amount, scope and duration that have been attempted to ameliorate the behavior and have proved to be unsuccessful.
  - 5. Evidence of continued efforts to find other options.
  - 6. Peer reviewed literature or practice guidelines that support the proposed restrictive or intrusive intervention.
  - 7. References to the literature should be included, and where the intervention has limited or no support in the literature, why the plan is the best option available.
  - 8. The plan for monitoring and staff training to assure consistent implementation and documentation of the intervention(s).

#### IV. DEFINITIONS

- A. Aversive Techniques: Those techniques that require the deliberate infliction of unpleasant stimulation (stimuli which would be unpleasant to the average person or stimuli that would have a specific unpleasant effect on a particular person) to achieve the management, control or extinction of seriously aggressive, self-injurious or other behaviors that place the individual or others at risk of physical harm. Examples of such techniques include use of mouthwash, water mist or other noxious substance to consequate behavior or to accomplish a negative association with target behavior, and use of nausea-generating medication to establish a negative association with a target behavior or for directly consequating target behavior. Clinical techniques and practices established in the peer reviewed literature that are prescribed in the behavior treatment plan and that are voluntary and self-administered (e.g., exposure therapy for anxiety, masturbatory satiation for paraphilias) are not considered aversive for purposes of this technical requirement. Otherwise, use of aversive techniques is **prohibited**.

- B. Intrusive Techniques: Those techniques that encroach upon the bodily integrity or the personal space of the individual for the purpose of achieving management or control, of a seriously aggressive, self-injurious or other behavior that places the individual or others at risk of physical harm. Examples of such techniques include the use of a medication or drug that is not a standard treatment or dosage for the individual's condition. Use of intrusive techniques as defined here requires the review and approval by the Committee.
- C. Peer-reviewed literature: Scholarly works that typically represent the latest original research in the field, research that has been generally accepted by academic and professional peers for dissemination and discussion. Review panels are comprised of other researchers and scholars who use criteria such as "significance" and "methodology" to evaluate the research. Publication in peer-reviewed literature does not necessarily mean the research findings are *true*, but the findings are considered authoritative *evidence* for a claim whose validation typically comes as the research is further analyzed and its findings are applied and re-examined in different contexts or using varying theoretical frameworks.
- D. Physical Management: A technique used by staff to restrict the movement of an individual by direct physical contact in order to prevent the individual from physically harming himself, herself, or others. Physical management shall only be used on an emergency basis when the situation places the individual or others at imminent risk of serious physical harm. Physical management, as defined here, shall not be included as a component of a behavior treatment plan. The term "physical management" does not include briefly holding an individual in order to comfort him or her or to demonstrate affection, or holding his/her hand. Physical management involving prone immobilization of an individual for behavioral control purposes is **prohibited under any circumstances**.
- E. Positive Behavior Support: A set of research-based strategies used to increase quality of life and decrease problem behavior by teaching new skills and making changes in a person's environment. Positive behavior support combines valued outcomes, behavioral, and biomedical science, validated procedures; and systems change to enhance quality of life and reduce problem behaviors such as self-injury, aggression, property destruction, pica, defiance, and disruption.
- F. Practice or Treatment Guidelines: Guidelines published by professional organizations such as the American Psychiatric Association (APA), or the federal government.
- G. Restraint: Any physical or mechanical device, material or equipment that immobilizes or reduces the ability of the recipient to move his or her arms, legs, body or head freely, for the purposes of the management, control, or extinction of seriously aggressive, self-injurious or other behaviors that place the individual or others at risk of physical harm. This definition excludes anatomical or physical supports that are ordered by a physician, physical therapist or occupational therapist for the purpose of maintaining or improving an individual's physical functioning. The definition also excludes safety devices required by law, such as car seat belts or child car seats used while riding in vehicles. The use of physical or mechanical devices used as restraint is **prohibited** except in a state-operated facility or a licensed hospital.

- H. Restrictive Techniques: Those techniques which, when implemented, will result in the limitation of the individual's rights as specified in the Michigan Mental Health Code and the federal Balanced Budget Act. Examples of such techniques used for the purposes of management, control or extinction of seriously aggressive, self-injurious or other behaviors that place the individual or others at risk of physical harm, include prohibiting communication with others to achieve therapeutic objectives; prohibiting ordinary access to meals; using the Craig (or veiled) bed, or any other limitation of the freedom of movement of an individual. Restrictive techniques include the use of a drug or medication when it is used as a restriction to manage, control or extinguish an individual's behavior or restrict the individual's freedom of movement and is not a standard treatment or dosage for the individual's condition. Use of restrictive techniques requires the review and approval of the Committee.
- I. Seclusion: The placement of an individual in a room alone where egress is prevented by any means. Seclusion is **prohibited** except in a hospital or center operated by the department, a hospital licensed by the department, or a licensed child caring institution licensed under 1973 PA 116, MCL 722.111 to 722.128.
- J. Special Consent: Obtaining the written consent of the recipient, the legal guardian, the parent with legal custody of a minor child or a designated patient advocate prior to the implementation of any behavior treatment intervention that includes the use of intrusive or restrictive interventions or those which would otherwise entail violating the individual's rights. The general consent to the individualized plan of services and/or supports is not sufficient to authorize implementation of such a behavior treatment intervention. Implementation of a behavior treatment intervention without the special consent of the recipient, guardian or parent of a minor recipient may only occur when the recipient has been adjudicated pursuant to the provisions of section 469a, 472a, 473, 515, 518, or 519 of the Mental Health Code.

### Legal References

1997 federal Balanced Budget Act at 42 CFR 438.100  
MCL 330.1712, Michigan Mental Health Code  
MCL 330.1740, Michigan Mental Health Code  
MCL 330.1742, Michigan Mental Health Code  
Department of Community Health Administrative Rule 330.7199(2)(g)  
MDCH Technical Requirement For Behavior Treatment Plan Review Committees

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### Procedures

None

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Title 1 Northern Lakes Policies, Part 106 Supports and Services – NLCMH Provided and Contract Subpart J Mental Health Code Protected Recipient Rights, Policy No. 106.1004, Subject Treating Problem Behaviors (RR)

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