

Home and Community Based Services and “Homelike Settings”

Presentation to the Joint Task Force on Improving the Safety of Behavioral Health Workers

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Definition of “home like settings”

- ORS and CFR do not define “home like settings”
- OHA, APD AFH, ODDS AFH Definitions
 - "Home-Like" means an environment that promotes the dignity, security, and comfort of individuals/residents through the provision of personalized care and services and encourages independence, choice, and decision-making by the individual.
- APD RCF/ALF Definition
 - "Homelike Environment" means a living environment that creates an atmosphere supportive of the resident's preferred lifestyle. Homelike environment is also supported by the use of residential building materials and furnishings.

Home and Community Based Settings Regulations

- All 3 program areas use Medicaid Home and Community Based authorities to fund non-institutional settings including:
 - Adult Foster Homes
 - Assisted Living Facilities
 - Group Homes
 - Residential Care Facilities
 - Residential Treatment Homes and Facilities
- If an individual lives in a “provider-owned, operated and controlled setting” the provider must abide by federal CFRs related to the rights of the individual.
- Additionally, there are state licensing and adult protective service statutes and administrative rules.

Federal and State HCBS Setting Regulations

- The setting must:
 - Be integrated in and support access to the greater community.
 - Ensure the individual's rights of privacy, dignity, respect, and freedom from coercion and restraint
 - Optimizes, individual initiative, autonomy, self-direction, and independence in making life choices
- Each individual has:
 - The right to choose their setting from the options based on their needs.
 - A unit that may be owned, rented, or occupied by the individual under a legally enforceable Residency Agreement with the same protections as Oregon landlord tenant law including protections from eviction.
 - The right to privacy in their own unit including a lockable entrance door to their unit with the individual and only appropriate staff having a key.
 - The right to choose the roommate if sharing rooms.
 - The freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement.
 - The right to have visitors of his or her choosing at any time.
 - The freedom and support to control his or her own schedule and activities.
 - The freedom and support to have access to food at any time.

Individually Based Limitations

- In HCBS settings, if an individual cannot safely manage the rights specified in state or federal regulations, an individually based limitation may be requested.
- An IBL allows a right to be limited but the IBL must be:
 - Agreed to by the individual or guardian
 - The minimum necessary to protect the individual or others
 - Assurances that the intervention does not cause harm to the individual
 - Approved by the case manager, if applicable
 - Time limited
- An IBL must be consented to and removed when informed consent is no longer applied.

Protective Service regulations and restraint

In the APD system – Abuse is defined as:

- **WRONGFUL USE OF A PHYSICAL OR CHEMICAL RESTRAINT OF AN ADULT.**
 - A wrongful use of a physical or chemical restraint includes situations where:
 - (i) A licensed health professional has not conducted a thorough assessment before implementing a licensed physician's prescription for restraint;
 - (ii) Less restrictive alternatives have not been evaluated before the use of the restraint; or
 - (iii) The restraint is used for convenience or discipline

Protective Service regulations and restraint

In the ODDS system – Adult Abuse includes:

- A wrongful use of a physical or chemical restraint upon an adult.
 - A wrongful use of a physical or chemical restraint excluding an act of restraint that is consistent with an approved treatment plan or in connection with a court order.
 - In the DD system, Behavior Professionals conduct functional behavior assessments and develop Positive Behavior Support Plans (PBSPs) that can include restraints as an emergency crisis strategy when indicated.

Child abuse for “children in care” under ORS chapter 418 includes the wrongful use of physical or chemical restraint and involuntary seclusion.

Protective Service regulations and restraint

In the BHD system – Abuse is defined as:

- A wrongful use of a physical or chemical restraint upon an adult.
 - A wrongful use of a physical or chemical restraint upon an adult, excluding an act of restraint prescribed by a physician licensed under ORS chapter 677, physician assistant licensed under ORS 677.505 to 677.525, naturopathic physician licensed under ORS chapter 685 or nurse practitioner licensed under ORS 678.375 to 678.390 and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.

Child abuse for “children in care” under ORS chapter 418 includes the wrongful use of physical or chemical restraint and involuntary seclusion.

Restraints in Adult Behavioral Health Programs

- Physical restraints may only be used in licensed and certified Secure Residential Treatment Facilities and Secure Transport companies to prevent injury to an individual who is in danger of harming themselves or others. Physical restraints can only be used as a last resort after other interventions have been attempted without success and only to the degree of force reasonably necessary for protection and for the least amount of time necessary.
- Only a Licensed Independent Practitioner, Physician Assistant or Registered Nurse may initiate seclusion or restraint procedures.
- Emergency physical restraints may be used by other mental health facilities to prevent immediate injury to an individual who is in danger of harming themselves or others. Emergency restraints can only be used after other interventions have been attempted and only to the degree of force reasonably necessary for protection and for the least amount of time necessary. Following the use of emergency restraints, the individual must be transported to the hospital for evaluation.

Restraints in Behavioral Health Children's Programs

- Supine physical restraints are allowed only licensed secure children's inpatient programs. companies to prevent injury to an individual who is in danger of harming themselves or others. Physical restraints can only be used as a last resort after other interventions have been attempted without success and only to the degree of force reasonably necessary for protection and for the least amount of time necessary.
- Physical restraint or seclusion may be used in other children's settings only in an emergency safety situation to prevent immediate injury to an individual who is in danger of physically harming himself or herself or others in situations, such as the occurrence of or serious threat of violence, personal injury, or attempted suicide, and after less restrictive interventions have been attempted or determined would not effectively reduce the risk.
- Restraint and seclusion may not be used simultaneously.
- Training is required for all individuals who may be applying restraints.

Restraints in Developmental Disabilities Programs

- Restraints of children in developmental disabilities group homes, host homes, and child foster homes are prohibited unless the child's behavior poses a reasonable risk of imminent serious bodily injury to the child or others and less restrictive interventions would not effectively reduce the risk.
- Restraints for children and adults must be written into the individual's Positive Behavior Support Plan (PBSP) and consented to through an IBL.
- Emergency restraints not included in a PBSP are only allowable when there is imminent risk of harm to the adult or others or when the adult's behavior has a probability of leading to engagement with the legal or justice system, only as a measure of last resort for as long as the situation presents imminent danger to the health or safety of the adult or others.
- Training is required for all individuals who may be applying restraints.

Unauthorized restraints

- Chemical restraints are not authorized within community-based settings.
- Restraints cannot be used to punish a resident's behavior.
- Restraints cannot be used for the convenience of a facility.
- Restraints cannot be used to offset short-staffing of a facility.
- Unauthorized or improper use of restraints is considered abuse.

- In addition, in the ODDS system for children and adults, any restraint that is retaliatory, chemical, mechanical, prone, supine, or lateral is prohibited.

OSHA Recommendations

- Facilities may:
 - Provide staff with panic buttons, GPS tracking and cell phones
 - Provide a safe room
 - Provide locked restrooms for staff in residential settings. This may not be feasible in AFHs
 - Provide comfortable sitting/waiting areas
 - Carefully staff the facility to reduce staff turnover
 - Change and add materials to reduce noise

OSHA Recommendations

- Facilities likely cannot:
 - Require two exits
 - Such a requirement would necessitate major remodels to existing residential programs and likely impossible in AFHs if the intent is to add two exits in resident rooms
 - Front and exit doors are required at the facility level
 - Lock unused doors to limit access
 - Secure furniture in the individuals' rooms
- Facilities may not
 - Arrange furniture so workers have clear exits in the individuals' units
 - Require an individual to go through a metal detector

Safety Installations

- Prohibited safety installations include:
 - Door locks on any room used by residents that would result in seclusion of the resident
 - Unauthorized restraints
 - Metal detectors
 - Searching individuals or their rooms
 - Video monitoring in personal areas (bedrooms and bathrooms)
 - Securing furniture
- Allowed safety installations include:
 - Door locks on staff offices
 - Alarms on doors and windows in common areas
 - Staff in all areas receive intervention training