

5.12: continued

- (c) In accordance with safety checks and opportunities for exercise as specified by the qualified professional, and, if applicable, set forth in the individual's ISP; and
- (d) With documentation as to the frequency and duration of use, safety checks, and opportunities for exercise.

(4) Medication Incidental to Treatment not Restraint. Sedatives or anti-anxiety medication prescribed by a qualified practitioner for the sole purpose of relaxing or calming an individual so that he or she may receive medical treatment is not an emergency restraint. Administration of such medication shall be deemed incidental to the treatment, and, except in a medical emergency, requires the consent of the individual or guardian.

5.13: Transportation Restraint

(1) Any limitation of movement (LOM) necessary for the safety of the individual during transportation shall not be deemed an emergency restraint, a support, or a health-related protection for purposes of 115 CMR 5.11 and 5.12. Such transportation restraint is also not subject to the requirements in 115 CMR 5.11 applicable to emergency restraint, regardless of whether an emergency exists at the time the LOM is implemented.

(2) Duration Limited to Activities Included In Transportation. Transportation restraint is permitted during and limited to transportation of the individual. For purposes of 115 CMR 5.11, "transportation" includes all activities incidental to transportation, including, but not limited to:

- (a) Relocating or assisting an individual from the point of departure to the transporting vehicle;
- (b) Relocating or assisting the individual from the transporting vehicle to the point of destination;
- (c) Temporary stops during transportation where the individual remains in or near the transporting vehicle.

(3) Any use of transportation restraint beyond the use of standard passenger safety devices (for example, seat belts) shall be the least restrictive method of ensuring passenger safety during transportation. The specific method of restraint shall be determined on an individualized basis and shall be included in the passenger's Individual Service Plan. Any use of transportation restraint not approved as part of an individual's service plan shall be reported according to the Department's regulations on incident reporting, found in 115 CMR 9.00 *Investigations and Reporting Responsibilities*. Any such use of unapproved transportation restraint shall also be reported in accordance with 115 CMR 9.00 if the reporter has reason to believe that such use constituted abuse or neglect.

5.14: Behavior Modification

(1) Authority, Applicability and Policy.

- (a) Authority. 115 CMR 5.14 is promulgated under the authority of M.G.L. c. 19B and M.G.L. c. 123B.
- (b) Application. 115 CMR 5.14 applies to all programs which are operated, funded or licensed by the Department.
- (c) Policy. It is the purpose of the Department, reflected in 115 CMR 5.14, to assure the dignity, health and safety of its clients. Behavior modification is a widely accepted and utilized treatment which in many cases has enabled clients to grow and reach their maximum potential. Behavior modification emphasizes the use of positive behavioral approaches. It is the Department's expectation that strategies used to modify the behavior of clients will not pose a significant risk of harm to clients and will not be unduly restrictive or intrusive. Indeed, the Department believes that it is both sound law and policy that in individual cases the only procedures which may be used are those which have been determined to be the least restrictive or least intrusive alternatives.

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(2) Definitions.

Behavior Modification means treatment using Interventions designed to increase the frequency of certain behaviors and to decrease the frequency of or eliminate other behaviors which behaviors have, as a result of a behavior analysis by persons experienced in such analysis, been identified as needing to be changed in order to enable the individual to attain the most self-fulfilling, age appropriate and independent style of living possible for the individual.

Intervention or Interventions means one or more of the following Behavior Modification procedures:

Aversive Intervention means procedures involving things or events that, when presented contingent upon some specified target behavior(s), have a decelerating effect upon that behavior.

Deprivation Procedures means procedures which withdraw or delay in delivery goods or services or known reinforcers to which the individual normally has access or which the individual owns or has already earned by performing or not performing specified behavior.

Positive Reinforcement Programs means procedures in which a positive reinforcer (*i.e.*, any consequent action which increases the likelihood of the immediately precedent behavior) is contingent on a specified behavior.

Time Out means socially isolating an individual by removing the individual to a room or an area physically separate from, or by limiting the individual's participation in, ongoing activities and potential sources of reinforcement, as a suppressive consequence of an inappropriate behavior.

(3) Classification of Interventions. Interventions used for Behavior Modification purposes shall be classified by Level pursuant to the provisions of 115 CMR 5.14(3).

(a) Advisory Panel for Classification of Behavior Modification Interventions. The Commissioner shall establish a joint Advisory Panel for the Classification of Behavior Modification Interventions for the purpose of ensuring that all Behavior Modification Interventions are properly classified by level.

1. The Advisory panel shall be composed of no fewer than five individuals, a majority of whom shall possess doctoral level degrees in psychology, with significant training and experience in applied behavior analysis and behavioral treatment. Such individuals shall be appointed for such terms as the Commissioner shall designate.

2. The Advisory Panel shall meet as often as may be necessary to ensure the proper classification of Interventions.

3. The Advisory Panel shall assist the Commissioner or designee in responding to requests for advisory opinions pursuant to 115 CMR 5.14(3)(e) and in ensuring that the provisions of 115 CMR 5.14 are met.

(b) Level I Interventions. The following shall be deemed Level I Interventions for purposes of 115 CMR 5.14, provided that use of such Level I procedures shall conform to the applicable standards specified in 115 CMR 5.14(4)(b):

1. Positive Reinforcement Programs utilizing procedures which have no discernible aversive properties, pose minimal risk of physical or psychological harm, and that do not involve significant physical exercise or physical enforcement to overcome the individual's active resistance, including but not limited to the following:

a. Positive reinforcement: procedures wherein a positive reinforcer is provided following a particular behavior.

b. Differential reinforcement of other behavior: procedures wherein a positive reinforcer is given after a specific behavior has not occurred for a certain period of time.

c. Differential reinforcement of incompatible behavior: procedures wherein a positive reinforcer is provided following a given behavior which is physically incompatible with the occurrence of one or more inappropriate behaviors.

d. Differential reinforcement of alternative behavior: procedures wherein a positive reinforcer is provided after a given behavior which is designed to replace one or more inappropriate behaviors.

- e. Satiation: continued or repeated presentation of a positive reinforcer that poses no risk to health and is made available until it no longer is effective as a positive reinforcer.
 - f. Token/point gain: procedures wherein a symbol or physical object or other tokens or points are provided after a given behavior and a given number of these tokens or points can be exchanged for a positive reinforcer.
2. Aversive Interventions or Deprivation Procedures that involve no more than a minimal degree of risk, intrusion, restriction on movement, or possibility of physical or psychological harm, and that do not involve significant physical exercise or physical enforcement to overcome the individual's active resistance, including but not limited to the following:
- a. Corrective feedback and social disapproval: the use of disapproving facial expressions and verbal statements such as "no", "wrong" or "stop that" following the occurrence of an unacceptable behavior.
 - b. Relaxation: procedures wherein, following the occurrence of unacceptable behavior with an agitated component, the individual is requested to assume and maintain a relaxed posture in a quiet location, with staff present.
 - c. Restitution: procedures wherein, following the occurrence of unacceptable behavior that disturbs the environment, the individual is requested to restore the environment to its original condition (or to a cleaner and/or more orderly state) by, for example, picking-up fallen objects, cleaning, apologizing, or otherwise providing restitution.
 - d. Ignoring: physical and social inattention during the occurrence of an unacceptable behavior.
 - e. Extinction: failing to supply (or otherwise arranging the absence of) the accustomed consequence(s) after a given inappropriate behavior occurs.
 - f. Token fines: procedures wherein points or tokens (which were previously earned or otherwise supplied) are removed or lost, contingent upon the occurrence of an inappropriate behavior.
 - g. Reinforcement Restriction: the withholding or decrease in the availability of positive reinforcements such as tea, coffee, desserts or edible treats that a dietician would find to be nonessential to a nutritious diet or specified leisure activities that are not part of the facility's or program's daily living routine.
 - h. Positive Practice: procedures wherein an individual is required to undertake repeated performances of an appropriate behavior.
 - i. Negative Practice: procedures wherein an individual is required to undertake repeated performances of an inappropriate behavior for a given time or repetitions following the occurrence of the inappropriate behavior.
 - j. Contingent exercise: procedures wherein a designated exercise or physical activity is performed for a given period of time or number of repetitions following the occurrence of an inappropriate behavior.
3. Time Out wherein:
- a. the individual is moved away from the location where positive reinforcement is available, but remains in the same area and in view; or
 - b. the material, activity or event providing positive reinforcement is removed for a given period; or
 - c. the individual is placed in a room alone for brief periods of time, in no case more than 15 minutes, provided that the door of the room is open and that staff are present at or near the door of the room to monitor the individual's behavior while in the room; or
 - d. the individual is placed in a room with the door closed, with staff present in the room, for brief periods of time, in no case more than 15 minutes.
- (c) Level II Interventions. The following shall be deemed Level II Interventions for purposes of 115 CMR 5.14, provided that no such Level II Interventions may be used except in accordance with the applicable standards and procedures set forth in 115 CMR 5.14(4):
- 1. All Positive Reinforcement Programs, Aversive Interventions and Deprivation Procedures otherwise classified as Level I where the procedure must be physically enforced to overcome the individual's active resistance.
 - 2. Time Out wherein an individual is placed in a room alone with the door closed (but not locked) for brief periods of time, in no case more than 15 minutes; provided that staff are present at or near the door of the room to monitor the individual's behavior in the room.

Deleted: , with the exception of those classified as Level I or Level III, including but not limited to the following:
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 ¶
 a. Any Intervention

Deleted: b. Any Intervention otherwise classified as Level I where the procedure involves significant physical exercise.¶
 c. Contingent application of unpleasant sensory stimuli such as loud noises, bad tastes, bad odors, or other stimuli which elicit a startle response.¶
 d. Short delay of meal for a period not exceeding 30 minutes, as a result of inappropriate meal related behavior, designed specifically to teach appropriate meal related behavior.¶

(d) Level III Interventions. The following shall be deemed Level III Interventions for purposes of 115 CMR 5.14, provided that no such Level III Intervention may be used except in accordance with the standards and procedures set forth in 115 CMR 5.14(4), including without limitation the special certification requirement of 115 CMR 5.14(4)(f) and the general requirement of 115 CMR 5.14(4)(b) that a determination be made that the predictable risks, as weighed against the benefits of the procedure, would not pose an unreasonable degree of intrusion, restriction of movement, physical harm or psychological harm:

1. Any Intervention which involves the contingent application of physical contact aversive stimuli such as spanking, slapping, hitting or contingent skin shock.
2. Time Out wherein an individual is placed in a room alone for a period of time exceeding 15 minutes.
3. Any Intervention not listed in 115 CMR 5.14 as a Level I or ~~Level II~~ Intervention which is highly intrusive and/or highly restrictive of freedom of movement.
4. Any Intervention which alone, in combination with other Interventions, or as a result of multiple applications of the same Intervention poses a significant risk of physical or psychological harm to the individual.

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(e) Advisory Opinions. Any person may request the Commissioner or designee to provide an advisory opinion regarding the proper classification of particular Interventions by Level for Interventions not set forth in 115 CMR 5.14, or for clarification of proper classification by Level in a particular instance involving a specific individual.

1. Upon receipt of any such request, the Commissioner or designee shall refer the request to the Advisory Panel.
2. The Commissioner or designee shall facilitate the Advisory Panel's review of the request and shall seek to obtain such additional information regarding the request as the Advisory Panel shall deem necessary.
3. Upon completing its review of the request, the Advisory Panel shall advise the Commissioner or designee regarding the matter and the Commissioner or designee shall thereupon issue an advisory opinion responding to the request and classifying the Intervention as appropriate.
4. The Commissioner or designee, and the Advisory panel, shall respond to each request as expeditiously as possible, and shall prioritize those requests that allege either that inappropriate treatment is resulting from an improper classification or that there is an urgent need for treatment that may be jeopardized if a prompt response is not received.

(4) Requirements for Behavior Modification.

(a) Scope. 115 CMR 5.14(4), establishes requirements for Interventions that are used, or that are proposed for use, for Behavior Modification purposes.

1. Interventions that limit an individual's freedom of movement and that are consented to, approved, and implemented for treatment purposes as part of a Behavior Modification plan for an individual in accordance with the requirements of 115 CMR 5.14(4), constitute reasonable limitations on freedom of movement. Such Interventions are not subject 115 CMR 5.11.
2. Procedures that are used, or that are proposed for use, for the purpose of protecting an individual or others from harm in an emergency and not for Behavior Modification purposes ~~do not constitute a treatment purpose as described in 115 CMR 5.14(4)(a)(1).~~ Such procedures are not subject to the provisions of 115 CMR 5.14 and may be used subject to 115 CMR 5.11.
3. The prescription and administration of psychotropic medication are not subject to 115 CMR 5.14.

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(b) General Requirements.

1. No Behavior Modification plan may provide for a program of treatment which denies the individual adequate sleep, a nutritionally sound diet, adequate bedding, adequate access to bathroom facilities, and adequate clothing.
2. No Interventions shall be approved in the absence of a determination, arrived at in accordance with all applicable requirements of 115 CMR 5.14, that the behaviors sought to be addressed may not be effectively treated by any less intrusive, less restrictive Intervention and that the predictable risks, as weighed against the benefits of the procedure, would not pose an unreasonable degree of intrusion, restriction of movement, physical harm or psychological harm.
3. General Prohibition on the Use of Level III Aversive Interventions. No program which is operated, funded or licensed by the department, shall employ the use of Level III Aversive Interventions to reduce or eliminate maladaptive behaviors, except as provided in 115 CMR 5.14(4)(b)4.
4. Level III Aversive Interventions are prohibited except as specifically provided in 115 CMR 5.14(4)(b)4. Individual-specific exceptions allowing the use of Level III Aversive Interventions to reduce or modify behavior may be granted only to individuals who, as of September 1, 2011, have an existing court-approved treatment plan which includes the use of Level III Aversive Interventions; provided further that any such exception may be granted each year thereafter if the exception is contained in the behavior treatment plan that has been approved by the court prior to September 1, 2011.
5. In the case of Level II and Level III Interventions, such determination shall be made and the Interventions shall be approved and consented to in accordance with the special requirements of 115 CMR 5.14(4)(d) and (e).
6. Only those Interventions which are, of all available Interventions, least restrictive of the individual's freedom of movement and most appropriate given the individual's needs, or least intrusive and most appropriate, may be employed.
7. Any procedure designed to decrease inappropriate behaviors such as Aversive Interventions, Deprivation Procedures and Time Out may be used only in conjunction with Positive Reinforcement Programs.
8. Level III Aversive Interventions that are allowed under 115 CMR 5.14(4)(b)4. may be used only to address extraordinarily difficult or dangerous behavioral problems that significantly interfere with appropriate behavior and or the learning of appropriate and useful skills and that have seriously harmed or are likely to seriously harm the individual or others.
9. No Intervention may be administered to any client in the absence of a written Behavior Modification plan.

In the case of Level II and Level III Interventions, the plan shall conform to the special requirements of 115 CMR 5.14(4)(c) and shall be subject to the special consent requirements of 115 CMR 5.14(4)(e).
10. Programs using Time Out shall conform such use to the following standards and restrictions:
 - a. The head of the facility or program or his/her designee shall approve the room or area as safe and fit for the purposes of Time Out.
 - b. Behavior Modification plans employing forms of Time Out that involve placing an individual alone in a room with an open or closed door shall comply with all safety, checking, and monitoring requirements set forth at 115 CMR 5.11(6)(e).
 - c. An individual may not be maintained in Time Out alone in a room the door of which is closed and locked (*i.e.*, secured by a key, bolt or door stop).
11. All Behavior Modification plans shall be developed in accordance with 115 CMR 5.14 and in accordance with the policies of the facility or program within which the plan is to be implemented, insofar as those policies do not conflict with 115 CMR 5.14.
12. In the event of a serious physical injury to or death of a person who is the subject of a Level II or Level III Intervention, whether or not such injury or death occurs during the implementation of the Behavior Modification program, the injury or death shall be reported immediately to the Commissioner or designee who may thereupon initiate an investigation pursuant to 115 CMR 9.00: *Investigations and Reporting Responsibilities.*

(c) Written Plan. All proposed uses of Level II and Level III Aversive Interventions for treatment purposes shall be set forth in a written plan which shall contain at least the following:

1. A clear specification of the behaviors which the treatment program seeks to decelerate or decrease, a specification of the methods by which the behaviors are to be measured (using measures such as frequency, severity, duration, etc.) and the available data concerning the current state of the behaviors with respect to these methods of measurement.
2. A clear specification of the behaviors which the treatment program seeks to have replace the behaviors targeted for deceleration, the methods by which these behaviors are to be measured, and available data concerning the current state of the behaviors with respect to these methods of measurement.
3. A description and classification by Level of each of the Intervention to be used; a rationale, based on a comprehensive functional analysis of the antecedents and consequences of the targeted behavior, for why each Intervention has been selected; the conditions under which each Intervention will be employed; the duration of each Intervention, per application; the conditions or criteria under which an application of each Intervention will be terminated; in measurable terms, the behavioral outcome expected from the use of each proposed Intervention; the criteria for measuring success of each Intervention and the Behavior Modification plan as a whole and for revising and terminating the plan; the risks of harm to the individual with each Intervention and the plan as a whole; the individual's prognosis if the treatment is not provided; feasible treatment alternatives; and, a statement indicating the nature of the less restrictive or less intrusive Interventions which have been employed and the clinical results thereof, or those which have been considered and the reasons they have not been tried.
4. The name of the treating clinician or clinicians who will oversee implementation of the plan.
5. A procedure for monitoring, evaluating and documenting the use of each Intervention, including a provision that the treating clinician(s) who will oversee implementation of the plan shall review a daily record of the frequency of target behaviors, frequency of Interventions, safety checks, reinforcement data, and other such documentation as is required under the plan. Such treating clinician(s) shall review the plan for effectiveness at least weekly and shall record his/her assessment of the plan's effectiveness in achieving the stated goals.

(d) Review and Approval. In addition to consent requirements stated in 115 CMR 5.14(4)(e) the following reviews and approvals are required prior to the implementation of any Behavior Modification plan involving the use of Level II or Level III Interventions:

1. All such plans shall be developed by those clinicians who provide services to the individual, and such other clinicians as they may designate (the treating clinician(s)).
2. All such plans shall be classified, reviewed and approved prior to implementation by a clinician designated by the head of the program. Such clinician shall have a demonstrated history of experience and training in applied behavior analysis and behavioral treatment. Such clinician may be the same clinician as the clinician who develops the plan pursuant to 115 CMR 5.14(4)(d)1.
3. Each such plan shall be reviewed by the program's human rights committee (*i.e.*, a committee established in accordance with the provisions for human rights committees set forth at 115 CMR 3.09: *Protection of Human Rights/Human Rights Committees*). The committee's review shall occur no later than the next meeting following the meeting at which the plan is first presented to the committee, provided that the committee shall further expedite such review on request of the program head or designee for cases where the program head or designee determines that there is an urgent need for treatment that may be jeopardized if prompt attention is not given to the proposed plan. Except in an emergency (*i.e.*, in circumstances where the treating clinician, subject to the approval of the program head, determines that the immediate application of the Interventions provided for by the proposed plan is necessary to prevent serious harm to the individual or to others), such review shall occur and the comments (if any) of the human rights committee shall be addressed by the treating clinician(s) prior to implementation of the plan.

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- a. The committee shall review a plan to determine if it conforms to the requirements for protection of human rights established by 115 CMR 5.14.
 - b. The committee's review of a plan may be based on such record reviews, interviews, inspections, and other activity as the Committee may in its discretion deem necessary and may include requests that the plan be resubmitted for such periodic review as the Committee may deem appropriate.
 - c. In the event that the human rights committee concludes that the plan or a part of the plan violates the requirements of 115 CMR 5.14 the plan or part thereof shall not be implemented unless:
 - i. the problem is resolved informally with the treating clinician(s), or
 - ii. the client or his or her representative or guardian or the treating clinician(s) initiate(s) an appeal under 115 CMR 6.30 through 6.34, and the plan or part thereof is determined pursuant to such appeal to conform to 115 CMR 5.15.
4. Each such plan shall be reviewed by a physician or by a qualified health care professional working under a physician's supervision who shall determine whether, given the individual's medical characteristics, the Intervention is medically contraindicated. No Intervention that is medically contraindicated shall be implemented.
5. Each such plan shall, in addition to other requirements set forth in 115 CMR 5.14, be reviewed by a Peer Review Committee appointed by the program head or designee. The Peer Review Committee shall conduct such review in a timely manner consistent with the individual's needs for treatment as represented by such plan, and shall further expedite its review on request of the program head or designee in cases where the program head or designee determines that there is an urgent need for treatment that may be jeopardized if prompt attention is not given to the proposed plan. Except in an emergency (*i.e.*, in circumstances where the treating clinician, subject to the approval of the program head, determines that the immediate application of the Interventions provided for by the plan is necessary to prevent serious harm to the individual or to others), such review shall occur and the comments (if any) of the peer Review Committee shall be addressed by the treating clinician(s) prior to implementation of the plan.
- a. For each such review, the Peer Review Committee shall be composed of three or more clinicians with combined expertise in the care and treatment of individuals with needs similar to those served by the facility or program and in behavior analysis and behavioral treatment, at least one of whom shall be a licensed psychologist.
 - b. For reviews of Level III Aversive Interventions, the Committee shall be specially constituted so as to exclude any clinician serving as a treating clinician within the program proposing to use the Intervention.
 - c. The Committee shall review a plan to determine if it conforms to the requirements for appropriate treatment established by 115 CMR 5.14.
 - d. The Committee's review of a plan may include such record reviews, interviews, inspections, and other activity as the Committee may in its discretion deem necessary and may include requests that the plan be resubmitted for such periodic review as the Committee may deem appropriate.
 - e. In the event that the Peer Review Committee concludes that the plan or a part of the plan violates the requirements for appropriate treatment established by 115 CMR 5.14, the plan or part thereof shall not be implemented unless:
 - i. the problem is resolved informally with the treating clinician(s), or
 - ii. the client or his or her representative or guardian or the treating clinician(s) initiate(s) an appeal under 115 CMR 6.30 through 6.34, and the plan or part thereof is determined pursuant to such appeal to conform to 115 CMR 5.14.
6. The head of any program using or proposing to use a Level III Aversive Intervention shall notify the Commissioner or his or her designee upon the filing of any guardianship petition, temporary or permanent, seeking authorization by substituted judgment for such Intervention. The Commissioner may upon receipt of such notice, provide for an independent clinical review by one or more clinicians designated by the Commissioner or designee of the proposed treatment and may advise the court having jurisdiction of the matter of said clinician's treatment recommendations. Said program shall cooperate fully with said clinicians and shall afford full access to each individual, his or her record and the staff working with the individual.

7. In lieu of having the human rights and/or peer review functions specified in 115 CMR 5.14 performed by committees appointed by the same program that is proposing to use Level II or ~~Level III Interventions~~, the director of such a program may request the Commissioner or designee to provide for the performance of such reviews by human rights committees and/or peer review committees established by the Commissioner or designee. The Commissioner or designee may provide for such reviews in response to such a request in the event that he or she determines that the program is unable to provide itself for such reviews or that the purposes of 115 CMR 5.14 will be served by the provision of such reviews by committees established by the Commissioner or designee.

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(e) Consent. In addition to consent requirements generally applicable to individual service plans, a Behavior Modification plan employing Level II or Level III Aversive Interventions may not be implemented unless it has been consented to in accordance with the following requirements:

1. Where the individual is 18 years of age or older, or is deemed a mature minor under the applicable law, and is able to provide informed consent to a plan of treatment, the plan may be implemented upon his/her acceptance of its provisions.

Before a plan involving the use of Level III procedures is implemented pursuant to such consent, the head of the program shall notify the Commissioner or his or her designee who shall be afforded an opportunity to evaluate the individual. In the event that the Commissioner or designee doubts the individual's ability to provide informed consent, a petition for the appointment of a temporary or permanent guardian shall be filed by the Commissioner or designee or by some other suitable person.

2. Where the individual is a minor and is not deemed a mature minor capable of giving informed consent:

a. that portion of the plan which does not involve the use of Level III Procedures may be implemented upon a parent's or legal guardian's informed consent to its provisions.

b. in the event that no parent or legal guardian exists or is available, then that portion of the plan which does not involve the use of Level III Procedures may be implemented upon its approval by the head of the program, provided that actions to initiate proceedings for the appointment of some suitable person as guardian or, where applicable, actions to provide for the availability of a temporarily unavailable parent or legal guardian are commenced by the head of the program concurrently with such approval.

c. that portion of the plan which involves the use of Level III Interventions may be implemented only upon authorization of a court of competent jurisdiction utilizing the substituted judgment criteria.

3. Where the client is an adult but is unable to provide informed consent to the implementation of the plan,

a. that portion of the plan which does not involve the use of Level III Interventions may be implemented when informed consent is provided by the individual's temporary or permanent guardian.

b. in the event that no permanent or temporary guardian has been appointed or is available, then that portion of the plan which does not involve the use of Level III Interventions may be implemented upon its approval by the head of the program, provided that actions to initiate proceedings for the appointment of some suitable person as guardian or, where applicable, actions to provide for the availability of a temporarily unavailable parent or legal guardian are commenced by the head of the program concurrently with such approval.

c. that portion of the plan which involves the use of Level III Aversive Interventions may be implemented only upon authorization of a court of competent jurisdiction utilizing the substituted judgment criteria.

(f) Special Certification Requirement for Programs Utilizing Level III Aversive Interventions. No Behavior Modification plans employing Level III Aversive Interventions may be implemented except in a program or a distinct part of a program that meets the standards established by 115 CMR 5.14(4) and that is therefore specially certified by the Department as having authority to administer such treatment. The following standards and procedures shall govern all such certifications:

1. Only those programs or facilities which meet the following standard shall be certified under 115 CMR 5.14(4): the program or facility must demonstrate that it has the capacity to safely implement such Behavior Modification plan in accordance with all applicable requirements of 115 CMR 5.14.
2. Any program seeking such certification shall submit a written application to the Commissioner or designee.
3. Such application shall include a comprehensive statement of the program's policies and procedures for the development and implementation of plans employing Level III Aversive Interventions, including a description of the program's actual use, or proposed use, of such procedures, and of the program's policies and practices regarding the training and supervision of all staff involved in the use of such procedures, and further including current resumes of all members of the Peer Review Committee required by 115 CMR 5.14(4)(d)5. and a description of the review procedures followed by such Committee.
4. Such application shall further include a certification by the program of its ability to comply 115 CMR 5.14: *Behavior Modification*.
5. The Commissioner or designee shall review such application upon its receipt and, after a determination that the written application is complete and satisfies all applicable requirements, shall provide for an inspection of the program by authorized Department representatives.
6. In the course of any inspection pursuant to 115 CMR 5.14(4)(f)5. or 115 CMR 5.14(4)(f)10., inspection staff shall have access to the records of the program's clients (including any written plans required by 115 CMR 5.14(4)(c) and data and information developed pursuant to such plan), the physical plant of the facility, the employees of the program, the professional credentials of such employees, and shall have the opportunity to observe fully the treatment employed by the program and to review with the program's staff the procedures for which certification was granted or is sought and the manner in which such procedures have been or are to be implemented.
7. After such review and inspection, the Commissioner or designee shall approve, approve with conditions, or disapprove the program's application and, if approved, shall certify the program subject to any applicable conditions based upon his or her determination of the program's compliance with all applicable requirements.

The Commissioner or designee may, as a condition of approval, require appointment of one or more persons approved by the Commissioner or designee to the program's peer review committee or human rights committee in the event that he or she determines that such appointment or appointments are necessary to ensure performance by such committees of their review responsibilities consistent with the requirements established by 115 CMR 5.14.
8. If disapproved, or if certification is revoked in accordance with 115 CMR 5.14(4)(f)10., programs not operated by the Department shall have the right of appeal established by the applicable provisions of M.G.L. c. 19 and M.G.L. c. 30A.
9. Any such certification of a program shall be effective for a maximum of two years and may be renewed thereafter upon the Commissioner or designee's approval of a renewal application pursuant to the standards and procedures set forth in 115 CMR 5.14(4)(f).
10. The performance of a provider certified for Level III interventions may be reviewed as part of the survey required by the Department's regulations on certification and licensing, 115 CMR 8.00: *Certification, Licensing and Enforcement*, and shall be further subject to such additional inspections as the Commissioner in his or her discretion deems appropriate. Such Level III certification may be revoked, and the Department may revoke, suspend, limit, refuse to issue or refuse to renew a provider's Level III certification or license pursuant to 115 CMR 8.33, upon a finding that the conditions for certification are no longer met, as well as for any of the grounds stated at 115 CMR 8.33.

11. A program shall be eligible for consideration for certification for use of Level III Interventions only if, prior to the effective date of 115 CMR 5.14, the program had been using one or more ~~Level III Interventions pursuant to a Behavior Modification plan~~ for one or more clients of the program. This restriction on eligibility shall continue in effect indefinitely and shall be modified only by amendment of 115 CMR 5.14. Such amendment shall only be proposed or adopted by the Commissioner in the event that he or she finds that there exists a compelling need for treatment with such Interventions that cannot be met within existing programs or through alternative programs.

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12. When necessary to prevent discontinuity in existing programming or to provide for an emergency, the Commissioner may in his or her discretion provide for the interim certification of a program, provided that the application and review process required for certification by 115 CMR 5.14 shall be initiated and completed as soon as possible thereafter.

(5) Relationship to ISP Process. Behavior Modification treatment plans are subject to the ISP planning requirements of 115 CMR 6.00: *Eligibility, Individual Support Planning and Appeals* to the following extent only:

(a) Behavior Modification treatment plans employing Level II and III Interventions are subject to the procedural requirements concerning the development and implementation of individual service plans as set forth in 115 CMR 6.23, the modification of such plans as set forth in 115 CMR 6.25 and the requirements concerning periodic review as set forth in 115 CMR 6.24. Furthermore, such plans are subject to ISP appeal as provided for in 115 CMR 6.30 through 6.34.

(b) Behavior Modification treatment plans employing Level I Interventions are subject to the requirements concerning periodic review as set forth at 115 CMR 6.24 and are subject to ISP appeal as provided for in 115 CMR 6.30 through 6.34.

5.15: Medication

(1) The use of medications by programs subject to 115 CMR 5.00 is prohibited except as provided in 115 CMR 5.15 or in 115 CMR 5.11 concerning chemical restraints.

(2) Medication shall not be used by programs subject to 115 CMR 5.00 as punishment, or in quantities that interfere with the individual's habilitation.

(3) Medication shall not be used by programs subject to 115 CMR 5.00 for the convenience of staff or as a substitute for programming.

(4) No medication shall be administered by programs subject to 115 CMR 5.00 for the purpose of controlling or modifying behavior, except:

(a) in accordance with the provisions of 115 CMR 5.11 regarding emergency chemical restraint if applicable; or

(b) in accordance with the recommendations of an individual service plan or support service plan containing at least the following information:

1. a description of the behavior to be controlled or modified;
2. appropriate data concerning the target behavior prior to intervention with the proposed drug therapy, phrased in objective terms, which shall constitute a basis from which the individual's clinical course is evaluated;