

Guardianship and Conservatorship in Iowa

Issues in Substitute Decision Making

Sometimes a person with a disability may have behaviors that are disturbing, disruptive, or even potentially harmful. What can be done?

Behavior Limit Interventions

Sometimes, a person with a disability also has behaviors that are disturbing, disruptive, or even potentially harmful. When that is the case, family, guardians, caregivers, and doctors may think about using behavior control interventions.

While these interventions are meant to stop the behavior in the short term, the long-term goal should be to help the person develop skills to control his or her own behavior. These interventions should always be the least restrictive and least intrusive to the ward (disabled person).

What are Behavior Control Interventions?

There are a variety of interventions which are used to control behavior. These include behavior management, physical restraints, medication, or a combination of these approaches.

What is Behavior Management?

Behavior management is a kind of behavior intervention. It is based on the theory that when behavior is followed by a positive and pleasurable experience, it will strengthen and increase. On the other hand, behavior followed by a negative or unpleasant experience will weaken and decrease. Behavior management is usually less restrictive and less intrusive than the use of medication to control behavior or the use of physical restraints.

What are the Keys to Successful Behavior Management?

The keys to successful behavior management are making sure:

- That the behavior management plan fits the needs of the person;
- That alternative, appropriate, or positive behavior skills are being developed as part of the behavior management plan, in addition to reducing the negative or undesired behavior;
- To understand what the person may be trying to communicate through the inappropriate behavior; and
- To discover what in the person's environment may be reinforcing the unwanted behavior, causing it to continue, and then working to change that part of the environment or situation.

When considering the use of any behavior management intervention, it is important to realize that some behaviors cannot be reduced or eliminated and may actually increase. This is most common in persons who have Alzheimer's Disease or other related dementia-type diseases. This also occurs in some people who develop permanent side effects from long-term administration of certain psychotropic medications. In these cases, the behavior management will focus more on helping the person avoid harm or danger to self and/or others, and less on reduction and elimination of the behavior.

When is Behavior Management Really Necessary?

The guardian should closely follow the use of any behavior management program to make sure that it meets the needs and is in the best interest of the ward. The guardian should also be aware that such techniques may be used more for the convenience of care staff than for the best interest of the ward.

Under federal regulations for nursing homes, informed consent from the guardian must be given before the facility can restrict or deprive the person of access to an activity or property/object, or before using physical or mechanical types of restraints. For example, physical restraints, such as a "posey" for use in a wheelchair, would be considered a mechanical restraint.

A doctor may prescribe the use of restraints for medical purposes. But there may be occasions when care staff use this type of restraint to control a person because it is easier than engaging the person in some other appropriate or needed activity.

This may happen more frequently in care facilities or by in-home care providers where care staff are untrained and underpaid, or where there are not enough staff to attend to all the people who need assistance. In any situation, the guardian must be informed about the use of the restraint and given information about how and why it is being used before giving consent for its use.

What Are the Ward's Rights When a Behavior Management Plan is Used?

All licensed service providers operate under specific regulations which allow them to perform certain functions, but which also protect the rights of the person receiving the service. The guardian should become familiar with the rights related to any service the ward may receive. Also, the guardian should ask the service provider to give him/her a written copy of the rights of the person receiving their services and ask them to explain any portion which the guardian does not understand.]

What if the Ward's Behavior is Very Challenging?

When a person's behavior may cause immediate harm to him or herself or to others, some form of physical restraint may be used to control the behavior. This is called "aversive and deprivation" intervention. It may be used when general behavior management techniques are not enough to control dangerous or challenging behavior. Physical and mechanical restraint procedures fall under this category.

Aversive and deprivation procedures combined with positive approaches have been effective in reducing, and in some cases eliminating, challenging behavior. However, most often they serve primarily to protect the person, property, or others from harm. The use of aversive or deprivation procedures is not generally recommended unless other less-restrictive and positive methods have been tried first. They must be used under the supervision of a person trained in behavior management and behavior analysis. All parts of the behavior reduction plan must be specifically related to the person's own needs and closely monitored.

What, if Any, Medication is Recommended to Control Behavior?

Any guardian who makes decisions for an individual is properly concerned with choices regarding behavior-altering medications. These medications

are called “psychotropics.” A subclass of these medications is called “neuroleptic” medications. Psychotropic medication will not necessarily solve or eliminate all problems an individual is facing. Yet it may be unfair to deprive an individual of medication which can assist in making the person’s life better. It is most important to know why the medication is being used.

What Happens After Consenting to the Use of Medication?

The guardian needs to continuously monitor the use of any medication. Consenting to the use of medication is only the beginning of an ongoing process - a process which includes evaluating the effectiveness of the treatment to ensure that it is actually benefiting the person. The guardian who has been given the power to consent to medical treatment has the authority to refuse or authorize the use of medications, including psychotropics. The guardian should include all medication strategies and results in the annual report which he or she submits to the court.

Behavior Management Consent Checklist

Before consenting to the use of any behavior management intervention, including aversive or deprivation procedures, make sure that there is careful planning and the least restrictive or least aversive interventions are tried first. To assist the guardian in making these decisions, a checklist has been developed. If the guardian answers “no” to many of these questions, he or she may want to reconsider the use of the behavior management intervention plan or aversive or deprivation procedures.

- Does staff have reasonable knowledge of behavior management techniques?
- If aversive and deprivation procedures are being planned, are they truly being used as a “last resort?” Has there been a number of well-

designed, positive behavior management techniques that have been found unsuccessful?

- Has staff been instructed on how to develop non-aversive, positive programs for challenging behaviors?
- Have the possible side effects of medication, behavioral techniques, deprivation, and aversive intervention been fully discussed?
- Will the caregiver be able to implement these methods in the ward’s home? What will happen if the caregiver cannot or does not want to implement the programs?
- Can the behavior management procedure be used in all the settings in which the ward exhibits the behavior?
- Is the environment in which the ward resides or receives services stimulating and supportive?
- Is the guardian sure that the disruptive behaviors are not the result of frustration? Communication limitations? Lack of alternative means to express anger? Refusal? Boredom? The result of untreated illness or pain?
- Is the facility or program including the guardian in its planning for behavior management procedures?
- Has staff been instructed on how to perform the procedure?
- Does staff have resources available for consultation, such as a social worker, a psychologist, or psychiatrist?
- Does the guardian feel that the ward’s dignity is being maintained throughout both the planning process and the administration of the behavior management procedures?
- Has the ward recently experienced life events which would explain the behavior?

Behavior Medication Consent Checklist

If the guardian is asked to consent to the use of medication to treat the ward's behavior, the guardian must make sure that he or she has appropriate information in order to give informed consent. These questions may help in determining whether a guardian has sufficient information to make this decision.

- What are the specific behaviors or statements of the individual that the medication is to change? If there is a psychiatric diagnosis, what are the specific behaviors that the medication is to change?
- What information or data is recorded and collected and used to monitor the behavior in order to determine if the psychotropic medication is having its desired effect? Is the data "opinion" or actually observed behavior? Is the data shared with the guardian?
- What are the specifics of the medication - the dose, the possible dose range, the route of administration, the expected duration? How long is it to be used before deciding whether it is working or not?
- What are the side effects and risks of the medication? How are they treated? Is the person at higher risk for some of the side effects?
- How will the medication be monitored? What is the monitoring system? What specific assessment tools are used to check for side effects? How often are they used? How will the guardian be informed if side effects are observed?
- What other behavior management techniques are being used along with the use of the psychotropic medication? What kind of educational, environmental, or skill-building efforts are also in place? Have these been considered and properly addressed?

- Is the lowest effective dose of the medication being used? If attempts to lower the dosage are made, are these done very gradually in order to prevent withdrawal reactions?
- Are medication changes occurring without the guardian being informed? Are too many "emergencies" occurring and medication being started without the guardian's consent?
- The most important question: How is the ward doing when the guardian sees the ward and observes daily activities? Is the ward participating in activities to the extent of their ability? Is the behavior still interfering with life despite the medication? Are side effects present and interfering with life activities?

These materials are a general summary of the law. They are not meant to completely explain all that you should know about guardianship and conservatorship. You should see a lawyer to get complete, correct and up-to-date legal advice. Iowa's law on guardianship and conservatorship is found in Iowa's Probate Code starting at section 633.551.



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