

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES

GUIDANCE DOCUMENT

“This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Nebraska Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.”

Pursuant to
Neb. Rev. Stat. § 84-901.03

Table of Contents

Introduction.....	1
HLRC Meeting Requirements	1
Required Information Provided to HLRC Members	1
Submitting Required Information in Therap.....	2
HLRC Review Type Definitions	2
Case Note Questionnaire	3
Reviews	9
Review Process	9
Referral Process	9
Appendix A: Definitions.....	11

Introduction

The instructions in this guide are for agency providers of Medicaid Home and Community-Based Services (HCBS) Developmental Disabilities (DD) Waiver services. This guide outlines current requirements for agency providers to submit their agency Human and Legal Rights Committee (HLRC) meeting information to the Department of Health and Human Services (DHHS) Division of Developmental Disabilities (DDD).

All Developmental Disability (DD) Waiver agency providers must establish an HLRC (404 NAC 4-002.05) to protect and promote participants' rights. HLRCs help ensure that rights are not restricted without good reason and all rights restrictions receive due process.

HLRC Meeting Requirements

At a minimum, HLRCs must meet twice a year. The HLRC reviews situations where emergency safety interventions (ESI) were required, any supports and practices that restrict a participant's rights, incidents where a violation of a participant's rights may have occurred, and all reported allegations of abuse, neglect, or exploitation (404 NAC 4-002.05).

Required Information Provided to HLRC Members

The following information must be provided to HLRC members so they can review and make informed decisions about rights restrictions:

- A description of the rights restriction, including when and how it will be used;
- The reason for the rights restriction, including the identified risk being addressed and how the rights restriction addresses the risk;
- A summary of what has been tried before to address the identified risk;
- A summary of the benefits and potential negative effects of the restrictive measure;
- Habilitation programs and other supports to reduce the need for rights restriction;
- Criteria set by the Individual Support Plan (ISP) team for reducing the rights restriction;

- ISP team approval for the rights restriction before use and semi-annually thereafter, as documented in the ISP;
- Written informed consent from the participant for the rights restriction; and
- At least six months of any relevant supporting documentation including, but not limited to:
 - Incident reports, daily logs, and other information showing the need for the restriction;
 - Habilitation program data, when available;
 - Physician contact forms for a restriction related to psychotropic medication or medical needs; and
 - The safety plan, which includes the rights restriction.

In addition to rights restrictions, the provider's HLRC must review during their meetings: all Emergency Safety Interventions (ESI); incidents where a violation of a participant's rights may have occurred; and all reported allegations of abuse, neglect, or exploitation.

When a provider uses a sub-committee for reviews, documentation of the sub-committee activities must be provided to the HLRC and documented in the HLRC meeting minutes per 404 NAC 4-002.05(D).

Submitting Required Information in Therap

Agency provider HLRC information must be uploaded in the Therap case note questionnaire titled, "Human and Legal Rights Committee."

Providers may attach the forms and documents they currently use to provide the required information to their HLRCs. When a provider is already storing this information in Therap, they may indicate where the information is in Therap.

All agencies must complete the case note questionnaire within 10 business days of their last HLRC committee meeting.

HLRC Review Type Definitions

The following types of reviews are completed by agency HLRCs or the subcommittees that report findings to the HLRC.


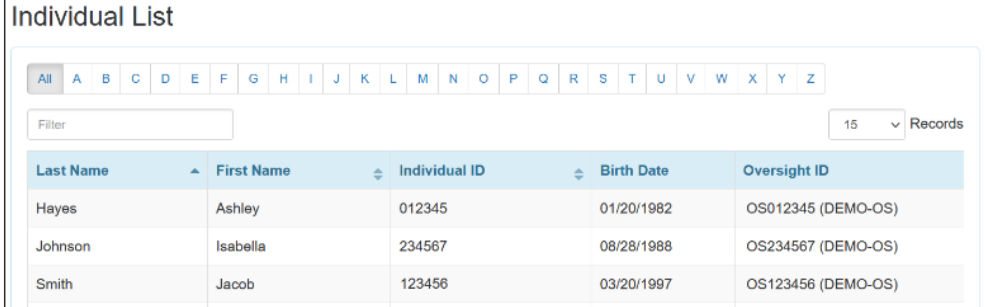
- **Abuse/Neglect/Exploitation (ANE) Investigation:** Review of an ANE allegation for a participant. This includes the review of peer-to-peer allegations and incidents.
- **Annual:** Annual review of all restrictions in place for a participant.
- **ESI:** Review of any ESI used for a participant but not listed as a rights restriction in their ISP. All ESIs or restraints must be reviewed by the agency HLRC.
- **Increased Restriction:** A review of a restriction when the restrictive measures have been increased. Anytime an increase occurs, the restriction must be reviewed again by the HLRC.
- **Intake Into Services:** When a participant is new to a provider's services their restrictions must be reviewed. This pertains to when participants are entering DD Waiver services and starting services with a provider or transitioning from services with another provider.
- **Interim:** A review of restrictions given interim approval between scheduled HLRC meetings. A case note must be entered at the time of approval. When the HLRC meeting review occurs longer than 10 business days after the initial approval, a separate case note must be entered for the HLRC review of the interim restriction.
- **New Restriction:** Any restrictions added to a participant's ISP must be reviewed by the HLRC during the next scheduled meeting.


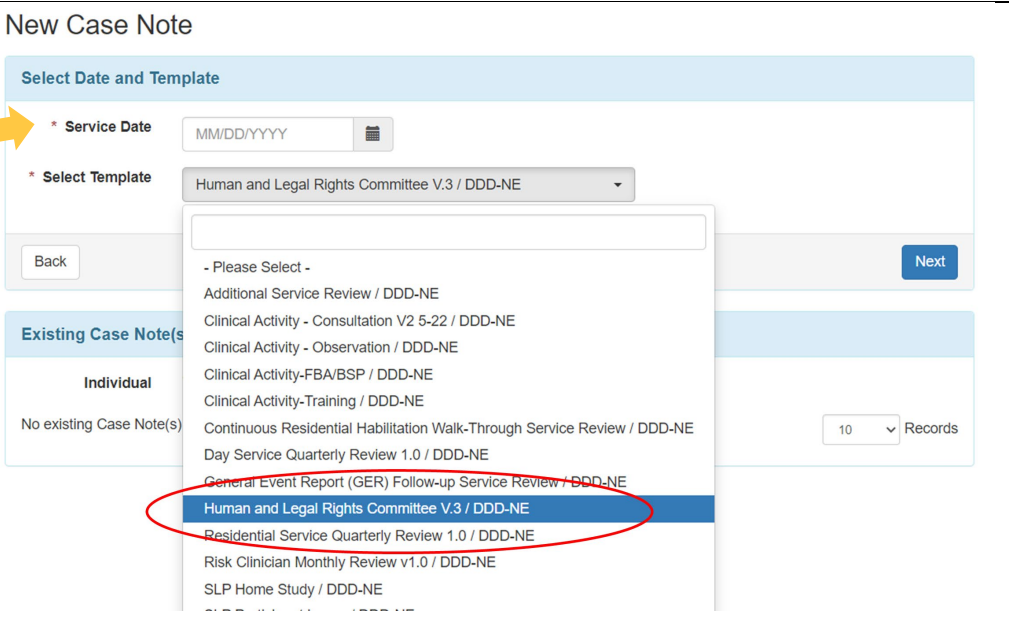
- **Rights Violation:** A review of an incident in which a violation of a participant's rights may have occurred.
- **Semi-Annual for Medications:** All restrictive medications must be reviewed semi-annually.
 - A medication is considered restrictive when it is a psychotropic medication that alters brain function and results in a change in the person's perception, mood, consciousness, or behavior.
 - When documentation from the prescribing physician is not available for ISP team review, or available documentation does not meet the required criteria, the psychotropic medication is a rights restriction (DD Policy Manual Section 3.7).
- **Other Review Type:** Other is only used when providers choose to review all restrictions more frequently than DDD policy requires or when there are no restrictions for an agency to review but they must hold an HLRC meeting per DDD policy.

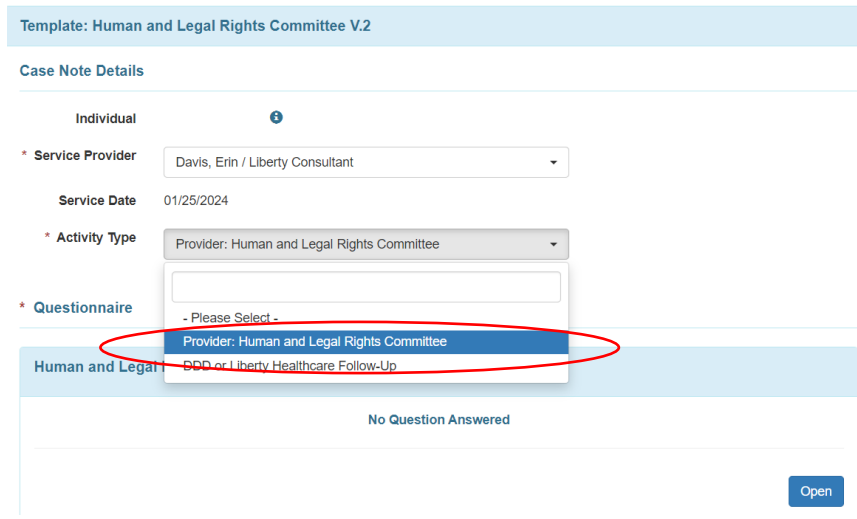

Case Note Questionnaire

The following are step-by-step instructions on entering and completing the case note questionnaire.

Creating a Case Note

<p>Option 1 for Starting a Case Note:</p> <p>Select New under the "Case Note" section.</p>	
<p>Select the participant from the "Individual List."</p>	

<p>Option 2 for Starting a Case Note:</p> <p>On the Individual Home Page, under “Modules” on the left side, select New under the “Case Note” section.</p>	
<p>The Service Date will be the date the provider enters the case note questionnaire.</p> <p>Select the “Human and Legal Rights Committee” template.</p>	

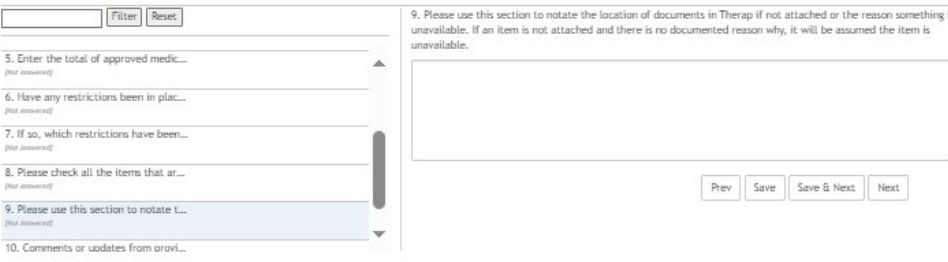

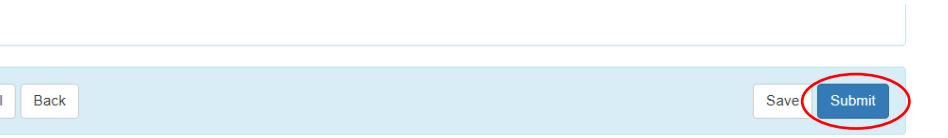
<p>Select the Activity Type: “Provider: Human and Legal Rights Committee.”</p>	 <p>Template: Human and Legal Rights Committee V.2</p> <p>Case Note Details</p> <p>Individual ⓘ</p> <p>* Service Provider Davis, Erin / Liberty Consultant</p> <p>Service Date 01/25/2024</p> <p>* Activity Type Provider: Human and Legal Rights Committee</p> <p>* Questionnaire - Please Select -</p> <p>Provider: Human and Legal Rights Committee</p> <p>BDD or Liberty Healthcare Follow-Up</p> <p>Human and Legal Rights Committee</p> <p>No Question Answered</p> <p>Open</p>
<p>To open the questionnaire, click the blue Open button in the lower right corner.</p>	 <p>* Service Provider Davis, Erin / Liberty Consultant</p> <p>Service Date 02/06/2024</p> <p>* Activity Type Provider: Human and Legal Rights Committee</p> <p>* Questionnaire</p> <p>Human and Legal Rights Committee V.3</p> <p>No Question Answered</p> <p>Open</p>

Human and Legal Rights Questionnaire Template

<p>The questionnaire pop-up will appear with 10 fields to answer.</p> <p>Questions 1 and 2 must be answered before the questionnaire can be saved and the case note submitted.</p> <p>These questions have a red asterisk * as a reminder that they are required.</p>	<p>Template: Human and Legal Rights Committee V.2</p> <p>Case Note Details</p> <p>Individual ⓘ</p> <p>* Service Provider: Davis, Erin / Liberty Consultant</p> <p>Service Date: 01/25/2024</p> <p>* Activity Type: Provider: Human and Legal Rights Committee</p> <p>* Questionnaire: <div> <div>- Please Select -</div> <div>Provider: Human and Legal Rights Committee</div> <div>DDD or Liberty Healthcare Follow-Up</div> </div> </p> <p>Human and Legal Rights Committee</p> <p>No Question Answered</p> <p>Open</p>
<p>1. Date Reviewed by the HLRC</p> <p>Enter the date the committee reviewed the documents and rights restrictions.</p>	<p>Filter Reset</p> <p>1. Date Reviewed by the Rights Review Committee?*</p> <p>[Answer Required]</p> <p>2. Type of review completed:</p> <p>Save Save & Next Next</p>
<p>2. Type of Review</p> <p>Select the type of review that was completed for the participant.</p> <p>For definitions of review types, see HLRC Review Types earlier in this guide.</p>	<p>Filter Reset</p> <p>1. Date Reviewed by the Rights Review Committee?*</p> <p>[Answer Required]</p> <p>2. Type of Review Completed:*</p> <p>[Answer Required]</p> <p>3. Does this person have any court-ordered... [Not Answered]</p> <p>4. Enter the total of approved non-medical... [Not Answered]</p> <p>5. Enter the total of approved medical... [Not Answered]</p> <p>6. Have any restrictions been in place...</p> <p> <input type="checkbox"/> Abuse/Neglect/Exploitation (ANE) Investigation <input type="checkbox"/> Annual <input type="checkbox"/> Emergency Safety Intervention (ESI) Review <input type="checkbox"/> Increased Restriction (Current restriction in place with increased restrictive measures.) <input type="checkbox"/> Intake Into Services (transitioning from another provider or starting DD Waiver services) <input type="checkbox"/> Interim <input type="checkbox"/> Medications/Semi-Annual <input type="checkbox"/> New Restriction (Brand new restriction added for the person.) <input type="checkbox"/> Rights Violations </p>

<p>3. Court-Ordered Restrictions</p> <p>Select Yes or No. This only pertains to restrictive items ordered by a judge. It does not pertain to guardianship, payees, conservatorships, etc.</p> <p><i>Example: A judge orders a person to not have access to specific establishments.</i></p>	<p>3. Does this person have any court-ordered restrictions?</p> <p><input type="radio"/> Yes</p> <p><input type="radio"/> No</p>
<p>4. Total of Approved Non-Medication Rights Restrictions</p> <p>Enter the total of rights restrictions the ISP team has approved and are documented in the ISP. Do not include psychotropic rights restrictions in this total.</p> <p>When this does not apply, enter 0.</p>	<div> <input type="text"/> <input type="button" value="Filter"/> <input type="button" value="Reset"/> </div> <div> <p>1. Date Reviewing by the Rights Revi... <small>[Answer Required]</small></p> <p>2. Type of Review Completed: <small>[Answer Required]</small></p> <p>3. Does this person have any court-or... <small>[Not Answered]</small></p> <p>4. Enter the total of approved non-m... <small>[Not Answered]</small></p> <p>5. Enter the total of approved medic... <small>[Not Answered]</small></p> </div> <div> <p>4. Enter the total of approved non-medication rights restrictions for the participant</p> <p><small>Hints: If this does not apply enter zero (0)</small></p> <input type="text"/> <div> <input type="button" value="Prev"/> <input type="button" value="Save"/> <input type="button" value="Save & Next"/> <input type="button" value="Next"/> </div> </div>
<p>5. Number of Approved Medication Rights Restrictions</p> <p>Enter the total of medication rights restrictions that are approved and documented in the ISP. Each medication counts as a separate restriction.</p> <p><i>Example: When a participant has three psychotropic medications that are rights restrictions, enter "3" in this field.</i></p> <p>When this does not apply to the review, enter 0.</p> <p>When a participant is prescribed psychotropic medications, but they are not</p>	<div> <input type="text"/> <input type="button" value="Filter"/> <input type="button" value="Reset"/> </div> <div> <p>1. Date Reviewing by the Rights Revi... <small>[Answer Required]</small></p> <p>2. Type of Review Completed: <small>[Answer Required]</small></p> <p>3. Does this person have any court-or... <small>[Not Answered]</small></p> <p>4. Enter the total of approved non-m... <small>[Not Answered]</small></p> <p>5. Enter the total of approved medic... <small>[Not Answered]</small></p> <p>6. Have any restrictions been imposed...</p> </div> <div> <p>5. Enter the total of approved medication rights restrictions for the participant:</p> <p><small>Hints: This only pertains to medication restrictions that are approved i</small></p> <input type="text"/> <div> <input type="button" value="Prev"/> <input type="button" value="Save"/> <input type="button" value="Save & Next"/> <input type="button" value="Next"/> </div> </div>

<p>considered rights restrictions per DDD policy and regulations, do not include these in the total.</p>	
<p>6. Restrictions in Place for Five Years or Longer</p> <p>This only applies to restrictions from the recent committee review. <i>This is used for possible referrals to the HLRAC.</i></p> <p>N/A is used when the review type is for ANE allegations, possible rights violations, ESI or restraint reviews, or reviews of new restrictions.</p> <p>If unknown, work with the Service Coordinator to determine length. If unable to determine, answer No.</p>	<div> <input type="text"/> <input type="button" value="Filter"/> <input type="button" value="Reset"/> </div> <div> <div>3. Does this person have any court-or... <small>[Not Answered]</small></div> <div>4. Enter the total of approved non-m... <small>[Not Answered]</small></div> <div>5. Enter the total of approved medic... <small>[Not Answered]</small></div> <div>6. Have any restrictions been in plac... <small>[Not Answered]</small></div> <div>7. If so, which restrictions have been... <small>[Not Answered]</small></div> </div> <div> 6. Have any restrictions been in place five (5) years or longer? <input type="radio"/> Yes <input type="radio"/> No </div>
<p>7. Which Restrictions are in Place for Five Years or Longer</p> <p>List restrictions in place longer than five years and part of the recent committee review.</p>	<div> <input type="text"/> <input type="button" value="Filter"/> <input type="button" value="Reset"/> </div> <div> <div>3. Does this person have any court-or... <small>[Not Answered]</small></div> <div>4. Enter the total of approved non-m... <small>[Not Answered]</small></div> <div>5. Enter the total of approved medic... <small>[Not Answered]</small></div> <div>6. Have any restrictions been in plac... <small>[Not Answered]</small></div> <div>7. If so, which restrictions have been... <small>[Not Answered]</small></div> </div> <div> 7. If so, which restrictions have been in place five years or longer? <div></div> <div> <input type="button" value="Prev"/> <input type="button" value="Save"/> <input type="button" value="Save & Next"/> <input type="button" value="Next"/> </div> </div>
<p>8. Information Provided to the HLRC For Review</p> <p>Required items are checked and either attached to the main case note or Box 9 can be utilized to describe where to find the information in Therap.</p> <p>All required information must be either attached, indicated where it is in Therap, or documented on how the information is provided to the committee for review.</p>	<div> <input type="text"/> <input type="button" value="Filter"/> <input type="button" value="Reset"/> </div> <div> <div>5. Enter the total of approved medic... <small>[Not Answered]</small></div> <div>6. Have any restrictions been in plac... <small>[Not Answered]</small></div> <div>7. If so, which restrictions have been... <small>[Not Answered]</small></div> <div>8. Please check all the items that ar... <small>[Not Answered]</small></div> <div>9. Please use this section to notate L... <small>[Not Answered]</small></div> <div>10. Comments or updates from provi...</div> </div> <div> 8. Please check all the items that are attached to this case note and attach to the case note or indicate in box 7 where the information is located in Therap if not attached. <small>Notes: Per requirements of the DDD Policy Manual in Section 3.4</small> <input checked="" type="checkbox"/> The required information provided to the rights review committee for each rights restriction reviewed: *Description *Reason *What was tried before. *Benefits vs. potential negative effects. *Habituation program and other supports to reduce the need for the restriction. *Reduction criteria. *ISP team approval. *Written informed consent from the participant. *At least 6 months of supporting documentation. <input type="checkbox"/> Documentation showing the committee, or a subcommittee reviewed all use of restraints or emergency safety interventions (ESIs). (Per requirements of the DDD Policy Manual in Chapter 7.2, section K) <input type="checkbox"/> Documentation showing the committee, or a subcommittee reviewed all incidents in which a violation of participant's rights may have occurred. (Per requirements of the DDD Policy Manual in Chapter 7.2, section K) <input type="checkbox"/> All reported allegations of abuse, neglect, or exploitation. (Per requirements of the DDD Policy Manual in Chapter 7.2, section K) <input type="checkbox"/> Discussion notes, voting records, etc. </div>

<p>9. Comment Box</p> <p>Used to indicate where items are in Therap or the reason something is unavailable.</p> <p>Document requests will not be completed for missing items. It will be assumed they are not available.</p>	
<p>10. Comments or Updates</p> <p>This additional box can be used to share other pertinent information or updates.</p> <p><i>Example: A restriction was approved on an interim basis and since the meeting, the restriction is no longer needed.</i></p>	
<p>Final Step: Case Note Completion</p> <p>After all information is entered, click the blue Submit button to complete the case note submission.</p>	

Reviews

Review Process

The Liberty Healthcare Human and Legal Rights (HLR) Coordinator completes reviews of case note questionnaires and submitted documentation to ensure all requirements are met per DDD policy, state laws, and regulations.

Referral Process

When there is a concern with compliance with policy and regulations or case notes submitted with missing information, the case is referred to DDD Quality for further review.

Liberty Healthcare may refer cases after their review to the Human and Legal Rights Advisory Committee (HLRAC). Cases may be referred to the HLRAC when:

- Non-medication restrictions in place for 5 years or longer with little to no change;
- There are five or more restrictions in place;
- The reduction plan requires more than 6 months for measurable criteria and/or zero target behavior occurrence;
- Documentation of previously tried methods before implementing the restriction has 3 or fewer alternative methods listed; or

- The supports in place are not teaching the skills to reduce the restriction.

ISP teams can make referrals to the HLRC for review and recommendations on how to best support a participant and reduce the use of restrictions over time. These are submitted via Therap SComm to the mailbox "HLRCReferrals."

Appendix A: Definitions

Behavior Support Plan: A type of habilitation program based on a behavioral assessment, which teaches an appropriate replacement behavior and decreases problem behavior.

Emergency Safety Intervention (ESI): Use of physical restraint or separation as an immediate response to an emergency safety situation.

Habilitation Program: A structured method for teaching skills that have goals and data collection.

Individual Support Plan (ISP): A plan of services, supports, activities, and resources based on the participant's personal goals and preferences, and assessments of strengths and needs.

Individual Support Planning (ISP) Team: The people who support a participant to develop and carry out the ISP. Members include the participant, their guardian, Service Coordinator, developmental disabilities providers, and others chosen by the participant.

Nebraska Administrative Code (NAC): Nebraska state regulations.

Participant: The person receiving Medicaid HCBS DD Waiver services and any person legally authorized to act on behalf of the participant.

Prohibited Practice: An intervention that is prohibited by the Division of Developmental Disabilities because the intervention excessively restricts the rights of participants or increases the risk of negative outcomes. Prohibited practices listed in the DD Policy Manual:

- **Mechanical Restraint** - Any device, material, object, or equipment that restricts freedom of movement or normal access to the body, except:
 1. The use of acceptable and age-appropriate child safety products, such as a car seat or booster seat.
 2. Use of car safety systems, such as seatbelts or wheelchair tie-down straps.
 3. Equipment ordered by a physician or health care provider for the participant's safety, such as a lap belt on a wheelchair.
- **Physical restraint, except when used as an emergency safety intervention** – A physical hold that restricts, or is meant to restrict, a participant's voluntary movement.
- **Chemical restraint** – A drug used for discipline or convenience and is not required to treat any medical symptoms.
- **Seclusion** – Confining a participant alone in an area and physically preventing them from leaving or having contact with other people.
- **Aversive stimuli** – A procedure to change unwanted behavior that is painful, frightening, or potentially harmful to the participant's health and safety.
- **Corporal punishment** – Causing pain as a consequence for a behavior.
- **Verbal abuse** – Use of oral, written, or gestured language that intentionally uses offensive terms toward a participant.
- **Physical abuse** – Act of violence or physical force that causes bodily harm.
- **Emotional abuse** – Humiliation, harassment, threats, or intimidation causing distress.
- **Denial of basic needs** – Withholding access to food or water, clothing, shelter, and treatment for physical needs.
- **Discipline** – Use of punishment to correct undesired behavior.

Rights Restriction: A support or practice limiting a participant's rights.

Safety Plan: A guide for the people providing direct support, which includes:

1. A summary of all identified risks, triggers, and warning signs.
2. A detailed description of all the supports, strategies, and equipment used to address the identified risks.
3. Specific instructions for when and how to use all the supports, strategies, and equipment being used.