

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2005 JUL 29 P 4: 02

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Department of Health and Human Resources TITLE NUMBER: 78

CITE AUTHORITY: 49-2B and 49-5-1

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Minimum Licensing Requirements for Group  
Residential Facilities in West Virginia

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Martha Yeager Walker  
Authorized Signature

**SCANNED**

### **Brief Summary of Rule**

**This allows the amount of time allocated to staff supervision to be determined by a time study. Allocation of this time may generate increased federal reimbursement.**

## Statement of Circumstances

The West Virginia Department of Health and Human Resources faces a deficit as high as \$150 million. Enacting this rule allows DHHR to increase federal reimbursement to DHHR's programs.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Minimum licensing requirements for Group Residential...

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Department of Health and Human Resources

Address: 1900 Kanawha Boulevard, East  
Charleston, WV 25305

Phone Number: 304-558-7899 Email: johlaw@wvdhhr.org

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

Approval of this rule will allow the West Virginia Department of Health and Human Resources to generate approximately \$1-\$1.5 million in federal reimbursement.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2006 Increase/Decrease (use "-")	2007 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Equipment	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Minimum licensing requirements for Group Residential...

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

Without approval of this emergency rule, DHHR misses the opportunity for an approximately \$1-\$1.5 million in federal reimbursement. While the costs will be small or minimal, failure to approve the rule prevents a potential capture of federal funding.

### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Enactment of this rule will allow increased reimbursement from Title XIX of the Social Security Act.

Date: ~~June 28, 2005~~ July 29, 2005 *My Walker*

Signature of Agency Head or Authorized Representative

*Martha Yeager Walker*

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 29, 2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Health and Human Resources,  
Bureau for Children and Families  
Diamond Building—Room 730  
350 Capitol Street  
Charleston, WV 25301

LEGISLATIVE RULE TITLE: Minimum Licensing Requirements for Group Residential  
Facilities in West Virginia

1. Authorizing statute(s) citation 49-2B and 49-5-1

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 29, 2005

b. What other notice, including advertising, did you give of the hearing?  
None

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 29, 2005 @ nnoon.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached \_\_\_\_\_ No comments received       x

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 29, 2005

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- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

John D. Law, Assistant Secretary, West Virginia Department of Health and Human Resource, Building 3, Room 206, Charleston, WV 25305. e-mail jonlaw@wvdhhr.org; phone, 558..7899; fax, 558-7075.

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- g. **IF DIFFERENT FROM ITEM 'f',** please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Tara Buckner, CPA, Administration, Internal Control, West Virginia Department of Health and Human Resources, Building 3, Room 206, Charleston, WV 25305. e-mail--tbuckner@wvdhhr.org; phone, 558.9138; fax, 558-1003.

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

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b. Date of hearing or comment period:

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

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d. Attach findings and determinations and reasons:

Attached 

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*Martha Yeager Walker*

*7.29.05*

TITLE 78  
LEGISLATIVE RULE  
DEPARTMENT OF HUMAN SERVICES

SERIES 3  
MINIMUM LICENSING REQUIREMENTS FOR GROUP  
RESIDENTIAL FACILITIES IN WEST VIRGINIA

FILED  
2005 JUL 29 P 4:02  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§78-3-1. General.**

1.1. Scope. -- These regulations establish the rules and regulations of the West Virginia Department of Human Services governing the requirements for the operation of Group Residential Facilities.

1.2. Authority. -- W. Va. Code '49-2B and 49-5-1.

1.3. Filing Date. --

1.4. Effective Date. --

**§78-3-2. General Commentary.**

**2.1. Purpose.**

a. These standards are the basis for the licensing and approval of group residential facilities for children. Licenses or approval certificates are issued if the standards and applicable rules and regulations are met. The purpose is to regulate the provision of child care so as to assure care, protection and supervision, necessary to health, safety and welfare of children.

b. The core regulations (Section 4.2 through 99.6) apply to all residential child-caring facilities both public and private.

c. The specialized modules (Section 101 through 136) apply only to child-caring facilities both public and private.

**2.2. Relocation, renovation, enlarging, building of a group residential facility.**

a. No person shall construct a building or structure to be used as a child care facility, or extend, alter or modify any structure used as a child care facility without first making written application to the State's Department of Department of Health and the State Fire Marshal's Office.

b. Construction, extension, alteration or modifications shall not commence until a letter of review or inspection report has been obtained for such purpose from these agencies. Plans shall also be submitted to the State Department of Human Services.

c. Facilities moving to a new location shall be evaluated by the State Department of Health, the State Fire Marshal and the State Department of Human Services to assure continued compliance with licensing requirements, and such facilities will not be acceptable until evaluated and approved. Thirty (30) days notice shall be given the Department of Human Services prior to relocation and a new application shall be submitted for the operation of a group residential facility planned in the new location.

**2.3. Development of Standards of Child Care.**

a. The state department shall be responsible for the development of desirable standards for the care of children. To this end, it shall cooperate with, advise and assist all child welfare agencies, including state institutions, which care for neglected, delinquent or mentally or physically handicapped children, and shall supervise all such agencies. The department in cooperation with the state department of health and with child welfare agencies, shall formulate and make available standards of child care services for children, to which all child welfare agencies must conform.

#### 2.4. Definitions.

a. "Child Welfare Agency" means any agency or facility maintained by the state or county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities, including without limitation, private homes, or any facility that provides care for unmarried mothers and their children.

b. "Group Home" means any facility, public or private, which is used to provide residential care for ten (10) or fewer children.

c. "Foster Family Group Home" means a private residence which is used for the care on a residential basis of six (6), seven (7) or eight (8) children who are unrelated by blood, marriage or adoption to any adult member of the household.

#### 2.5. Approval of Incorporation.

a. Before issuing a charter for the incorporation of any organization having as its purpose the receipt of children for care or for placement in family homes, the secretary of state shall provide a copy of the petition, together with any other information in his possession pertaining to the proposed corporation, to the state department and no charter for any such corporation shall be issued unless the state department shall first certify to the secretary of state that it has investigated the need for the services proposed and the merits of the proposed charitable corporation and recommends the issuance thereof; applications for amendments of any existing charter shall be granted only upon similar approval.

b. A child welfare agency shall not be incorporated in this State unless the articles of incorporation have first been examined and approved by the state department. Proposed amendments to such articles of incorporation shall likewise be subject to the examination and approval of the state department.

#### 2.6. License and Approval Requirements.

a. Any person, corporation or child welfare agency other than a state agency, which operates a residential child care facility, a child placing agency or a day care center shall have a license.

b. Any residential child care facility, day care center or any child placing agency operated by the state shall obtain approval of its operations from the commissioner. Such facilities and placing agencies shall maintain the same standards of care applicable to licensed facilities, centers or placing agencies of the same category.

#### 2.7. Conditions of Licensure and Approval.

a. A license or approval is effective for a period of two (2) years from the date of issuance, unless revoked or modified to provisional status based on evidence of a failure to comply with the provisions of this article or any rules and regulations promulgated

c. The commissioner shall make a decision on each application within sixty (60) days of its receipt and shall provide to unsuccessful applicants written reason for the decision.

d. Applications for licenses or approval shall be made on forms provided by the state department. Forms shall be completed with all information required or the application will be invalid.

e. Applications must be accompanied by:

1. Current fire inspection report by the State Fire Marshal's Office.
2. Current health inspection report by the County Department of Health, Division of Sanitation, (Physical Plant Inspection - S6-50 and Food Service Inspection - SF-1.)
3. Current nutrition inspection report by the Bureau of Nutrition, State Department of Health.

#### 2.10. Supervision and Consultation Required.

a. The commissioner shall provide supervision to ascertain compliance with the rules and regulations promulgated pursuant to this article through regular monitoring, visits to facilities, documentation, evaluation and reporting. The commissioner shall consult with applicants, the personnel of child welfare agencies, and children under care to assure the highest quality child care possible. The director of the department of health and the state fire marshal shall cooperate with the commissioner in the administration of the provisions of this article in the administration of the provisions of this article by providing such reports and assistance as may be requested by the commissioner.

#### 2.11. Investigating Authority.

a. The commissioner shall enforce the provisions of this article. An on-site evaluation of every facility regulated pursuant to this article shall be conducted no less than once per year by announced or unannounced visits. The commissioner shall have access to the premises, personnel, children in care and records of the facility, including, but not limited to, case records, corporate and financial records and board minutes. Applicants for licenses and approvals shall consent to reasonable on-site administrative inspections, made with or without prior notice, as a condition of licensing or approval. When a complaint is received by the commissioner alleging violations of licensure or approval requirements, the commissioner shall investigate the allegations. The commissioner may notify the facility's director before or after a complaint is investigated and shall cause a written report of the results of the investigation to be made.

b. The commissioner may enter any unlicensed or unapproved child care facility or personal residence for which there is probable cause to believe that the facility or residence is operating in violation of this article.

#### 2.12. Administrative and Judicial Review.

a. Any person, corporation, governmental official or child welfare agency, aggrieved by a decision of the commissioner made pursuant to the provisions of this article may contest the decision upon making a request for a hearing by the commissioner within thirty (30) days of receipt of notice of the decision. Administrative and judicial review shall be made in accordance with the provisions of Article 5, Chapter 29a of this Code.

pursuant to this article. The license or approval shall be reinstated upon application to the commissioner and a determination of compliance. The license or approval issued under this article is not transferable and applies only to the facility and its location stated in the application. This license or approval shall be publicly displayed, except in foster family homes, foster family group homes and group homes shall be required to display licenses upon request rather than by posting.

b. A provisional license or approval may be issued as

1. An initial license or approval to a new facility which has been unable to demonstrate full compliance because the facility is not fully operational, or

2. A temporary license or approval to an established licensed facility which is temporarily unable to conform to the provisions of this article or the rules and regulations promulgated hereunder. A provisional license or approval shall expire six (6) months from the date of issuance and may be reinstated no more than two (2) times. The issuance of a provisional license or approval shall be contingent upon the submission to the commission of an acceptable plan to overcome identified deficiencies within the period of the provisional license or approval.

c. The commissioner as a condition of issuing a license or approval, may

1. Limit the age, sex or type of problems of children allowed admission to a particular facility,

2. Prohibit intake of any children, or

3. Reduce the number of children which the agency or facility operated by the agency is licensed or approved to receive.

## 2.8. Waivers and Variances to Rules and Regulations.

a. Waivers or variances of rules or regulations may be granted by the commissioner if the health, safety or well-being of a child would not be endangered thereby.

1. "Variance" means a declaration that a rule may be accomplished in a manner different from the manner set forth in the rule.

2. "Waiver" means a declaration that a certain rule is inapplicable in a particular circumstance.

## 2.9. Application for License or Approval.

a. Any person or corporation, or any governmental agency intending to act as a child welfare agency shall apply for a license or approval to operate child care facilities regulated by this article. Applications for license or approval shall be made separately for each child care facility to be licensed or approved.

b. The commissioner may prescribe forms and reasonable application procedures. Before issuing a license or approval, the commissioner shall investigate the facility, program and persons responsible for the care of children. The investigation shall include, but not be limited to, review of resource need, reputation, character and purposes of applicants, a check of personnel criminal records, if any, and personnel medical records, the financial records of applicants and consideration of the proposed plan for child care from intake to discharge.

**2.13. Administrative Hearing Procedure for Licensed or Approved Child Welfare Agencies.**

a. This administrative hearing procedure applies to "any person, corporation, governmental official or child welfare agency aggrieved by a decision of the commissioner..."

**b. Reasons for appeal:**

1. Denial of license for child welfare agencies or approval of other specified facilities caring for children

2. Revocation of a license/approval or placement on provisional status for currently licensed or approved facilities

3. Any adverse decision of the commissioner pursuant to provisions of Chapter 49, Article 2, of the West Virginia Code.

c. Request for a hearing: All requests for a hearing must be made in writing within thirty (30) days of receipt of notice of the decision to deny application for a license, revocation of a license, or denial of a certificate of approval or revocation of a certificate of approval. Upon receipt of the request, the state hearing officer will schedule the hearing and give all parties at least ten (10) days notice of the date, time and place of the hearing, and a brief statement of the matters asserted or the issue(s) involved.

d. State hearing officer: The hearing will be conducted by an impartial state hearing officer who has not previously been involved in the case under appeal. The state hearing officer will have the authority to

1. Administer oaths and affirmations

2. Regulate the course of the hearing

3. Hold conference for the settlement or simplification of the issues by consent of the parties

4. Dispose of procedural requests or similar matters

5. Rule upon offers of proof and receive relevant evidence

6. Arrive at a decision based on proper evidence presented at the hearing and the rules and regulations regarding the specific program in question. The state hearing officer does not have the authority to issue subpoenas for witnesses or documents, books or records, although he/she may request voluntary attendance by witnesses or production of records or other evidence which are relevant to the issues in dispute.

**e. Procedures in the hearing and decision:**

1. An opening statement by the state hearing officer to introduce the purpose of the hearing and briefly set forth rules and procedures to be utilized in the hearing.

2. The hearing will be recorded by a mechanical device or by stenographic notes and characters.

3. The state hearing officer will administer oaths and affirmations to those individuals testifying.

4. The issue or issues to be decided upon in the hearing will be set forth at the beginning. Additional issues may be added during the hearing if agreed by both parties.

5. Each party will be given opportunity to present its case without undue restrictions providing the evidence and information is related to the issue or issues involved in the hearing. All material evidence entered will be noted in the record and numbered. The rules of evidence as applied in civil cases in the circuit court of the state shall be followed.

6. Each party has the right to cross examine witnesses who testify and the right to redirect and submit rebuttal evidence.

7. Each party may object to improper or irrelevant evidence presented and have their objection ruled upon or noted in the record.

8. Each party will be given the opportunity to sum up their position.

9. Prior to making a final decision, each party will have an opportunity to present its view of the facts and applicable law in a written statement to the state hearing officer. If submitted, either or both parties will be allowed to review the written statements of the adverse party and submit a final written argument on the matter prior to the final decision of the hearing officer.

10. Based on proper evidence presented at the hearing and any findings of fact and conclusions of law presented at the hearing and any findings of fact and conclusions of law presented, the state hearing officer will make a final decision.

11. A copy of the final order or decision will be served upon each party and attorney in person or by registered or certified mail.

12. Any party requesting a hearing or an appeal from an adverse decision of the Department of Human Services shall bear the necessary and attendant costs of such an appeal or hearing, including costs of transportation, court reporting, production, and copying of documents and all similar costs. Costs for a fact finder or hearing officer shall be borne by the Department of Human Services.

f. Judicial review: Any party adversely affected by the final decision may institute a judicial review by filing a petition in either the Circuit Court of Kanawha County or in the circuit court of the county in which the petition lives or does business.

#### **§78-3-3. Administration and Organization - General Commentary.**

Several principles were considered in the development of standards and guidelines for the organization and management of residential facilities.

3.1. **Stability/Viability:** A residential facility must maintain an organization which is capable of providing high quality services on a sustained basis. Residential facilities must be able to respond to the changing needs of the client population.

3.2. **Accountability:** All residential care facilities must be accountable for their performances, planning and expenditures in order to ensure the effective and efficient allocation of resources.

3.3. **Continuity of Care:** All children are entitled to care based on planning which is coherent, consistent and responsive to their changing needs and circumstances, and which

has as its ultimate goal the return of each child under care to as normal an environment as is possible.

**3.4. Responsibility to Community:** All residential care facilities must be open, cooperative and consistent in their interaction with placing agencies, other providers of service and the public at large.

**§78-3-4. Administrative Practices and Procedures - Commentary.**

**4.1.** Though administrative practices and procedures vary widely, human service organizations with sound, effective administrations have the following common characteristics.

- a. The lines of authority within the organization are consistent and understandable.
- b. The financial resources of the organization are allocated in an organized and planned fashion, with established mechanisms for accountability.
- c. The organization effectively plans for present and future financial, personnel, program and physical plant requirements.
- d. Administrative practices and procedures within the organization are consistent with the stated purpose of the organization.

**3.** All plans made by the organization are adaptable to changing circumstances.

The requirements regarding administrative practices and procedures embody these characteristics but are intended to accommodate the variety of structures, practices and procedures of existing residential facilities.

**4.2.** A residential facility shall not operate without the formal prior approval of the regulatory body.

**4.3.** A residential facility shall allow the regulatory body to inspect all aspects of a program's functioning which impact on children and to interview any staff member of the facility or any child in care of the facility.

a. A residential facility shall make any information which the facility is required to have under the present requirements and any information reasonably related to assessment of compliance with these requirements available to the regulatory body.

**§78-3-5. Waivers - Commentary.**

**5.1.** The requirements contained in this document are designed to ensure the maintenance of high quality residential child care. This is, of course, the only legitimate focus for any regulatory effort in the field.

a. Residential programs may obtain waivers for any of the specific requirements in the standards by prior agreement with the regulatory body.

b. To obtain waiver, the facility must demonstrate that it complies with the intent of a particular requirement in a manner not permitted by the wording of the requirement.

c. A facility may not obtain a waiver on the basis of inability to achieve compliance with a requirement.

**5.2. A residential facility shall comply with all relevant requirements unless a waiver for specific requirement(s) has been granted through a prior written agreement with the regulatory body. This agreement shall specify the particular requirement(s) to be waived, the duration of the waiver, and the terms under which waiver is granted.**

**a. Waiver of specific requirements shall be granted only when the facility has documented and demonstrated that it complies with the intent of the particular requirement(s) in a manner not permitted by the requirement(s).**

**b. The waiver agreement shall contain provisions for a regular review of the waiver.**

**c. When a facility fails to comply with the waiver agreement in any particular, the agreement shall be subject to immediate cancellation.**

**§78-3-6. The Governing Body, The Board of Directors and the Advisory Board - Commentary.**

**6.1. A large number of models and structures are used by organizations to manage their operations. Several factors will determine which model best suits an organization. These factors include the purpose of the organization, its size, location, and the style and personality of the people within the organization. The organization must weight many factors in the establishment of its management structure.**

**a. Despite the structural variety that is possible, there are certain common features that should be applicable to particular types of organizations. For those organizations providing children's residential services, these common characteristics are:**

**1. An identifiable body or person within the organization who is accountable for that organization.**

**2. Identifiable and understandable responsibilities and duties within the organization.**

**3. An organizational structure reflecting the role and responsibilities of the organization within the community.**

**b. The translation of these features into requirement is a delicate task. Levels of performance must be maintained without undue interference in the internal management of the organization. The following requirements represent an attempt to find an acceptable balance.**

**c. For the purpose of this document a governing body of a residential facility is that person or group of persons responsible for the operation of the facility. The governing body has authority over the policies and activities of the residential facility.**

**d. For the purposes of this document a board of directors is an association of persons collectively without a proprietary interest in a facility but empowered to act as the governing body.**

**e. For the purposes of this document an advisory board is an association of persons who act in an advisory capacity to the governing body of a facility.**

**6.2. A residential facility shall have a governing body which is responsible for and has authority over the policies and activities of the facility, and which is broadly representative of the community served, and , if different, of the community in which the agency is located.**

6.3. A publicly operated residential facility shall have an advisory board which includes representatives of the community in which the facility is located, representatives of the parents of the type of child served and providers of residential services.

6.4. The governing body of a residential facility shall be responsible for ensuring a facility's continual compliance and conformity with the provisions of the facility's charter.

6.5. The governing body of a residential facility shall be responsible for ensuring the facility's continual compliance and conformity with the terms of all leases, contracts or other legal agreements to which the facility is a part.

6.6. The governing body of a residential facility shall be responsible for ensuring the facility's continual compliance and conformity with all relevant laws and/or regulations, whether federal, state, local or municipal, governing the operation of the facility.

6.7. The governing body of a residential facility shall designate a person to act as chief administrative officer of the facility and shall delegate authority of such person as to manage the affairs of the facility effectively.

6.8. The governing body of a residential facility shall annually evaluate the performance of the chief administrative officer to ensure that this officer's conduct of the facility's business conforms with the facility's charter, all relevant laws and regulations, and the policies defined by the governing body.

6.9. The governing body of a residential facility shall ensure that the facility is housed, maintained, staffed, and equipped in such a manner as to implement the program of that facility.

6.10. The governing body of a residential facility shall ensure that the facility is adequately funded and fiscally sound. To this end, the governing body shall be responsible for:

- a. Assessing the adequacy of sufficient operating funds for at least six (6) months (reserves, guarantee of a loan or funds, fees).
- b. The review and approval of the facility's annual budget.
- c. An annual audit of all accounts by a certified public accountant not in the employ of the facility nor a member of the board.

6.11. The governing body of a residential facility shall, in consultation with the chief executive officer, formulate and review, at least once every two (2) years, written policies concerning:

- a. The residential facility's goals and current service
- b. Personnel practices and job descriptions
- c. Fiscal management
- d. Annual plan of the facility

6.12. The governing body of a residential facility shall ensure that the facility has written policies and procedures to carry out ongoing evaluation of their services it offers and compiles a written report of such evaluation annually.

6.13. The governing body of a residential facility shall consult with the regulatory body prior to making any substantial alteration in the program provided by the facility, and shall meet with representatives of the regulatory body whenever required to do so.

6.14. No employee or member of the immediate family of an employee of any public agency which has placement responsibilities, regulates or purchases the services of a privately run residential facility shall be a member of the governing body of the facility.

6.15. The board shall develop an affirmative action plan which shall include the following points:

- a. referrals.
- b. services provided to clients.
- c. client, staff and Board composition.

The affirmative action plan shall include a statement of compliance with Title 6 of the Civil Rights Act and Section 504 of the Rehabilitation Act regarding employment practices and non-discrimination.

**§78-3-7. Composition and Organization of a Board of Directors.**

7.1. The responsibilities of a board of directors of a residential facility shall be clearly defined. The board of directors shall be organized and composed in such a manner as to discharge these responsibilities.

7.2. A residential facility shall have written minutes of all meetings of the board of directors, and its committees, of the facility.

7.3. A residential facility shall have a list of the membership of a board of directors of the facility. This list shall indicate the term of membership of each member of the board, the name and position of each officer of the board and the term of office of each officer.

**§78-3-8. The Advisory Board for a Publicly Operated Facility.**

8.1. The members of the advisory board of a publicly operated residential facility shall be appointed for specific terms of office by the highest ranking executive officer of the appropriate governmental level or by a person designated by this officer.

8.2. The advisory board of a publicly operated residential facility shall advise and assist the governing body.

a. The advisory board shall keep itself informed as to the operational policies and practices of the residential facility. The advisory board has the right and responsibility to consider all aspects of that facility's operations, and to make recommendations to that facility's governing body. The advisory board shall make at least semi-annual visits to the residential facility.

b. The advisory board shall at least annually report on all aspects of the residential facility to the governmental body responsible for its appointment. This report shall make recommendations for improving services provided by the facility. This report shall be provided to the governing body of the facility and shall be available to the public.

8.3. The advisory board of a publicly operated residential facility shall inform the governing body in writing of any event or circumstances which the majority of the advisory board believes warrants correction.

8.4. In the event of serious disagreement between the governing body and the advisory board, the advisory board of a publicly operated residential facility shall report to the appointing governmental body clearly outlining the nature of the disagreement.

8.5. All for profit residential facilities shall have an advisory board.

#### §78-3-9. Organization.

9.1. A residential facility shall have documents which identify the statutory basis for the existence of the facility and the nature of the authorization of the facility under state laws.

a. A publicly operated residential facility shall have documents which identify the statutory basis of its existence and the administrative framework of the governmental departments within which it operates.

b. A privately operated residential facility shall have documents which fully identify its ownership. A corporation, partnership, or association shall identify its officers and shall have, where applicable, the charter; partnership agreement; constitution; articles of association; and/or by-laws of the corporation, partnership or association.

9.2. The chief executive officer of a residential facility or a person designated by that officer and authorized to act, as necessary, in place of that officer shall be readily accessible to the staff of the facility and/or the authorized representatives of appropriate governmental agencies at all times.

#### §78-3-10. Statement of Purpose.

10.1. A residential facility shall have a written statement specifying its philosophy, purposes, and program orientation and describing both short and long-term aims. The statement should identify the types of services provided and the characteristics of the children to be served by the program. The statement of purpose shall be available to the public on request.

#### §78-3-11. Program Description.

11.1. A residential facility shall have a written program plan which describes the services provided by the facility. The statement shall include a description of the facility's place for the provision of services as well as the assessment and evaluation procedures used in services planning and delivery. The plan shall make clear which services are provided directly by the facility and which will be provided in cooperation with community resources. If the facility administers several programs at different geographical sites, appropriate resources shall be identified for each site. The program description shall be available to the public on request. (See Section 92)

#### §78-3-12. Fiscal Management.

12.1. A residential facility shall demonstrate that it is financially sound and manages its financial affairs prudently. All funds disbursed by the facility shall be expended in accordance with the program objectives as specified by the governing body.

12.2. A residential facility which receives public funds directly or indirectly shall demonstrate fiscal accountability through regular recording of its finances and an annual external audit. This audit shall be made available to any agency from which the facility purchases services or which provided funds to the facility.

**§78-3-13. Conflict of Interest.**

13.1. A residential facility shall not permit public funds to be paid or committed to be paid to any corporation, firm, association or business in which any of the members of the governing body of the facility, the executive personnel of the facility, or the members of the immediate families or members of the governing body or executive personnel have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the facility. The facility shall have a written disclosure of any financial transaction with the facility in which a member of the board or his/her immediate family is involved. (See Section 14.2.)

**§78-3-14. Contracts, Leases and Rental Agreements.**

14.1. A residential facility which receives public funds, directly or indirectly, shall ensure that all purchase-of-service agreements involving professional services to children in care are in writing. Purchase-of-service agreements shall contain all terms and conditions required to define the clients to be served, the services to be provided, the procedures for payment, and the payment plan. (See Section 21.2f.)

14.2. A residential facility which receives public funds, directly or indirectly, shall have copies of all leases into which the facility has entered. These leases shall include the location of the property involved, the monthly or annual rent, the ownership of the property, the useable square footage and the term of the lease.

14.3. If a member of the governing body of a residential facility which receives public funds, directly or indirectly, any staff members of the facility or any member of the immediate family of either a staff member or a member of the governing body of the facility, has any financial interest in any property rented by the facility, the facility shall have a report detailing the nature and extent of the financial interest and identifying the party or parties having the interest.

**§78-3-15. Insurance Coverage.**

15.1. A residential facility which accepts prepayment of public funds, directly or indirectly, shall maintain adequate bonding. All persons delegated the authority to sign checks or manage funds shall be bonded at the facility's expense.

15.2. A residential facility shall carry adequate insurance covering fire and liability as protection for children in care. In addition, the residential facility shall have insurance which covers liability to third parties or children in care arising through the use of any vehicle, whether owned or not owned by the facility, used by any of the facility's staff or agents on the facility's business.

a. Provision shall be made for indemnifying, bonding and insuring board members, trustees, officers, and employees of the residential facility against liability incurred while acting properly in behalf of the agency.

**§78-3-16. Fund Raising and Publicity.**

16.1. The use of children in fund raising, publicity and related activities is actually fairly rare among operators of children's residential facilities. Most operators would simply rather not deal with the thorny issues that such practices raise when other approaches to fund raising and publicity are available and seem to serve at least as well.

16.2. Facilities that do involve children in such activities should take every precaution to safeguard the rights of the children involved and their families.

16.3. The facility must protect the child's dignity and make certain that such activities will not expose the child to excessive attention and identification in the community.

16.4. The involvement of children with severe emotional problems or youthful offenders in any activity that results in their identification in the community is a serious violation of professional ethics and may, in some cases, constitute a violation of law.

a. Some residential facilities conduct publicity campaigns which may be viewed as positive elements in the programs of children in care. Such campaigns usually involve the athletic, scholastic or other achievements of particular children. The following regulations are not intended to affect the operations of such programs.

16.5. A residential facility shall obtain the written informed consent of a child and the child's parent(s) or guardian prior to involving the child in any activity related to fund raising and/or publicity for the facility.

**§78-3-17. Photography and Audio or Audio-Visual Recording.**

17.1. A residential facility shall have written policies and procedures regarding the photographing and audio or audio-visual recordings of the children in care.

a. The written consent of a child and the child's parent(s) or guardian shall be obtained before the child is photographed or recorded for research or program publicity purposes.

b. All photographs and recordings shall be used in a manner which respects the dignity and confidentiality of the child.

17.2. A residential facility shall have written policies regarding the participation of children in research project. These policies shall conform to the National Institute of Mental Health Standards on Protection of Human Subject.

17.3. A residential facility must have written procedures for the maintenance and security of records specifying who shall supervise the maintenance of records, who shall have custody of records, and to whom records may be released. Records shall be the property of the residential facility and the residential facility, as custodian, shall secure records against loss, tampering or unauthorized use.

**§78-3-18. Research.**

18.1. A residential facility shall maintain the confidentiality of all children's case records. Employees of the facility shall not disclose or knowingly permit the disclosure of any information concerning the child or his/her family, directly or indirectly, to any unauthorized person.

**§78-3-19. Confidentiality.**

19.1. Public disclosure of confidential information may constitute a serious breach of the trust that is necessary in any therapeutic community. Disclosure of information in the performance of professional duties is, of course, a necessary feature of the helping professions, but is subject to professional standards and legal restrictions. The standards and guidelines concerning confidentiality are designed to reflect commonly accepted practices among child care professionals.

19.2. Without the voluntary, written consent of the parent(s) or guardian a residential facility shall not release any information concerning a child in care except to the child, his parent(s) or guardian, their respective legal counsel, the court or an authorized public official in the performance of his/her mandated duties. Children's records shall be maintained in a confidential fashion and in accordance with Chapter 49, Section 7, Article 1 of the West Virginia Code.

19.3. A residential facility shall, upon request, make available information in the case record to the child, his parent(s) or guardian and their respective legal counsel if the information being released does not contain material which violates the right of privacy of another individual and/or material that should be withheld from release according to other laws or by order of the court. If, in the professional judgement of the administration of the facility, it is felt that information contained in the record would be damaging to a child, that information may be withheld except under court order. Facilities which have on-grounds educational programs shall comply with federal and state laws governing education records.

19.4. A residential facility may use materials from case records for teaching or research purposes, development of the governing body's understanding and knowledge of the facility's services or similar education purposes, provided that names are deleted and other identifying information is disguised or deleted.

19.5. A residential facility shall not release a personnel file without the employee's permission except under court order.

#### §78-3-20. Children's Case Records.

20.1. A residential facility shall maintain a written record for each child which shall include administrative, service, and educational data from the time of admission until the time the child leaves the facility. A child's case record shall include at least the following:

- a. The name, sex, race, religion, birthdate and birthplace of the child;
- b. The name, address, telephone number and marital status of the parent(s) or guardian of the child;
- c. Date of admission and source of referral;
- d. When the child was not living with his/her parent(s) prior to admission, the name, address, telephone number and relationship to the child of the person with whom the child was living;
- e. Date of discharge, reason for discharge, the name, telephone number and address of the person or agency to whom the child was discharged and the aftercare plan;
- f. All documents related to the referral of the child to the facility;
- g. Documentation of the current custody and legal guardianship;
- h. The child's court status, if applicable;

i. A copy of the child's birth certificate or a written statement of the child's birthdate including the source of this information;

j. Consent forms signed by the parent(s) or guardian prior to placement allowing the facility to authorize all necessary medical care, routine tests, immunization and emergency medical or surgical treatment and all other required release forms;

k. Cumulative health records;

l. Appropriate education records and reports;

m. Treatment or clinical records and reports;

n. Records or special or critical incidents;

o. Service plans and related material.

**§78-3-21. Administrative File.**

21.1. A residential facility shall assemble an administrative file, which shall be maintained in the administrative headquarters, and shall be made available upon request of the appropriate governmental agency. It shall contain the following information and documents:

a. Governing structure including the charter, articles of incorporation;

b. By-laws, or other legal basis for its existence; (See Section 9.1)

c. Organizational structure of the facility staff;

d. Name and position of persons authorized to sign agreements and submit official documentation to the appropriate government agency; (See Section 9.2)

e. Board structure and composition with names and addresses and terms of membership; (See Section 7.1)

f. Existing purchase of service agreements; (See Section 14.1)

g. Insurance coverage; (See Section 15.2)

h. Procedure for notifying interested parties of changes in the facility's policy and programs;

i. A master list of all social service providers which the facility uses included in the files of all residential facilities. (See Section 14.1)

**§78-3-22. General Administrative Matters.**

22.1 A residential facility accepting any child who resides in another state shall comply with the terms of the Interstate Compact on Juveniles and the Interstate Compact on the Placement of Children.

22.2. A residential facility shall, when allowed by law, have a representative present at all judicial, educational or administrative hearings which address the status of a child in care of the facility.

**22.3. A residential facility shall ensure that all entries in records are legible. All entries shall be signed by the person making the entry. All entries shall be accompanied by the date on which the entry was made.**

**§78-3-23. Evaluation.**

**23.1. Residential care as we understand it today is a relatively young field. In the final analysis, we do not really know much about the relative effectiveness of the variety of residential programs. It is fair to say, in any case, that our impressions in this regard are essentially matters of personal opinion based on personal experience. Though we would not ordinarily choose to see it in this way, we stake the lives of children, in addition to the taxpayer's money, on these opinions.**

**23.2. In this last regard, the question of funding residential programs, many residential child care professionals feel that the writing is on the wall. Programs will, in coming years, be increasingly required to demonstrate that the services they provide are valuable and effective.**

**23.3. The type of evaluation required by the following requirements is in-house and is essentially designed to assist facilities in making improvements in their programs. The Department believes in addition to such in-house studies, residential facilities should seek objective outside evaluation.**

**23.4. The strongest need that the Department identifies in this area is the need for outcome research. We must know what happens to children after they leave care. Such research should provide a number of opportunities for improving the services of residential facilities. Determining the common characteristics of children who succeed in the community after leaving a program might, for example, inform a new and more effective admissions policy. Determining the common characteristics of children who fail might identify a gap in the program.**

**23.5. Facilities must additionally undertake internal review of their own processes and procedures to see if they are meeting the stated goals of their programs. Residential staff are often too busy with day-to-day tasks to stand back and look at what they are doing and the way they are doing it.**

**a. Finally, a facility should periodically review its social task-the need of the community that the facility's services are designed to meet. The needs of the community change radically over a period of years and the services of residential programs must change with them.**

**23.6. A residential facility shall complete an annual written evaluation which could include consideration of the following: (See Section 6.12)**

- a. Frequency of and reasons for unplanned discharges of children in care;**
- b. Staff turnover rate;**
- c. General staff effectiveness and staffing patterns;**
- d. General program effectiveness in relation to stated goals and community needs;**
- e. Number of referrals received;**
- f. Number of referrals rejected and reasons for rejection;**
- g. Number of children cared for;**

**h. Where children were discharged and aftercare plans.**

**§78-3-24. The Physical Environment and Safety - Commentary.**

**24.1. A residential facility should not be seen merely as a building. Its physical plant, structure, site, internal and external arrangement of space, and health, safety and security provisions are key elements in the quality of care. The physical plant provides surroundings which should ensure the well-being of the facility's residents, support a desired set of interactions among the residents, and enhance the capacity of the program to meet its desired objectives.**

**24.2. The residential facility should be a warm, attractive environment, as much like an ordinary family home as possible.**

**24.3. The physical structures and surroundings of an institutional facility should, together with established routine maintenance and emergency procedures, promote health and safety. Children in care must be protected from unnecessary risks and extraordinary hazards.**

**24.4. These standards view residential care facilities as total physical environments which include the interior and exterior of the structure and the locale. This physical environment must not only protect the resident's safety and security, but also support the achievement of programmatic goals and reflect the facility's philosophy of treatment.**

**24.5. The following requirements focus on particular needs of the residential facility as regards the physical environment. In particular these requirements focus on the manner in which environment impinges on program and on the consciousness of those who live or work in the facility. These requirements are intended as a supplement to existing building codes and safety regulations.**

**§78-3-25. Location of Facilities.**

**25.1. Any individual or organization seeking licensure, certification or approval of a residential facility for children shall provide the following documentation to the regulatory body at the time of application:**

**a. Evidence that the proposed site location of the facility will be appropriate to children to be served in terms of individual needs, program goals and access to service facilities;**

**b. Identification of the permitted uses of the site under existing zoning by-laws of the municipality in which the site is located;**

**c. A copy of the site plan and a sketch of the floor plan of the proposed facility;**

**d. A description of the way in which the facility will be physically harmonious with the neighborhood in which it is located considering such issues as scale, appearance, density and population.**

**§78-3-26. Other Jurisdictional Approvals.**

**26.1. All buildings, grounds, equipment shall comply with all applicable building codes, fire, health, safety laws and regulations.**

**§78-3-27. Building Exterior and Grounds - Commentary.**

**27.1. Poor external maintenance of a facility has frequently been an objection raised by local government, neighborhood associations and neighbors regarding community-based residences. Objections concerning the exterior and grounds often involve concern over decline of property value, tax increases, and safety of area residents -all valid concerns from the point of view of area residents.**

**a. As well as protecting the residents, high standards of exterior maintenance and ground maintenance do much to facilitate the acceptance of a facility within a community.**

**27.2. A residential facility shall ensure that all structures on the grounds of the facility are maintained in good repair and are free from reasonable danger to health or safety.**

**27.3. A residential facility shall maintain the grounds of the facility in an acceptable manner and shall ensure that the grounds are free from any hazard to health or safety.**

**a. Garbage and rubbish which is stored outside shall be stored securely in non-combustible, covered containers and shall be removed on a regular basis not less than once every week. Garbage containers shall be watertight and vermin proof, kept clean and stored on a concrete or metal platform.**

**b. Trash collection receptacles and incinerators shall be separate from play areas and be so located as to avoid being a nuisance to neighbors.**

**c. Fences shall be in good repair.**

**d. Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, shall be fenced off or have natural barriers to protect children.**

**e. Playground equipment shall be so located, installed and maintained as to ensure the safety of children.**

**27.4. A residential facility shall have access to outdoor recreational space and suitable recreational equipment.**

**§78-3-28. Interior Space - Commentary.**

**28.1. The physical environment of a residential facility should protect a positive, healthy image to the children it serves. Size of rooms, physical layout of rooms, adaptability of space and maintenance should all be considered in conjunction with the goals and philosophy of the program when choosing accommodations.**

**28.2. A residential facility shall be structurally designed to accommodate the physical needs of each child in care.**

**§78-3-29. Living Rooms, Lounges.**

**29.1. Each living unit of a residential facility shall contain space for the free and informal use of children in care. This space shall be constructed and equipped in a manner consonant with the programmatic goals of the facility.**

**29.2. A residential facility shall provide an appropriate variety of interior recreational spaces.**

**§78-3-30. Dining Areas.**

30.1. A residential facility shall provide dining areas which permit children, staff and guests to eat together in small groups.

30.2. The residential facility shall provide dining areas which are clean, well-lighted, ventilated and attractively furnished.

**§78-3-31. Sleeping Accommodations.**

31.1. There shall be a minimum of sixty (60) square feet per occupant in bedrooms. Bedrooms for single occupants shall have a minimum of eighty (80) square feet.

31.2. A residential facility shall not use any room with a ceiling height of less than seven (7) feet, six (6) inches as a child's bedroom unless the room has a distinct area allowing a useable space with floor areas as required by Section 31.1.

31.3. A residential facility shall not permit more than four (4) children to occupy a designated bedroom space.

31.4. A residential facility shall not use any room which does not have a direct source of natural light as a bedroom space.

31.5. Each child shall have his/her own bed with a level mattress and sufficient linens and covers. Beds shall be kept clean and comfortable; linens shall be changed at least weekly, but more frequently, if necessary. All mattresses shall have mattress pads and covers and beds shall be separated from each other by at least two (2) feet (this does not preclude the use of bunkbeds).

31.6. A residential facility shall ensure that sheets, pillow cases and blankets are provided for each child.

31.7. A residential facility shall provide children with solidly constructed beds. Cots or other portable beds are not to be used on a routine basis.

31.8. A residential facility shall ensure that the uppermost mattress of any bunkbed in use shall be far enough from the ceiling to allow the occupant to sit up in bed.

31.9. A residential facility shall provide each child in care with his/her own dresser or other adequate storage space for private use, and a designated space for hanging clothes in proximity to the bedroom occupied by the child.

31.10. Each child in care at a residential facility shall have his/her own designated area for rest and sleep.

31.11. The decoration of sleeping areas in a residential facility shall allow some scope for the personal tastes and expressions of the children.

**§78-3-32. Bathrooms.**

32.1. A residential facility shall have one (1) commode, one (1) lavatory and one (1) bathtub or shower for every six (6) occupants (includes staff members): Facilities shall provide separate bathrooms for each six (6) occupants of each sex. Hot and cold running water shall be provided to lavatories, bathtubs and showers under pressure and shall be equipped with mixing faucets or tempered water. Combination faucet-fountains are prohibited. Spring loaded faucets are prohibited except when metered to allow a minimum of fifteen (15) second flow of water. Bathrooms shall be provided with a covered waste

container. Bathrooms and their facilities shall be kept clean and maintained in good repair. Floors and walls shall be moisture resistant and non-absorbent. There shall be no open flame heaters. This does not preclude the use of protected electric heaters.

32.2. A residential facility shall provide toilets and baths or showers which allow for individual privacy unless children in care require assistance.

32.3. A bathroom in a residential facility shall have a safe and adequate supply of hot and cold running water. This water shall be potable.

32.4. A bathroom in a residential facility shall contain mirrors secured to the walls at convenient heights and other furnishings necessary to meet the child's basic hygienic needs.

32.5. A bathroom in a residential facility shall be equipped to facilitate maximum self-help by children. A bathroom shall be large enough to permit staff assistance of children, if necessary.

32.6. Toilets, wash basins and other plumbing or sanitary facilities in a residential facility shall, at all times, be maintained in good operating condition, and shall be kept free of any materials that might clog or otherwise impair their operation.

#### §78-3-33. Kitchens.

33.1. Kitchens used for meal preparation in a residential facility shall be provided with the necessary equipment for the preparation, storage, serving and clean up of all meals for all of the children and staff regularly served by such kitchen. All equipment shall be maintained in working order. Facilities accommodating more than ten (10) persons shall comply in full with all applicable provisions of the State Board of Health Food Service Sanitation regulations. Facilities accommodating ten (10) or less persons may utilize a family-type kitchen provided the following requirements are met: The kitchen shall provide sufficient space to carry out proper food preparation and dishwashing operations. Food shall be protected from contamination during storage, preparation and service. Food contact utensils and equipment shall be of approved material, easily cleanable construction, and in good repair. Refrigeration equipment shall be provided to assure the maintenance of potentially hazardous foods at or below forty-five degrees (45) F. Dishwashing facilities and methods shall be employed to effectively remove food, soil and soaps and detergents. Cleaned dishes, utensils and equipment shall be stored in a clean, dry area protected from contamination. Foods shall be from approved sources. The use of home canned foods is prohibited. Every facility shall so be constructed and equipped that all occupants can be served at one (1) time. Storage and laundry areas, kitchens and furnace rooms are required to have one (1) hour separation. Any variance shall be the Fire Marshal's determination.

33.2. A residential facility shall not use disposable dinnerware at meals on a regular basis unless the facility documents that such dinnerware is necessary to protect the health or safety of children in care.

33.3. A residential facility shall ensure that all dishes, cups and glasses used by children in care are free from chips, cracks or other defects.

33.4. Each living unit of a residential facility shall have a snack preparation space.

33.5. In facilities with eleven (11) or more persons, kitchen areas in a residential facility shall be so constructed as to allow staff to limit children's access to kitchen when necessary.

**§78-3-34. Staff Quarters.**

34.1. A residential facility utilizing live-in staff shall provide adequate separate living space for these staff.

**§78-3-35. Administrative and Counseling Space.**

35.1. A residential facility shall provide a space which is distinct from children's living areas to serve as an administrative office for records, secretarial work and bookkeeping.

35.2. A residential facility shall have a designated space to allow private discussions and counseling sessions between individual children and staff.

**§78-3-36. Furnishings - Commentary.**

36.1. Furnishings should be chosen to contribute to a comfortable environment. Furnishings should enhance the program's efforts to instill a sense of responsibility and self-respect in children. Broken, rundown and cast-off furnishings often give a negative message and can contribute to undermining a program's work with a child.

36.2. A residential facility shall have comfortable customary furniture as appropriate for all living areas. Furniture for the use of children shall be appropriately designed to suit the size and capabilities of these children. Carpet shall apply to West Virginia State Fire Regulations.

36.3. There shall be evidence of routine maintenance and cleaning program in all areas of a residential facility.

36.4. A residential facility shall replace or repair broken, rundown or defective furnishings and equipment promptly.

a. Outside, doors, windows and other features of the structure necessary for security from weather shall be repaired within twenty-four (24) hours of being found to be in a state of disrepair.

**§78-3-37. Doors and Windows.**

37.1. All bedrooms shall have windows.

37.2. A residential facility shall provide insect screening for all openable windows unless the facility is centrally air-conditioned. This screening shall be readily removable in emergencies and shall be in good repair. All exterior doors shall be close fitting and screen doors or doors used in lieu of shall be self-closing.

37.3. A residential facility shall ensure that all closets, bedrooms and bathrooms which have doors are provided with doors that can be readily opened from both sides.

**§78-3-38. Storage.**

38.1. A residential facility shall ensure that there are sufficient and appropriate storage facilities.

**38.2.** A residential facility shall have securely locked storage spaces for all potentially harmful materials. Keys to such storage spaces shall be available only to authorized staff members. Storage areas shall be one (1) hour fire separation. (See Section 33.1)

a. Poisonous or toxic materials shall be stored in locked storage spaces that are not used for any other purpose.

b. The facility shall have only those poisonous or toxic materials required to maintain the facility.

c. Drugs, personnel files and case records are to be kept in locked storage spaces. Access to drugs, personnel files and case records is to be carefully limited to authorized persons. There shall be evidence of routine security precautions.

**38.3.** A residential facility shall ensure that all electrical equipment, wiring, switches, sockets and outlets are maintained in good order and safe condition. The Fire Marshal uses the National Electric Code as the governing code.

**38.4.** Any room, corridor or stairway within a residential facility shall be sufficiently illuminated.

**38.5.** Corridors within a residential facility's sleeping areas shall be illuminated during the night.

**38.6.** A residential facility shall provide adequate lighting of exterior areas to ensure the safety of children and staff during the night.

#### **§78-3-39. Heat.**

**39.1.** A residential facility shall take all reasonable precautions to ensure that heating elements, including hot water pipes, are insulated and installed in a manner that ensures the safety of children.

**39.2.** A residential facility shall maintain the spaces used by children at temperatures in accordance with federal, state and local laws.

#### **§78-3-40. Water.**

**40.1.** Hot water accessible to children in a residential facility must be regulated to a temperature not in excess of one hundred ten degrees (110) F.

**40.2.** A residential facility using water from any source other than a public water supply must ensure that such water is annually tested by the appropriate state or local authority in accordance with state or local law. The most recent test report shall be kept on file.

#### **§78-3-41. Finishes and Surfaces.**

**41.1.** A residential facility shall not have walls or ceilings surfaced with materials containing asbestos.

41.2. A residential facility shall not use lead paint for any purpose within the facility or on the exterior or grounds of the facility nor shall the facility purchase any equipment, furnishings or decoration surfaces with lead paint.

a. A residential facility which accepts children for placement who are under six (6) years of age, mentally retarded or severely, emotionally disturbed shall have evidence that the facility has been tested for and found to be free of lead paint hazards.

**§78-3-42. General Safety Practices.**

42.1. A residential facility shall immediately notify the responsible agency and the regulatory body of a fire or other disaster which might endanger or require the removal of children for reasons of health and safety. A residential facility shall have a fire alarm system which complies with a state fire code.

42.2. Each separate living unit within a residential facility shall have twenty-four (24) hour telephone service or an intercom system connected with an outside telephone service. Emergency telephone numbers, including fire, police, physician, poison control, health agency, and ambulance shall be conspicuously posted adjacent to the telephone.

42.3. A residential facility shall not maintain any staff member or child to be in possession of any firearm or chemical weapon on the grounds or within the structures of the facility.

a. A facility shall not permit any staff member or child to be in possession of any firearm or chemical weapon on the grounds or within the structures of the facility.

b. Security guards patrolling the grounds and structures of a residential facility, whether employed by the facility or by a security service under contract to the facility, shall not be permitted to be in possession of any firearm or chemical weapon on the grounds or within the structures of the facility.

42.4. All containers of poisonous and toxic materials kept in a residential facility shall be prominently and distinctly marked or labeled for each identification as to contents and shall be used only in such manner and under such conditions as will not contaminate food or constitute a hazard to the children in care or the staff.

42.5. Porches, elevated walkways and elevated play areas within a residential facility shall have barriers to prevent falls.

42.6. Every required exit, exit access and exit discharge in a residential facility shall be continuously maintained free of all obstruction of impediments to immediate use in the case of fire or other emergency.

42.7. The use of candles shall not be allowed in any area of a residential facility.

42.8. Powerdriven equipment used by a residential facility shall be kept in safe and good repair. Such equipment shall be used by children only under the supervision of a staff member and according to state law. Lawn mowers shall be stored in areas separated with one (1) hour fire rated material.

42.9. A residential facility shall have procedures to ensure that the facility is protected from infestation. Such procedures are to be conducted by qualified persons.

42.10. Children in care of a residential facility shall swim only in areas posted as being safe. A certified individual shall be on duty when the children are swimming. A certified individual is one who has a current water safety instructor certificate or senior lifesaving certificate from the Red Cross or its equivalent. Certification shall be documented in the personnel records.

a. All on-grounds pools shall be enclosed with safety fences and shall be regularly tested to ensure that the pool is free of contamination.

b. On-grounds pools shall comply with Department of Public Health requirements concerning swimming pools.

**§78-3-43. Emergency Planning and Procedures.**

43.1. A residential facility shall have written procedures for staff and children to follow in case of emergency or disaster. These procedures shall be developed with the assistance of qualified fire and safety personnel, and shall include provision for the evacuation of buildings and assignment of staff during emergencies.

43.2. A residential facility shall train staff and children to report fires and other emergencies appropriately. Children and staff shall be trained in fire prevention.

43.3. A residential facility shall conduct emergency drills which shall include actual evacuation of children to safe areas at least monthly. The facility shall ensure that all personnel on all shifts are trained to perform assigned tasks during emergencies and ensure that all personnel on all shifts are familiar with the use of the fire-fighting equipment in the facility.

a. A record of conducted fire drills shall be recorded.

b. All persons in the building shall participate in emergency drills.

c. Emergency drills shall be held at unexpected times under varying conditions to stimulate the possible conditions in case of fire or other disasters.

d. The facility shall make special provision for the evacuation of any physically handicapped children in the facility.

e. The facility shall take special care to help emotionally disturbed or perceptually handicapped children understand the nature of such drills.

43.4. A residential facility shall maintain an active safety program including investigation of all accidents and recommendations for prevention.

**§78-30-44. Transportation.**

44.1. A residential facility shall ensure that each child is provided with the transportation necessary for implementing the child's service plan.

44.2. A residential facility shall have means of transporting children in cases of emergency.

**44.3.** Any vehicle used in transporting children in care of a residential facility, whether such vehicle is operated by a staff member or any other person acting on behalf of the facility, shall be properly licensed and inspected in accordance with state law.

a. Any staff member of a residential facility or other person acting on behalf of the facility operating a vehicle for the purpose of transporting children shall be properly licensed to operate that class of vehicle according to state law.

**44.4.** A residential facility shall not allow the number of persons in any vehicle used to transport children to exceed the number of available seats in the vehicle.

**44.5.** All vehicles used for the transportation of children shall be maintained in a safe condition, be in conformity with all applicable motor vehicle laws, and be equipped in a fashion appropriate for the season.

a. If inspections are not required by state law, the facility shall have maintenance records.

**44.6.** A residential facility shall ensure that there is adequate supervision in any vehicle used by the facility to transport children in care.

**44.7.** Identification of vehicles used to transport children in care of a residential facility shall not be of such nature as to embarrass or in any way produce notoriety for the children.

**44.8.** A residential facility shall ensure that any vehicle used to transport children has the following minimum amounts of liability insurance: Injury per person: \$ 300,000

Injury per accident: \$1,000,000

**44.9.** A residential facility shall ascertain the nature of any need or problem of a child which might cause difficulties during transportation, such as seizures, a tendency towards motion sickness or a disability. The facility shall communicate such information to the operator of any vehicle transporting children in care.

**44.10.** The following additional arrangements are required for residential facilities serving handicapped, nonambulatory children:

a. A ramp device to permit entry and exit of a child from the vehicle must be provided for all vehicles except automobiles used to transport physically handicapped children. A hydraulic lift may be utilized provided that a ramp is also available in case of emergency.

b. In all vehicles except automobiles, wheelchairs shall be securely fastened to the floor.

c. In all vehicles except automobiles, the arrangements of the wheelchairs shall provide an adequate aisle space and shall not impede access to the exit door of the vehicle.

#### **§78-3-45. Sewage Disposal.**

**45.1.** All facilities shall be served by an approved public sewage system or by a sewage disposal system that has been approved by the Health Department. Sewage

disposal systems shall comply with the design standards, specifications and instructions issued by the State Health Department, and shall be kept in good repair and properly maintained and operated.

**§78-3-46. Plumbing.**

46.1. All plumbing shall meet the requirements of local plumbing codes or ordinances, or in the absence thereof, the national plumbing code. Cross connections and potential back-siphonage possibilities are prohibited.

**§78-3-47. Laundry.**

47.1. Laundry, if done on the premises, shall be done in a room separated by one (1) hour construction designed for that particular purpose including space for sorting soiled linen and clothing and space for sorting clean linen and clothing, provided that in facilities accommodating ten (10) or less occupants a separate laundry room designed for the particular purpose shall not be required.

a. No laundry operation shall be done in any food preparation or dishwashing area.

b. Soiled laundry shall be stored in nonabsorbent, easily cleanable covered containers. Soiled and clean laundry shall not be stored or placed in the same container or on a common table or shelf.

c. Washing machines shall be installed so that no back-siphonage possibilities exist. Laundry shall be done in wash water having a temperature of at least one hundred forty degrees (140) F and the laundry air dried; or, if the laundry is done by mechanical equipment, washing shall be accomplished at a temperature of one hundred forty degrees (140) F or higher and the laundry tumbled dried at one hundred sixty degrees (160) F or higher until dried.

**§78-3-48. Animals.**

48.1. Dogs, cats, or other domestic animals shall be appropriately confined and maintenance of animals shall be consistent with applicable local ordinances.

a. Wild, dangerous or obviously ill animals are prohibited. Animals and their quarters shall be kept in a clean condition at all times.

b. All dogs and cats owned or under the supervision of an occupant shall have been currently vaccinated against rabies, distemper, hepatitis and leptospirosis.

**§78-4-49. Communicable Diseases.**

49.1. No occupant while affected with any disease in a communicable form, or while a carrier of such disease, or while affected with boils, infected wounds, sores or a respiratory infection shall work in any capacity in which there is a likelihood of such person transmitting disease to other persons, and no person known or suspected of being infected with any such disease or condition shall be employed in such area or capacity.

a. The operator shall notify the health officer immediately of any known or suspected cases of communicable disease and any outbreak of intestinal disorders.

**§78-3-50. Housekeeping.**

50.1. Each facility accommodating ten (10) or more persons shall provide at least one (1) janitorial or custodian closet with service sink and storage space for cleaning equipment and supplies. Storage room requires separation by one (1) hour rated construction. Mops and brooms shall be stored off the floor in racks or holders.

**§78-3-51. Human Resources - General Commentary.**

51.1. Adults are usually the major features in the landscape as seen through the eyes of children. The success or failure of a residential program depends in large part on what happens in the direct contacts between staff members and children. Well-written program statements; sound bookkeeping procedures; extensive, stimulating recreational opportunities; attractive living spaces -- all of these are elements of the ideal residential facility. A residential facility perfect in every respect save the presence of competent, caring adults would be worse than useless to the children in care. It would be lifeless, sterile and without heart.

51.2. Good child care work depends on the balancing of three (3) factors. Good child care workers are intelligent people capable of analyzing persons and situations quickly and accurately and with a good grasp of the abstract concepts involved in therapeutic models. Good child care workers are caring, nurturing people who are sensitive to the needs and feelings of others. Finally, good child care workers can competently handle the physical needs of children in care.

51.3. Quality child care depends largely but not completely on the presence of a good child care staff. Child care is a stressful occupation. Troubled children do not automatically respond to a staff member just because he/she is a nice, reasonable person who cares about them. They will often respond with hostility, suspicion or outright aggression. No human being can help feeling angry, rejected and hurt when faced with such resistance. Child care workers need professional resources to assist them in dealing with their feelings and forming new strategies for approaching children and to ensure that these strategies exist in the context of a child's long-range service plan. Staff turnover rates in child care programs are tragically high. The phenomenon of "burn-out", the complete emotional and physical exhaustion of workers, constitutes a major occupational hazard for child care professionals. Long hours, low rewards and exploitative personnel practices are major contributing factors to these problems. The human cost, both to workers and to children exposed to continual staff change, is incalculable.

51.4. Staff working with children are part of a system that can either encourage them to become more effective helpers or discourage the most dedicated and competent persons. All staff should be seen as contributing members of a child care team and should have a voice in determining the nature of services provided.

51.5. The needs of staff for working conditions which encourage professional and personal growth are recognized and supported in these standards and guidelines.

51.6. Quality child care will also depend on the communications network in a facility. The various workers and professionals must be responding to a child consistently and within their respective roles. Finally, all staff should have the authority and freedom to carry out the responsibilities demanded by their jobs and must be held accountable for the services they provide.

**§78-3-52. Staff Evaluation and Development - Commentary.**

**52.1. Regardless of the competence, maturity, sensitivity and experience which staff members may bring to their jobs, working with children with special needs is extremely demanding. Beyond careful hiring policies, the residential facility should:**

**a. ensure that all staff are thoroughly familiar with the operation, program and emergency procedures of the facility;**

**b. establish and maintain staff evaluation procedures designed to promote the development of highly competent and caring staff members;**

**c. ensure that all staff, particularly direct service staff, have sufficient opportunities for learning and advancement;**

**d. maximize the use of all available resources in the ongoing process of personal and vocational development;**

**e. establish working conditions which contribute to staff stability and effectiveness.**

**The facility must have a comprehensive approach to staff training. Staff members must be trained in the variety of areas necessary for responsible child care.**

**52.2. Residential facilities are often short-staffed. When a new staff member is hired, there is pressure to rely on him/her immediately, neglecting or postponing orientation procedures. Effective orientation procedures, are, however, critical. Orientation in emergency procedures minimizes the chance of costly errors occurring. Orientation in administrative and program procedures ensures that all staff understand the workings of the total program.**

**52.3. A close linkage between performance evaluation and training emphasizes a positive and developmental, rather than a punitive and judgmental, approach to staff. Evaluations should hold no surprises for a staff member nor should they be seen as something that happens once a year that bears little relationship to the ongoing program.**

**52.4. Residential facilities should ensure that training objectives and activities are directly related to competency development and are geared to each staff member's professional needs in terms of his/her current performance evaluation and the specific competencies required in the job to be performed. In planning specific training activities, attention should be given to utilizing all internal resources-arranging for staff to share expertise with one another-as well as the resources of the local community.**

**52.5. Ongoing supervision is an important part of staff development. Supervision provides an opportunity for the employee to examine his/her work with his/her immediate supervisor, in the context of his/her performance goals and training objectives.**

**52.6. The strain of working with children with special needs in the same capacity within the same facility for long period of time may erode a staff member's morale and sensitivity. Residential facilities should do everything possible to develop and maintain a work environment that continually stimulates the development of staff, and prevents staff "burn-out".**

**52.7. A residential facility shall have a comprehensive written staff plan for the selection, orientation, ongoing training, development, supervision and evaluation of all staff members.**

**52.8. All staff shall receive orientation to the program at the beginning of employment and fifteen (15) hours of in-service training annually. This shall be documented including date, subject and method of training and staff involved. Staff shall receive ongoing supervision in addition to orientation and training.**

**52.9. The facility shall provide the opportunity for direct care staff to attend annually at least one (1) professional conference and/or training session as part of their employment. According to the needs of the individual agency, training shall include the following areas:**

- a. The facility's emergency and safety procedures;**
- b. The principles and practices of child care and human development;**
- c. The facility's administrative procedures and overall program goals;**
- d. Acceptable behavior management techniques; (See Section 90.5)**
- e. Crisis management; (See Section 97.4)**
- f. Passive physical restraint;**
- g. Review and familiarity with State Licensing Requirements.**

**52.10. A residential facility shall have an introductory training and orientation program for all staff. This program shall include facility's administration procedures and overall program goals, orientation to emergency and safety procedures and the responsibilities of the staff member's job. The training shall be documented including date, subject, and method of training and staff involved.**

**a. Inexperienced direct service staff shall be supported and assisted by experienced workers until such time as these staff are able to safeguard the health and safety of children in care effectively.**

**52.11. A residential facility shall ensure that a minimum of one (1) evaluation/planning conference per year for each staff member is held, documented and signed by the staff person and his/her immediate supervisor. There must be an opportunity for the employee to express his/her agreement or disagreement with the evaluation in writing. The staff person shall be given a copy of his/her evaluation.**

**a. Within at least three (3) months of initial employment, each new direct service or administrative employee shall have his/her first written evaluation with his/her supervisor for the purpose of evaluating performance, setting time-limited performance goals, and developing an individual training plan.**

**b. The supervisor and individual employee shall review progress made toward established performance goals, review present strengths and weaknesses; establishment of additional goals as needed; devise training objectives to help meet the goal and establish a strategy that will allow achievement of these goals and objectives.**

**§78-3-53. Personnel Policies and Procedures - Commentary.**

**53.1. Residential facilities should have considerable latitude in formulating personnel policies and practices.**

**53.2. In most fields of endeavor, it is possible to outline the necessary qualifications for a particular task with fair precision. It is relatively easy to outline the skills that the total staff complement of a residential facility should possess, but the next step, refining this general statement to an individual level, is not so easy.**

**53.3. All child care professionals must be people who possess a degree of social skill and a degree of insight into the workings of human behavior, but beyond that they are as various as the clients they serve.**

**53.4. Residential child care involves a broad range of activities. It is not possible to imagine a human being who is good at all of them. Residential operators therefore usually try to compose a "staff mix" that matches the "institutional mix".**

**53.5. Staff members should be selected on the basis of competence, not necessarily on the basis of paper qualifications. Facilities must be able to provide evidence of competence of any staff member to the licensing authority, particularly if the staff member is not educated or certified in a manner normally required for a given position. Previous positive work experience and ongoing work performance evaluation would usually constitute appropriate evidence of competence.**

**53.6. Similarly, a facility may deploy staff in whatever manner its administration sees fit, but it must be able to demonstrate to the licensing authority that all the required program functions are adequately covered.**

**53.7. The appropriate number of staff for a program depends on a number of factors, including:**

- a. the goals and objectives of the program;**
- b. the nature of the direct service or treatment provided;**
- c. the characteristics of the children in care (for example: age, sex, and nature and severity of problems, conditions and behavior);**
- d. the number of children in care;**
- e. the range of services provided;**
- f. the nature and range of staff competencies;**
- g. the mixture of full-time and part-time staff;**
- h. the extent of community resources utilized; and**
- i. the nature of the physical setting.**

53.8. The following requirements have been developed on the assumption that meeting the needs of the children in care is the primary and central concern of the residential care program.

53.9. A residential facility shall employ a sufficient number of qualified staff and delegate sufficient authority to such staff to carry out the requirements it undertakes. Staff meeting this requirement shall be administrative, clinical, social work and child care staff. Child care staff shall be assigned at the ration of one (1) for every ten (10) youth. While youth are present at the facility, there shall be no less than two (2) child care staff per living unit. Staff shall be the age of majority. There shall be qualified and trained relief staff to permit regular staff to have time off and to meet emergencies. Quantification of staff supervision time at each facility will be determined by an annual time study. A residential facility will be required to participate in the time study at the request of the Department of Health and Human Resources.

53.10. The director shall ensure that provision is made for the following:

- a. Administrative functions;
- b. Fiscal functions;
- c. Clerical functions;
- d. Housekeeping, maintenance and food service functions;
- e. Direct child service functions;
- [A f. Supervisory functions;
- g. Record keeping and reporting functions;
- h. Social service functions;
- i. Ancillary service functions.

53.11. The facility shall provide qualified staff to operate the program in accordance with the homes stated goals and the need of children utilizing care.

a. There shall be a full-time director who shall have at least a Master Degree in the field of Human Services or other directly relevant fields, and two (2) years experience in the field OR Bachelors Degree from an accredited college or university and five (5) years experience in field of Human Services. Facilities that have the following positions shall employ personnel who meet these requirements:

b. Direct Child Care Staff/Child Care Worker shall have a high school diploma, certified equivalency, or two (2) years successful experience in working with children.

c. Assistant Director/Program Director shall have a Masters Degree in Human Services field OR Bachelors Degree in Human Services field and three (3) years experience in the field.

d. Clinical Director shall have a Masters Degree and two (2) years clinical experience.

e. Social Services Director shall have a Masters Degree in Social Work and two (2) years experience in the field.

f. Caseworker shall have a Bachelors Degree in Human Services field.

g. A residential facility employing any person who does not possess usual qualifications for the position in which he/she is employed shall have a written statement justifying reasons for employing this person.

53.12. A residential facility shall have a description of all staff assignments. This description shall provide complete information on roles, functions, lines of authority, lines of responsibility and lines of communication. This description shall be provided to all staff members as a part of the orientation procedure and, on request, to placing agencies.

53.13. A residential facility's personnel policies shall specify clearly the conditions under which it employs personnel related to board or to other staff members serving in a governing, administrative or supervisory capacity. A residential facility shall have a written description of personnel policies and procedures. This description shall be provided to all staff members and available to all persons seeking employment, and shall include:

- a. Salary provisions;
- b. Work schedule which provides staff with equivalent of two (2) days off per week;
- c. Conditions under which employment outside homes is permitted;
- d. Living arrangements when staff reside in home;
- e. Fringe benefits, i.e., health insurance, retirement, etc.;
- f. Line of authority;
- g. Annual evaluations;
- h. Grievance procedure;
- i. Sick leave, vacation and holidays;
- j. Promotions and transfers.
- k. Promotions and transfers.

53.14. A residential facility shall have complete written job descriptions covering all positions within the facility. Each employee shall be given his/her job description and shall have access to all other job descriptions.

53.15. A residential facility shall actively recruit and employ qualified personnel, of both sexes, broadly representative of the racial and ethnic groups it serves.

53.16. A residential facility shall not hire, or continue or employ, any person whose health, education achievement, emotional or psychological makeup impairs his/her ability to properly protect the health and safety of the children or is such that it would endanger the physical or psychological well-being of the children.

53.17. The residential facility shall require three (3) references, two (2) of which are written work references, or written telephone notes on such references to be on record before hiring staff who will work directly with children.

53.18. Upon an employee's termination from the facility, a final personnel report should be written and a copy provided to the employee.

53.19. The residential facility shall have a personnel file for each employee which shall contain:

- a. The application for employment and/or resume;
- b. Reference letters from former employer(s) and personal references or phone notes on such references;
- c. Any required medical examinations and an annual health and tuberculosis test;
- d. Applicable professional credentials/certifications;
- e. Initial three (3) month evaluation and annual performance evaluation thereafter;
- f. Personnel actions, other appropriate materials, reports and notes relating to the individual's employment with the facility;
- g. Employee's starting and termination dates;
- h. The staff member shall have access to his/her file and shall be allowed to add any written statement he/she wishes to make to the file at any time;
- i. Documentation of training.

53.20. A residential facility shall maintain the personnel file of an employee who leaves the facility for a period of five (5) years.

#### §78-3-54. Staff Communications.

54.1. A residential facility shall establish procedures to assure adequate communication among staff to provide continuity of services to the children. This system of communication shall include:

- a. At least, a weekly review of individual and aggregate problems of residents including actions taken to resolve these problems.
- b. Sharing of daily information noting unusual circumstances and other information requiring continued action by staff;
- c. Written reports maintained of all accidents, personal injuries and pertinent incidents related to implementation of children's individual service plans;
- d. Work schedules shall facilitate sharing such daily information.

54.2. Any employee of a residential facility working directly with children in care shall have access to the records of children with whom they work.

**54.3. A residential facility shall establish procedures which facilitate participation and feedback by staff members in policy making, planning and program development.**

**§78-3-55. External Professional Services.**

**55.1. A residential facility shall have documentary evidence that all professionals providing services to the facility, whether working directly with children in care or providing consultation to employees of the facility, are appropriately qualified, certified and/or licensed as appropriate to the nature of the service.**

**a. The facility shall ensure that a professional providing direct services to a child in care communicates with facility staff as appropriate to the nature of the service.**

**b. A professional providing direct services to a child in care shall be made aware of the relevant aspects of the service plan of the child.**

**§78-3-56. Volunteer Services.**

**56.1. The use of volunteers may improve a program in a variety of ways. Volunteers may serve as a communication channel between the facility and the community, bringing with them some of the concerns of the community and taking back to the community a knowledge of the program, services and children. Volunteers may also provide skills and services that would otherwise not be available. The proper use of volunteers offers possibilities of enriched programs and services for the children. Care must be taken to ensure that volunteers are not exploited and used only in appropriate ways.**

**56.2. The relationship between students placed in a residential facility and the facility should be mutually beneficial. The student should learn both by observation and performance and the facility should benefit, after a reasonable period of time, from the skills and talents that the student develops while at the facility.**

**56.3. A residential facility which utilized volunteer services, student field placements and internships on a regular basis, or utilizes volunteer services, student field placements and internships to work directly with a particular child or group of children for an extended period of time, shall have a written plan for using such persons. This plan shall be given to all such persons. The plan shall indicate that all such volunteers and students shall:**

- a. Be directly supervised by a paid staff member;**
- b. Be oriented and trained in the philosophy of the facility and the needs of children in care, and methods of meeting those needs;**
- c. Be subject to character and reference checks similar to those performed for employment applicants;**
- d. Be aware of and have input into the service plans for children they are working with directly and be briefed on any special needs or problems of these children.**

**§78-3-57. Quality of Life - General Commentary.**

**57.1. The requirements and guidelines concerning the quality of life in residential settings are designed to guarantee that children in care will live in environments resembling**

normal homes with capable, loving parents. The basic needs of daily life should be provided to all children who live in residential settings in a human and caring manner.

57.2. The effectiveness of any therapeutic program ultimately depends on the total atmosphere of the therapeutic setting. No setting consumes more than a small part of a child's day with planned therapeutic interaction. The balance is spent in accordance with the broader patterns of human existence: sleeping and eating, working and playing.

57.3. Such aspects of life are naturally very significant factors in the child's experience of the residential setting. The child will usually care very much about the food and clothing provided, the variety of recreational alternatives and similar matters. If reasonably satisfied of fair treatment in these regards, the child may begin to listen.

57.4. The residential environment must encourage spiritual, mental and physical growth and health. It must provide for a sense of belonging while promoting the development of the child's unique individuality. The child should have the opportunity to retain positive contacts with his/her normal community life and take part in the religious exercises and cultural activities to which he/she is accustomed.

57.5. The present standards and guidelines are intended, in part, to promote sensitivity to the rights of children. In the Department's opinion, children must be accorded the following rights.

**§78-3-58. Statement of Rights for Children in Children's Residences.**

58.1. Every child has the right to enjoy freedom of thought, conscience and religion.

58.2. Every child has the right to reasonable enjoyment of privacy.

58.3. Every child has the right to have his or her opinions heard and to be included, to the greatest extent possible, when any decisions are being made affecting his/her life.

58.4. Every child has the right to receive appropriate and reasonable adult guidance, support and supervision.

58.5. Every child has the right to be free from physical abuse and inhumane treatment. Every child has the right to be protected from all forms of sexual exploitation.

58.6. Every child has the right to receive adequate and appropriate medical care.

58.7. Every child has the right to receive adequate and appropriate food, clothing and housing.

58.8. Every child has the right to live in clean, safe surroundings.

58.9. Every child has the right to receive an educational program which will maximize his/her potential.

58.10. Every child has the right to communicate with "significant others" outside the facility.

**§78-3-59. Family Involvement - Commentary.**

59.1. The success or failure of a therapeutic program for an individual child may hinge on the involvement of the child's family in the program. If the family does not extend permission and support to the residential program to care for the child, the child is much less likely to arrive at the acceptance of placement that is usually a pre-condition for real progress.

59.2. The parent(s) of a child entering residential treatment usually have strong feelings of guilt and failure. Consequently they may either idealize the placements as "the best thing that ever happened" or develop strong resentments against any of the available targets—the child, the placing agency or the residential facility. They may overindulge the child or reject the child. Parent(s) of a child in care need to know where their child is and how he/she is being treated. They need to know that the family will continue to be an important part of the child's life. They should know the people who are dealing with their child.

59.3. Residential programs shall recognize the necessity of working closely with the families of children in care, whenever, possible. In exceptional circumstances children may need absolute protection from parental conduct or may, indeed, have no family available. In general, an intelligent approach to family involvement is, however, an important component of any residential program.

59.4. A residential facility shall have a written description of its overall approach to family involvement. If any restrictions are imposed, they shall be discussed with the child, the family, if involved, and be in writing and evaluated monthly.

59.5. A residential facility shall ensure that there shall be contact between the child and his parents unless it has been determined by the facility and the responsible agency that it is not in the child's best interest. The frequency of the contacts shall be determined by the needs of the child and his family.

59.6. A residential facility shall provide the parent(s) or guardian with a written description of the facility. Whenever possible, this shall be done prior to placement. The description shall include:

- a. A description of the philosophy of the facility; (See Section 11)
- b. A description of normal daily routines; (See Section 61.3)
- c. A description of behavior management and disciplinary practices at the facility; (See Section 96.6)
- d. Any specific treatment or strategy employed by the facility; (See Section 92.1 and 94.4)
- e. Visiting hours, home visits and other procedures related to communication with children. If any restrictions are imposed, they shall be discussed with the child and his/her family, if involved, and shall be in writing and evaluated monthly; (See Sections 62.5 - 62.7)
- f. A description of a procedure which the parent(s) may use to register complaints;
- f. Name and telephone number of staff person whom the parent(s) may contact on an ongoing basis;
- g. A description of the policy regarding religious training and church or synagogue attendance.

h. A residential facility shall provide conditions of reasonable privacy for visits and telephone contacts between children in care and their families.

i. Flexible visiting hours shall be provided for families who are unable to visit at the regular times.

**§78-3-60. Community Interaction - Commentary.**

60.1. A basic goal of residential care is to enable the child in care to function successfully in the community. Children in care should therefore be encouraged to become involved in community activities. The maintenance of strong relationships, both formal and informal, with community resources is an important responsibility of the residential care agency. Even if the child is eventually discharged to another community, the experience of contacting and utilizing resources will be useful to him/her.

60.2. It must also be recognized that some children, in order to learn to live in the community, must be isolated from the community for brief periods. The following requirements concerning community interaction are not intended to interfere with a therapeutic program for such a population.

60.3. When in accordance with a child's service plan, the residential facility shall give consideration to the special needs of children without families and children for whom regular family contact is impossible. The facility shall, when appropriate, involve "volunteer families", documenting the child's need for such service, the manner in which the "volunteer family" was recruited and the subsequent history of the involvement.

60.4. The residential facility shall encourage and arrange for children to care to participate in community, school functions and recreational activities on an individual basis. Children in care shall be encouraged to form friendships outside the facility.

a. Strategies for optimizing the appropriate use of community resources shall be formulated.

**§78-3-61. Daily Routine - Commentary.**

61.1. Human life is anchored in routine. The earth itself provides an orderly procession of days and seasons so central to consciousness that it evades discussion. We eat and sleep and work and play according to fixed and infinitely repetitive patterns.

61.2. The central assumption of residential care is that daily routines constitutes an effective agent for change. Good residential staff structure and the daily living environment and their own behavior in ways designed to assist the child in developing a health pro-social approach to the business of life. Staff must monitor the continuity of care provided to the child, and ensure that the various influences of special program activities, professional specialists, parents, schools and other resources are effectively coordinated. Implicit throughout the program's daily activities must be a concern for the development of ethical, spiritual and moral values, respecting the beliefs and values of each child and his/her family.

61.3. A residential facility shall have a written plan of basic daily routines which shall be available to all personnel. This plan shall be current and updated regularly.

- a. Children shall participate in planning daily routines.
- b. While daily routines are important, they shall be flexible enough to allow for implementation of the child's service plan.

#### **§78-3-62. Communication with Others.**

62.1. The overwhelming majority of those involved in residential care have intense feelings concerning the protection of children in care. In our enthusiasm to present the positive aspects of involving children in care with normal community activities and maintaining ongoing contacts with significant others, we cannot neglect the fact that such involvement and such contacts may not be in the child's best interests.

62.2. Our problems in developing standards concerning children's communication with others outside the facility was to achieve a balance between the need to protect the child from harmful contacts and the child's basic right to communicate with whomever he/she chooses. The child may, as well, have a need to maintain some relationship with the home community despite the fact that residential staff may feel that such a relationship is of dubious value.

62.3. Isolating a child may solve one (1) problem, but it creates another. A child's sense of himself/herself may be totally overwhelmed by such a radical procedure. Friends and acquaintances, though they may provide little else, do provide daily confirmation of who we are. In general, any friendship provides a great deal more, even if it is based on a community of interests that staff may feel has little value or, indeed, a negative value.

62.4. Prior to disallowing or restricting a child's communication with a particular person, the facility must be able to demonstrate that they are compelling reasons for doing so. Restricting or terminating a child's communications with others outside the facility is a serious matter and must be conducted according to established procedures for protecting the child's rights.

62.5. The residential facility shall have a written policy regarding visiting and other forms of children's communication with family, friends, and significant others. If any restrictions are imposed, they shall be discussed with the child and his/her family, if involved, and shall be in writing and evaluated monthly.

- a. This policy shall be developed with the goal of encouraging healthy family interaction, maximizing the child's growth and development and protecting children, staff and programs from unreasonable intrusions.

- b. This policy shall be provided to children, staff members, parent(s) or guardian and placing agencies.

62.6. A residential facility shall provide opportunities for a child in care to visit with parent(s) or guardian and siblings.

- a. A facility shall schedule or supervise visits in accordance with the child's service plan.

62.7. A residential facility shall have written procedures for overnight visits outside the facility including: procedures for recording the child's location, the duration of the

visit, the name and address of the person responsible for the child while absent from the facility and the time of child's return.

a. A residential facility shall have procedures for determining and reporting the absence without leave of a child in care. These procedures must include notification of the child's parent(s) or guardian, the placing agency and the appropriate law enforcement official within twenty-four (24) hours after it has been determined the child left the facility without permission.

62.8. A residential facility shall permit a child in care to receive and send mail. Facility staff shall not read children's mail. Facility practices concerning children's mail shall conform with applicable federal laws.

62.9. A residential facility shall be equipped with a sufficient number of telephones (either pay or free) for the child's use and shall have procedures for children's use of these telephones. If any restrictions are imposed, they shall be discussed with the child and his/her family, if involved, and shall be in writing and evaluated monthly.

62.10. When the right of a child in care to communicate in any manner with a person outside the facility must be curtailed, a residential facility shall:

a. Inform the child and responsible agency of the conditions of and reasons for restriction or termination of his right to communicate with the specified individual(s);

b. Inform the individual(s) over whom the restriction or termination of personal contact with the child has been placed or the conditions of and reasons for that action unless explanation is contraindicated or is not feasible;

c. Place a written report summarizing the conditions of and reasons for restriction or termination of the child's contact with the specified individual(s) into the child's case record and forward a copy of this report to the responsible agency;

d. Review this decision at least quarterly;

e. A facility shall not bar a child's attorney, clergyman or an authorized representative of the responsible agency from visiting, corresponding with or telephoning the child.

#### §78-3-63. Children's Money.

63.1. Children shall be provided with the opportunity to learn the use and value of money. A residential facility shall permit and encourage a child in care to possess his/her own money either by giving an allowance and/or by providing opportunities for paid work within the facility unless otherwise indicated by the child's service plan.

a. Money earned, received as a gift or received as allowance by a child in care shall be deemed to be that child's personal property.

b. Limitations may be placed on the amount of money a child in care may possess or have unencumbered access to when such limitations are considered to be in the child's best interests and are duly recorded in the child's service plan.

c. A child in care shall not normally be asked to assume expenses for his/her care and treatment. In accordance with his/her individual service plan an older child may be asked to pay some of his/her room and board and related expenses as preparation for independent living.

d. A residential facility may deduct reasonable sums from a child's allowance as restitution for damages done by the child if such a restitution is duly recorded in the child's individual service plan. Restitution must be negotiated with the child and based on the child's ability to pay.

e. The facility shall maintain a separate accounting system for children's money.

#### **§78-3-64. Work and Employment - Commentary.**

64.1. It is necessary to teach children that they are capable of influencing their own rewards. Competently performed work should generally lead to direct positive reinforcement in other areas. Every facility should outline an approach to teaching children good work habits. This approach should be based on the interests and abilities of the children.

64.2. The residential facility shall use work assignments with the facility only insofar as they provide a constructive experience for children and not as unpaid substitution for adult staff.

a. Work assignments shall be in accordance with the age and ability of the child and shall be scheduled so as not to conflict with other scheduled activities.

b. A facility shall comply with all child labor laws and regulations in making work assignments.

64.3. The residential facility shall ensure that any child who is legally not attending school is either gainfully employed or enrolled in a training program geared to the acquisition of suitable employment or necessary life skills.

a. Residential facilities dealing with older children shall have definite strategies for introducing these children into the work force. Voluntary programs of paid work; work in the community development in cooperation with local residents, business and agencies; program designed to teach children how to get and keep jobs shall be provided by the facility or in conjunction with community resources.

#### **§78-3-65. Recreation and Leisure Activities.**

65.1. A residential facility shall have a written plan for ensuring that a range of indoor and outdoor recreational and leisure opportunities are provided daily for children in care. Such opportunities shall be based on both the individual interests and needs of the children in care and the composition of the living group (i.e., structured as well as free time, group vs. individual, athletic vs. cultural/arts).

65.2. A residential facility shall utilize the recreational resources of the community whenever appropriate. The residential facility shall arrange the transportation and supervision required for maximum usage of community resources.

65.3. A residential facility which has recreation staff shall ensure that staff are apprised of and, when appropriate, involved in development and review of service plans. If the facility doesn't have recreation staff, they shall consult with physical education personnel for review of their recreation program.

**§78-3-66. Religion and Culture - Commentary.**

66.1. Standards and guidelines concerning religion deal with a particularly sensitive area. In our concern to correct the occasional abuse we cannot lose sight of one (1) of the fundamental principles of a free society-the individual has the right to follow his/her own conscience in matters of worship.

66.2. This principle protects the individual not only against state interference in the religious practices but equally against undue harassment or forceful indoctrination on the part of any religious community.

66.3. These standards are intended to be reflective of the principle of religious freedom. A family's religious practices conducted in a lawful manner are their own business. Residential facilities should encourage and allow children to continue their accustomed religious exercise. Residential facilities should never coerce any child to pursue or reject a religious affiliation. Though families have traditional rights in this regard, social institutions, in either the public or the private sectors, do not.

66.4. The right of the child to participate in the culture and/or ethnic community life is also fundamental and should be respected by all residential facilities.

66.5. A residential facility shall have a written description of its religious orientation, particular religious practices that are observed or any religious restrictions on admission. This description shall be provided to the child, the parent(s) or guardian and the placing agency.

a. During the admission process, the religious orientation and policy of the facility shall be discussed with the child and his/her parent(s) or guardian. At this time, the facility shall determine the wishes of the parent(s) or guardian and the child regarding the child's religious training.

b. Every child shall have the opportunity to participate in religious activities and services in accordance with his/her own faith or that of the child's parent(s) or guardian. The facility shall, when necessary, arrange transportation.

1. Wherever feasible, the child shall be permitted to attend religious activities and services in the community.

c. Children may be encouraged to participate in religious activities but they shall not be coerced to do so.

66.6. A residential facilities program shall reflect consideration for a sensitivity to the racial, cultural, ethnic and/or religious backgrounds of children in care.

a. The facility shall involve a child in cultural and/or ethnic activities, appropriate to his/her cultural and/or ethnic background.

**§78-3-67. Sleep.**

67.1. A residential facility shall have set routines for waking children and putting them to bed.

67.2. A residential facility shall ensure that each child has ready access to a responsible staff member throughout the night. (See Section 53.9)

a. When the needs of a child so dictate, there shall be an awake staff member near his/her sleeping area.

67.3. A residential facility shall ensure that the possessions and sleeping area of a child are not disrupted or damaged during the child's temporary, planned absence from the facility.

67.4. A residential facility shall ensure that no child over the age of five (5) years occupies a bedroom with a member of the opposite sex.

#### §78-3-68. Clothing.

68.1. A residential facility shall ensure that each child in care has adequate, clean, well fitting, attractive and seasonable clothing as required for health, comfort and physical well-being and as appropriate to age, sex and individual needs. The child shall be encouraged to participate in the selection of his clothing.

a. A child's clothing must be identifiably his/her own and not shared in common.

b. A child's clothing shall be kept clean and in good repair. the child shall be involved in the care and maintenance of his/her clothing. As appropriate, laundering, ironing and sewing facilities shall be accessible to the child.

68.2. When uniforms are required by the residential facility, the child and his/her parent(s) or guardian shall be advised prior to admission.

68.3. A residential facility shall ensure that discharge plans make provisions for clothing needs at the time of discharge. All personal clothing shall go with a child when he/she is discharged.

#### §78-3-69. Personal Belongings.

69.1. A residential facility shall allow a child in care to bring his/her personal belongings to the program and to acquire belongings of his/her own. However, the facility shall, as necessary, limit or supervise the use of these items while the child is in care. Where extraordinary limitations are imposed, the child shall be informed by staff of the reasons, and the decision and reasons shall be recorded in the child's case record. Provisions shall be made for the protection of the child's property.

#### §78-3-70. Personal Hygiene.

70.1. A residential facility shall establish procedures to ensure that children receive training in good habits or personal care, hygiene and grooming appropriate to their age, sex, race and culture.

- a. There shall be personal supervision by staff to provide for proper grooming and physical cleanliness of the children.
- b. The facility shall ensure that children are provided with all necessary toiletry items.
- c. The residential facility shall allow a child a reasonable degree of freedom in selecting a style of wearing his/her hair that reflects the child's personal taste.

**§78-3-71. Food Services - Commentary.**

71.1. The therapeutic value of providing plentiful nutritious food in comfortable surroundings cannot be overstressed. It would be fair to say that some children form their major impression of a facility based on how much food they are given and how much they like it.

71.2. For some children, the giving of food is the only expression of caring that they can comfortably acknowledge.

71.3. Residential facilities should therefore spend a great deal of time and thought on the matter of food services. Involvement of children and staff in the preparation of food provides a wide range of opportunities for positive interaction.

71.4. A residential facility shall ensure that a child is, on a daily basis, provided with food of such quality and in such quantity as to meet the recommended daily dietary allowances adjusted for age, gender and activity of the food nutrition board of the national research council.

71.5. A person designated by the chief administrative officer of a residential facility shall be responsible for the total food service of the facility. If this person is not a professionally qualified dietitian, regularly scheduled consultation with a professionally qualified dietitian shall be obtained.

- a. The person responsible for food service shall:
  1. Maintain a current list of children with special nutritional needs;
  2. Have an effective method of recording and transmitting diet orders and changes;
  3. Record in the children's medical records information relating to special nutritional needs and allergies;
  4. Provide nutrition counseling to staff and children;
  5. Manage and coordinate the resource of the dietary services to achieve effective, efficient and sanitary production.

71.6. A residential facility shall ensure that a child in care is provided at least three (3) meals or their equivalent available daily at regular times with not more than fourteen (14) hours between the evening meal and breakfast. Between meal snacks of nourishing quality shall be offered.

a. The facility shall ensure that the food provided to a child in care by the facility is in accord with his/her religious beliefs.

b. Menus for all food served shall be written one (1) week in advance, dated, posted for current week and kept on file for a minimum of two (2) months.

c. When planning meals, children shall be involved with guidance from a staff member. Consideration shall be given to the religious practices and to the cultural differences of the children.

71.7. No child in care at a residential facility shall be denied a meal for any reason except according to a doctor's order or according to his/her service plan.

a. No child shall be force-fed or otherwise coerced to eat against his/her will except by order of a doctor.

71.8. A residential facility shall ensure that, at all meals served at the facility, staff members eat substantially the same food served to the children in care, unless age differences or special dietary requirements dictate differences in diet. Staff members shall be present to eat at children's tables for the major meal of the day.

#### §78-3-72. Health Care.

72.1. A residential facility shall ensure the availability of a comprehensive program of preventive, routine and emergency medical and dental care for all children in care. The facility shall have a written plan for providing such care. This plan shall include:

- a. On-going appraisal of the general health of each child;
- b. Provision of health education and sex education as appropriate;
- c. Establishment of an ongoing immunization program;
- d. Approaches that ensure that any medical treatment administered will be explained to the child in language suitable to his/her age and understanding;
- e. An ongoing relationship with a licensed physician, mental health professionals and dentist to advise the facility concerning medical and dental care as required by the children in residence;
- f. Availability of a physician or an emergency room on a twenty-four (24) hours a day, seven (7) days a week basis;
- g. A facility shall show evidence of access to the resources outlined in this plan.

72.2. A residential facility which provides services for emotionally disturbed children in an open setting shall have well-established psychiatric resources available on both an ongoing and emergency basis.

- a. The facility shall show evidence of access to these resources.

#### §78-3-73. Medical Care.

**73.1. A residential facility shall arrange a general medical examination by a physician for each child in care within a week of admission unless the child has received such an examination within thirty (30) days before admission and the results of this examination are available to this facility. This examination shall include:**

**a. An examination of the child for physical injury and disease, including a V.D. test;**

**b. Vision and hearing tests;**

**c. A current assessment of the child's general health, including problems with alcohol and drug abuse;**

**d. Whenever indicated, the child shall be referred to an appropriate medical specialist for either further assessment or treatment, which includes general mental development appraisal.**

**e. The facility shall arrange an annual physical examination of all children ages six (6) or older; a semi-annual physical examination of all children between the ages of two (2) and six (6) years; and a physical examination every three (3) months of all children between the ages of one (1) and two (2) years, as applicable.**

**73.2. A residential facility must ensure that children receive timely, competent medical care when they are ill and that they continue to receive necessary follow-up medical care.**

**a. Every effort shall be made to maintain the child in his/her normal environment during illness.**

#### **§78-3-74. Dental Care.**

**74.1. A residential facility shall ensure that each child has had a dental examination by a dentist within sixty (60) days of the child's admission unless the child has been examined within six (6) months prior to admission and the facility has the results of that examination.**

**a. All children receive semi-annual dental examinations. Treatment shall be provided as needed.**

#### **§78-3-75. Corrective Devices.**

**75.1. A residential facility shall ensure that a child in care who needs glasses, a hearing aid, a prosthetic device or a corrective device is provided with the necessary equipment or device.**

#### **§78-3-76. Immunizations.**

**76.1. A residential facility, after attempting to determine a child's immunization history, shall ensure that the child has received all immunizations and booster shots which are required by the Department of Health. This process shall be initiated within thirty (30) days of his/her admission.**

#### **§78-3-77. Religious Objections to Medical Treatment.**

**77.1. A residential facility shall not require a child in care to receive any medical treatment when the parent(s) or guardian of the child or the child object to such treatment on the grounds that it conflicts with the tenets and practices of a recognized church or religious denomination of which the parent(s) or guardian or child is an adherent. In potentially life-threatening situations, the facility shall refer the child's care to appropriate medical and legal authorities.**

**§78-3-78. Medical and Dental Records.**

**78.1. A residential facility shall maintain current medical and dental records for each child in care. The following shall be included in each child's record: a record of each medical and dental examination; immunization records; a record of each visit to physician or dentist and treatment provided or recommended; a record of allergic reactions to food, medicine, animals, insect bites, plants, chemicals, dust, etc.; medication record including all drugs given, dosage, time given and the name of person administering the medication, professional counseling provision, suicide attempts and known addiction to drugs and alcohol.**

**a. Upon discharge, the facility shall provide a copy or summary of the child's health record to the person or agency responsible for the future planning and care of the child.**

**78.2. A residential facility shall make every effort to compile a complete past medical history on every child. This history shall, whenever possible, include:**

- a. Allergies to medication;**
- b. Immunization history;**
- c. History of serious illness, serious injury or major surgery;**
- d. Developmental history;**
- e. Current use of prescribed medication; (See Section 79.4)**
- f. Medication history.**

**§78-3-79. Administration of Medication.**

**79.1. A residential facility shall have written policies and procedures governing the use and administration of medication to children. These policies and procedures shall be disseminated to all staff responsible for prescribing and administering medication.**

**a. These policies shall specify the conditions under which medications can be prescribed and administered; who can administer medication; procedures for documenting the administration of medication and medication errors and drug reactions; and procedures for notification of the attending physician in cases of medication errors and/or drug reactions.**

**b. A residential facility shall inform a child and his/her parent(s) or guardian of the potential side effects of prescribed medications.**

79.2. A residential facility shall ensure that a child is personally examined by the prescribing physician prior to receiving any medication. In cases of medical emergency, telephone orders for the administration of medication may only be placed by a licensed physician.

79.3. A residential facility shall maintain a cumulative record of all medication dispensed to children including:

- a. The name of the resident;
- b. The type and usage of medication;
- c. The reason for prescribing the medication;
- d. The time and date the medication is dispensed;
- e. The name of the dispensing person;
- f. The name of the prescribing physician.

79.4. When a child first comes into care, a residential facility shall ascertain all medication the child is currently taking. At this time, the facility shall carefully review all medication the child is using and make plans to either continue the medication or to reconsider the medication needs of the child considering his changed living circumstances. (See Section 78.2e)

79.5. A residential facility shall have a written medication schedule for each child to whom medication is prescribed. A child's medication schedule shall contain the following information:

- a. Name of child;
- b. Name of prescribing physician;
- c. Telephone number at which prescribing physician may be reached in case of medical emergency;
- d. Date on which medication was prescribed;
- e. Generic and commercial name of medication prescribed;
- f. Dosage level;
- g. Time(s) of day when medication is to be administered;
- h. Possible adverse side effects of prescribed medication;
- i. Date on which prescription will be reviewed.

79.6. A residential facility shall provide a copy of a child's medication schedule to all staff members responsible for administering the medication to the child and such schedule shall subsequently be placed in the child's case record.

§78-3-80. Therapeutic Use of Psychotropic Medication Commentary.

80.1. Therapeutic usage of psychotropic medications involves the administration of psychotropic agents as a component of a comprehensive treatment plan. All usages of psychotropic medications except the emergency use of pharmacological intervention are governed by the following requirements.

80.2. These requirements were prepared in cooperation with medical practitioners and are intended as guidelines for physicians as well as administrators. The therapeutic usage of psychotropic medications raises a number of serious issues. While psychotropic drugs prescribed and administered according to sound clinical practice may be enormously beneficial, the same drugs are capable of doing permanent damage. Some facilities have, in the past, used these drugs incorrectly. Drugs cannot replace the presence of sufficient numbers of qualified staff persons.

80.3. A residential facility shall not engage in the therapeutic use of psychotropic medications unless approval of such use by that facility has been granted by the appropriate state authority.

80.4. A residential facility which uses psychotropic medications shall have a written policy governing the use of psychotropic drugs at the facility. This policy shall include the following:

- a. Identification of doctors permitted to prescribe psychotropic drugs and their qualifications;
- b. Identification of persons permitted to administer psychotropic drugs and their qualifications;
- c. Criteria for the use of psychotropic medications;
- d. A description of the facilities medication counseling program;
- e. Procedures for obtaining informed consent from the child and the parent(s) or guardian where consent is required;
- f. Procedures for monitoring and reviewing use of psychotropic medication, including a daily review by staff;
- g. Procedures for staff training related to the monitoring of psychotropic medication;
- h. Procedures for reporting the suspected presence of undesirable side effects;
- i. Recordkeeping procedures;
- j. This policy shall be disseminated to all direct service staff.

80.5. A residential facility which uses psychotropic medications shall maintain a routine medication counseling program designed to inform children to whom medications are being administered and their parent(s) or guardian of the projected benefits and potential side effects of such medications.

80.6. Unless there is a court order to the contrary, a residential facility which uses psychotropic medications shall ensure that the parent(s) or guardian of a child for whom a

medication is prescribed give prior, informed, written consent to the use of that medication at a particular level of dosage.

a. When the child is fourteen (14) years of age or over, the facility must also obtain prior, informed, written consent from the child except when the child lacks the capacity for informed consent.

b. Either the child and his/her parent(s) or guardian shall have the right to revoke consent at any time. When consent is revoked, administration of the medication shall cease immediately. The facility shall inform the prescribing physician and may, if indicated, seek a court order to continue medication.

c. A child who refuses to take a medication three (3) consecutive times shall be considered to have revoked consent.

d. When consent is revoked by a child, the facility shall notify the prescribing physician and the parent(s) or guardian.

e. The facility shall immediately file a statement describing the circumstances under which consent has been revoked. This statement shall be provided to the child, the parent(s) or guardian and the responsible agency. If consent has been revoked by refusal of medication, the statement shall be signed by two (2) staff members who personally witnessed refusal.

80.7. A residential facility which uses psychotropic medications shall ensure that no child who is fourteen (14) years of age or over is subjected to the administration of a psychotropic drug against his/her will unless such administration is permitted emergency pharmacological intervention.

80.8. A residential facility which uses psychotropic medications shall ensure that a child is personally examined by the prescribing physician prior to commencing administration of a psychotropic drug.

a. The prescribing physician shall provide a written initial report detailing the reasons for prescribing the particular medication, expected results of the medication and alerting facility staff of potential side effects.

b. Either the prescribing physician or another physician shall provide a written report on each child receiving psychotropic medications at least every thirty (30) days based on actual observation of the child and review of the daily monitoring reports. This thirty (30) day report shall detail the reasons medication is being continued, discontinued, increased in dosage, decreased in dosage or changed.

80.9. A residential facility which uses psychotropic medications shall ensure that usages of medications are in accordance with the goals and objectives of the child's service plan.

a. Psychotropic medications shall not be administered as a means of punishing or disciplining a child.

b. Psychotropic medications shall not be used unless restrictive alternatives have either been tried and failed or are diagnostically eliminated.

**80.10.** Licenses nurses or physicians shall supervise the administration of all psychotropic medications.

**80.11.** A residential facility which uses psychotropic medications shall ensure that each child who received medication is the subject of a daily monitoring report completed by a facility staff member trained in the recognition of side effects of the medication prescribed. This report shall be submitted to the prescribing physician.

**80.12.** A residential facility which uses psychotropic medications shall, when a child refuses medication, file a report detailing the child's name, the date, the time, the name of the person administering the medication and the child's stated reason for refusal. If possible, this report should be signed by the child.

**80.13.** A residential facility which uses psychotropic medications must maintain the following information in the case record of each child receiving the medication:

- a. Medication history;
- b. Documentation of all less restrictive alternatives either used or diagnostically eliminated prior to use of medication since entry into the facility;
- c. Description of any significant changes in the child's appearance or behavior that may be related to the use of medication;
- d. Any medication errors;
- e. Monitoring reports;
- f. Medication review reports;

**80.14.** A residential facility which uses psychotropic medications shall obtain an independent analysis of the facilities medication program at least annually.

#### **§78-3-81. Emergency Medical Services.**

**81.1.** A residential facility shall have written procedures for staff members to follow in case of medical emergency. These procedures shall both define the circumstances that constitute a medical emergency, and include instructions to staff regarding their conduct once the existence of a medical emergency is suspected or has been established. Emergency telephone numbers shall be posted by all phones.

**81.2.** A residential facility shall ensure that all staff have successfully completed a course in first-aid training. The training shall be renewed every three (3) years.

**81.3.** A first aid kit shall be available in each living unit and in every vehicle of a residential facility with type, size and contents to be determined according to the American Red Cross's current guidelines.

#### **§78-3-82. Illness, Accident, Death.**

**82.1.** A residential facility shall maintain records and report any serious occurrence involving a child in care. This shall immediately be reported to the child's parent(s) or guardian, to any other appropriate agency and to the licensing supervisor of the

Department of Human Services. This occurrence shall be documented and placed in the child's record.

82.2. All runaways shall be reported to the parents and/or responsible agency within twenty-four (24) hours after it has been determined the child left the facility without permission.

a. Any disaster or emergency, such as a fire, shall be reported within twenty-four (24) hours to the licensing supervisor of the Department.

**§78-3-83. Children's Grievance Procedure - Commentary.**

83.1. When children are placed in any type of residential care they frequently view themselves as being at the mercy of the system. Unfamiliar rules and routines are imposed on them "for their own good" and frequently they have no method or means of questioning these decisions. There are multiple benefits in having a grievance procedure in children's residence both for the child and the program.

83.2. By the introduction of a grievance procedure, through which a child can voice disagreements and problems in an appropriate way, behavior can be channelled away from outbursts caused by frustration and a sense of helplessness. The very introduction of a child's grievance procedure implies that a given program operates in a just manner and eliminates such rationalizations as "because that's the way it's always been done" and "because that's the rule". If a child sees himself/herself as powerless to affect situations he or she perceives as unfair, the child may be less motivated to change. If, however, a child is taught that to challenge and criticize is an acceptable part of social life, he or she may be more open to the ideas and suggestions of others.

83.3. A residential facility shall have a written grievance procedure for children. This procedure shall be written in clear and simple manner and shall allow children to make complaints without fear of retaliation.

a. The procedure shall be explained to the child by a staff member. The impartial review shall provide the opportunity for the youth to be heard. The staff member shall enter a note into the child's file confirming that this explanation has taken place with an acknowledgement from the child.

**§78-3-84. Institutional Child Abuse and Neglect - Commentary.**

84.1. Serious incidents of institutional child abuse or neglect are relatively rare considering the thousands of man hours of residential child care provided daily in the United States. Abuse and neglect must still be regarded as serious problems. In the first place, the abuse or neglect of children, no matter how infrequent, may never be disregarded. In the second place, there are forms of abuse and neglect far more subtle and no less damaging than actual physical abuse.

84.2. A pattern of institutional abuse or neglect within a facility is both a serious problem and an even more serious symptom. There is something profoundly wrong with a residential program where children are frequently abused or neglected. Treating abuse and neglect as problems leaves us, unfortunately, with few options. Staff members of a facility must be informed of their legal responsibilities to report incidents of abuse and neglect. Facilities must ensure that all incidents are reported to the appropriate state

authority. Each incident must be carefully and thoughtfully investigated. The due process rights of both the child and the staff members involved must be respected.

84.3. As a rule of thumb, we might say that, within a residential facility, staff members will generally tend to treat the children the way the facility treats them. A facility which properly screens, trains, supervises and supports staff members is not likely to experience a serious problem with abuse or neglect. Institutional abuse or neglect is caused by the same kinds of tensions and pressures which cause parents to abuse or neglect children. Isolation is, without doubt, a major factor. If the staff member feels little or no support from others within the facility, abuse or neglect is much more likely. Caring for children in a residential setting, particularly difficult children, is a high-pressure job. Sooner or later every direct service worker experiences a moment of intense anger and frustration and a desire to lash out at the child who has triggered these feelings. In a well-run facility, the worker is able to pull back, take a walk around the block and talk to someone who is prepared to listen. In a poorly run facility, the staff member's only outlet for these feelings is the child.

84.4. In particular, staff members must not be compelled to work excessively long hours with the children. An overworked direct service worker, teetering on the brink of "burn-out", is far more likely to lose control or perform his/her tasks poorly. We must strive to prevent institutional abuse and neglect. Requirements in the area of institutional abuse and neglect, however, must necessarily focus on responsibilities for reporting incidents of abuse and neglect.

84.5. A residential facility shall require each staff member of the facility to read and sign a statement clearly defining child abuse and neglect and outlining the staff members' responsibility to report all incidents of child abuse or neglect according to state law, and to report all incidents to the chief administrator of the facility or a person designated by the administrator.

84.6. A residential facility shall report any suspected or alleged incident of child abuse or neglect to the appropriate state authority and cooperate fully in the investigation of any incident.

84.7. A residential facility shall have procedures for handling any suspected incident of child abuse including:

- a. A procedure for ensuring that the staff member involved does not work directly with the child involved until the investigation is completed;
- b. A procedure for conducting in-house investigation of the incident;
- c. A procedure for disciplining any staff member involved in an incident of child abuse.

#### §78-3-85. Direct Service Management - General Commentary.

85.1. A residential facility is, above all, a place where a group of children live. They sleep, eat and generally follow a routine of human activities which is very little different from the routine of children anywhere. The requirements in the previous section, "Quality of Life" address the basic issues of this routine. Those requirements are designed to ensure the provision of good basic child care in residential facilities. A residential facility must, however, be much more than a comfortable and safe place to live. Children are or

should be placed in a particular facility for more compelling reasons than that this facility will provide good custodial care.

85.2. To put it simply, children are placed in a facility because they have needs and problems and the placing agency and the facility have reason to believe that the facility's program will help fill the needs and solve the problems. Direct service management refers to the approach the facility takes to this task. Direct service management is a relatively new concept. It suggests that the facility should take a coordinated and planned approach to serving children. Direct service management includes the manner in which children are moved through the facility's program from referral to aftercare. Direct service management also refers to the manner in which the facility manages children's behavior and plans services for children at the following three (3) levels:

- a. the facility-wide level;
- b. the intermediate or group level and
- c. the individual level.

85.3. The coordination of the vast number of activities involved in providing service to children on a twenty-four (24) hour basis to ensure that each element, as far as possible, supports the overall objectives of the facility is an enormously complex management problem.

85.4. In the ideal facility, every aspect of the program serves some purpose in teaching or helping children in a desired way. The therapeutic potential of every situation or activity is maximized through effective service management. For the sake of convenience, however, we have narrowed the focus in the following chapter to those activities related to the manner in which a facility directly addresses the needs and problems of children in care.

#### §78-3-86. The Process of Care: Referral to Entry - Commentary.

86.1. Residential care is often viewed as a sort of magical process that whisks children away, makes them better and returns them to the community in the state of complete readiness to assume the normal responsibilities of life. Even child care professionals have the understandable, though unfortunate, tendency to view their task as an isolated activity commencing with placement, ending with discharge and relating only very indirectly to other services provided to a child and his/her family on a continuing basis.

86.2. The only person who experiences the entire preparation, placement, and aftercare is the child; for him/her the experience is continuous. At the time of placement the child is usually upset at being removed from familiar surroundings, family and friends; discontinuities and contradictions in the placement process will impede an already difficult adjustment. An inadequately prepared child may be fearful, bewildered and angry.

86.3. From preparation for placement through aftercare a child should know what to expect at every stage. Professionals involved in the process should give consistent messages to the child and his/her family and operate with an awareness of the plan for the child's continuing care.

86.4. The standards and guidelines following are designed to ensure a smooth progression through the stages of care.

**§78-3-87. Referral Process.**

87.1. A residential facility shall have a written description of admission policies and criteria which shall include the following information:

- a. Policies and procedures related to intake;
- b. The age and sex of children in care;

1. No child under six (6) years of age shall be placed in a residential facility without prior written approval from the regulatory body.

c. The needs, problems, situation or patterns best addressed by the facility's program;

d. Any other criterion for admission;

e. Criteria for discharge;

f. Any preplacement requirements on the child, his parent(s) or guardian and/or the placing agency;

g. The facility shall, when applicable, have policies and procedures governing self-admission. Such policies and procedures shall include procedures for notification of parent(s) or guardian;

h. The written description of admission policies and criteria shall be provided to all placing agencies and shall be available to the parent(s) or guardian of any child referred for placement.

87.2. Within eight (8) days of receipt of completed referral materials from the referring agency, or individual, the facility shall notify the referral agency that it accepts the child or will require more information or preplacement conferences and visits or cannot meet the child's needs.

87.3. A residential facility shall not refuse admission to any child on the grounds of race or ethnic origin.

87.4. A residential facility shall not admit more children into care than the number of specified by the regulatory body.

87.5. A residential facility shall not accept any child for placement whose needs cannot be adequately met by the facility's program.

87.6. When refusing admission to a child, a residential facility shall provide a written statement of the reasons for refusal of admission to the referring agency.

87.7. A residential facility shall ensure that the child, his or her parent(s) or guardian, the placing agency and others, as appropriate, are provided reasonable opportunity to participate in the admission process and decisions. The facility shall document that due

consideration has been given to the concerns and feelings of the child, his/her parent(s) or guardian and the child's parent(s) or guardian is not possible, or not desirable, the reasons for their exclusion shall be recorded in the admission study.

87.8. A residential facility shall make its admission process as short in duration as possible.

**§78-3-88. Admission Procedures - Commentary.**

88.1. Admission is the initial phase of the continuing service provided by residential facilities to children and their families. Admission involves the preparation of the child for entry into residential care and should be carried out with the active participation of the child, his/her family and the placing agency.

88.2. Residential facilities are entrusted with the care of children. They, therefore, have a right to know any information relevant to the care of the particular child. Placing agencies have a responsibility to provide any relevant information to the facility.

88.3. Admission procedures, if properly conducted, can do much to dispel the fears, myths and false expectations that most children and their families have concerning residential placement. Admission should be conducted with a sensitivity to the powerful emotions surrounding the separation of a child from his/her family.

88.4. A residential facility shall accept a child into care only when a current comprehensive intake evaluation including social, health and family history, and, if appropriate, psychological and developmental assessment has been completed. (See Section 73.1)

a. In emergency situations necessitating immediate placement into group care, the facility shall gather as much information as possible about the child to be admitted and the circumstances requiring placement; and formalize this in an "emergency admission note" within two (2) days of admission, and then proceed with an admission study as quickly as possible. The admission study shall be completed within thirty (30) days of admission.

88.5. A residential facility shall, consistent with the child's maturity and ability to understand, make clear its expectations and requirements for behavior, and provide the child referred for placement with an explanation of the facility's criteria for successful participation in and completion of the program.

88.6. A residential facility shall ensure that a written placement agreement is completed. A copy of the placement agreement signed by all parties involved in its formulation shall be kept in the child's case record and a copy shall be provided to each of the signing parties. The signing parties shall include: The placing agency, the residential facility, the child, and the parent(s) or guardian.

a. The placement agreement shall be developed with the involvement of the child, the parent(s) or guardian and the representative of the placing agency. Where the involvement of any of these is not feasible or desirable, the reason for the exclusion shall be recorded and afford the parent(s) and child an alternative time and place. The placement agreement shall include by reference or attachment at least the following:

1. Discussion of the child's and the parent's or guardian's expectations regarding: family contact and involvement; the nature and goals of care, including any

specialized services to be provided; the religious orientation and practices of the child; and the anticipated discharge date plan.

2. A delineation of the respective roles and responsibilities of all agencies and persons involved with the child and his/her family;

3. Authorization to care for the child;

4. Authorization to obtain medical care for the child;

5. Arrangements regarding family visits, vacation, mail, gifts and telephone calls; (See Sections 59.6e, 61.3 -62.8)

6. Arrangements as to the nature and frequency of reports to, and meetings involving the parent(s) or guardian and referral agency;

7. Provision for notification of parent(s) or guardian and/or the placing agency in the event of unauthorized absences, medical or dental problems, and any significant events regarding the child. (See Sections 62.6A, 80.7)

#### §78-3-89. Emergency Admissions.

89.1. A residential facility shall not admit a child on emergency placement if the presence of the child to be admitted will be damaging to the ongoing functioning of the group and/or the children already in care. In the absence of separately identified programs, no facility shall provide emergency care and long-term care in the same facility.

#### §78-3-90. A Child's Entry Into The Program.

90.1. The first encounter of a child with a program is most important in laying the foundation for the positive experience in care. As Bettelheim (1950) points out: "Never again will he be as hopeful or as fearful about his life there, about the adults and the other children, about the activities, and about how he will stack up in the new order. But never again will he be quite so apt to misinterpret what he experiences, to destruct and to fight us. On the other hand, his behavior may never again show us so clearly what he is most frightened about, how distorted his view of reality is, and how he tries to defend himself against real problems and imaginary dangers."

90.2. During the admission phase crucial linkages between the child and his home and family are being weakened and the need for understanding and support towards all who are affected is great. The importance of approaching this highly significantly process in a sensitive and professional manner cannot be overemphasized.

90.3. Each child in care of a residential facility shall be assigned a staff person who carries out the function of a prime worker in the program.

90.4. A residential facility shall ensure that each child, upon placement, is checked for illness, fever, rashes, bruises and injury, allergies, use of medication, drugs and alcohol use. The child shall be asked if he has any physical complaints. The results of this procedure shall be documented and kept in the child's record.

90.5. A residential facility shall assign a staff member, preferably the child's prime worker, to orient the child and his/her parent(s) or guardian, if they are available, to life at the facility.

**§78-3-91. Service Planning and Child Management: Facility- Wide Level - Commentary.**

91.1. Residential facilities must begin to see their programs in terms of the total message given to children in care. What do they want the children to do? What behaviors are not desired? What reward may the child expect for appropriate behavior? What negative responses are given for inappropriate behavior? Answering these questions is much more difficult than it sounds. In a medium-sized facility, the child is exposed to a large number of facility employees in the course of the week. As far as the child is concerned, the message given by the "night staff" or, for that matter, the cook, may carry as much weight as the written list of rules posted on the bulletin board. In many facilities, staff from different areas of the program frequently give contradictory messages. Managing a facility to ensure that all employees give appropriate and consistent responses to children is a challenge to facility administration.

91.2. Residential programs should not see child management merely in terms of negative responses to inappropriate behaviors. The facility must provide positive motivations for children, rewards for appropriate behaviors. Most residential facilities make no effort to reflect a "pure" type of treatment strategy. Most programs pull together approaches drawn from various treatment models, traditional child-rearing techniques and methods based on past experiences. Such programs embody an approach to the raising of children that is probably better informed, but not substantially different from the parenting behavior of a significant portion of the general public.

91.3. Residential programs utilizing specific treatment strategies employ techniques that are based on comprehensive theories of human behavior. It would be conventional wisdom to note that the variety of such theories alone demonstrates the speculative nature of such an undertaking.

91.4. Treatment strategies generally involved the use of techniques that are not customary forms of parenting behavior in our culture. This in no way implies that such techniques are not effective in the context of a carefully planned therapeutic environment. Treatment strategies do, however, because of their inherent artificiality, create a system that is considerably less "forgiving" than the more conventional approaches.

91.5. Treatment services must be carefully planned to accord with overall family objectives and to appropriately service individual children. Direct care staff must be properly trained and supervised. The program must have access to the appropriate professional resources.

91.6. Above all, children should be placed in a particular program only on the basis of a demonstrable need for the treatment and services offered by the program.

**§78-3-92. Treatment.**

92.1. A residential facility shall have a written overall service plan. Any significant change in this plan shall be submitted to the appropriate state authority for review prior to implementation. If a specific treatment modality is used, the written plan shall include the following: (See Section 10)

- a. The name, position and qualifications of the person who has overall responsibility for the treatment program;
- b. Staff responsibility for planning and implementation of the treatment procedures and techniques;
- c. Staff competencies and qualification;
- d. The anticipated range or types of behavior or conditions for which such procedures and techniques are to be used;
- e. The range of procedures and techniques to be used;
- f. Restrictions on the use of stimuli that present significant risk in terms of psychological or physical damage;
- g. Assessment procedures for ensuring the appropriateness of the treatment for each child.
- h. Policies and procedures on involving and obtaining consent from the child and parent(s) or guardian;
- i. Requirements, where appropriate, for medical examination of a child prior to implementation of the treatment on a regular basis;
- j. Provisions for ongoing monitoring and recording;
- k. Provisions for regular and thorough review and analysis of the treatment data, the individualized treatment strategies and the overall treatment orientation;
- l. Provisions for making appropriate adjustments in the treatment strategies and orientation, the recording practices and procedures and the program activities in accordance with the results of the above reviews;
- m. Policies and procedures encouraging termination of the treatment procedures at the earliest opportunity in the event of achievement of goals, or when the procedures are proving to be ineffective or detrimental for a particular child.

**§78-3-93. Service Planning and Child Management: The Intermediate or Group Level - Commentary.**

93.1. The regulation of the size of living units or living groups within residential facilities presents a dilemma. We must protect the children from overcrowded conditions without limiting the creativity of facilities in making positive use of existing structures and resources.

93.2. Facilities approach grouping in a variety of ways. A child may be a member of a number of distinct groups which fill different needs and are composed of different children. In some facilities children who sleep in the same physical structure actually see very little of each other, breaking up into separate groups for education, therapy, recreation and a variety of other purposes. Regulating the size of this "sleeping group" would miss the point. The facility must be able to defend its grouping of children as a means of meeting both the general human and individual needs of children in care. In particular, we believe

that all persons should have an opportunity for privacy and peace and quiet in the course of the day.

93.3. We believe that all children should have an opportunity to build relationships in a face-to-face group of relatively small size.

93.4. We do not believe that there is any acceptable rationale for overcrowding in living space.

93.5. A residential facility shall have a statement describing the manner in which children are arranged into groups within the facility and demonstrating that this manner of arranging children into groups effectively addresses the needs of children in care. This statement must be in accordance with the following principles:

a. A residential facility shall ensure that all children have privacy and a place to go during periods of relative quiet and inactivity.

b. A residential facility shall ensure that all children are provided with consistency in the direct services staff who are responsible for their care.

c. A residential facility shall ensure that children are involved in decision-making regarding the roles and routines of their living group. The living group shall not exceed ten (10) children.

**§78-3-94. Services Planning and Child Management: The Individual Level - Commentary.**

94.1. In the day-to-day routine of caring for children in a residential facility, it is easy to lose sight of the need for planning an individualized program for each child designed to meet that child's unique needs in a manner suited to his/her personality. The service planning process provided opportunities for this.

94.2. Service plans are time-limited and goal-oriented. There are frequent reviews and updates of each plan. The facility may use these plans to measure the over-all performance of its program in meeting the needs of a particular child. Service plans, in addition to providing short-term objectives, provide an outline of the long-term goals.

94.3. The planning process, though it may differ from one facility to another, involves the child, his/her family and other persons and agencies significant in the child's life. The Department considers such involvement critical to a successful planning process.

94.4. Within thirty (30) days of admitting a child in care, a residential facility shall develop a written, time-limited, goal-oriented individual service plan for the child.

a. The individual service plan shall be developed by a planning team. This team shall include persons responsible for implementing the service plan on a daily basis. Members of the planning team do not necessarily have to be staff members of the facility.

b. The planning team shall assess the needs and strengths of the child in the following areas:

1. Health care;

2. Education;

3. Personal/social development;
4. Family relationships;
5. Vocational training;
6. Recreation;
7. Life skills development.

c. All methods and procedures used in this assessment shall be consistent with the child's age, cultural background and dominant language or mode of communication.

94.5. A residential facility shall provide an opportunity for the following persons to participate in the planning process:

- a. The child;
- b. His/her parent(s) or guardian;
- c. Representative(s) of the responsible agency;
- d. School personnel;
- e. Other persons significant in the child's life;
- f. When any of the above persons do not participate, reasons shall be documented.

94.6. Unless it is not feasible to do so, a residential facility shall ensure that the service plan and any subsequent revisions are explained to the child in care and his/her parent(s) or guardian in language understandable to these persons.

94.7. A residential facility shall ensure that the service plan for each child includes the following components:

- a. The findings of the assessment;
- b. A statement of goals to be achieved or worked towards for the child and his/her family;
- c. Strategies for fostering positive family relationships for the child with his/her family or guardian or for development a permanent home for the child;
- d. Specification of the daily activities, including education and recreation, to be implemented by the program staff and the child in order to attempt to achieve the stated goals as set forth by the planning team.
- e. Specification of any specialized services that will be provided directly or arranged for, and measures for ensuring their proper integration with the child's ongoing program activities;

f. Specification of time-limited targets in relation to overall goals, specific objectives, conduct expected of youth, and the method to be used for evaluating the child's progress;

g. Goals and preliminary plans for discharge and aftercare, i.e., medical/educational/human service/training, which may be relevant but cannot be offered by the facility.

h. Identification of all persons responsible for implementing or coordinating implementation of the plan;

i. The completed service plan shall be signed by the chief administrator of the facility or a person designated by the administrator, a representative of the responsible agency, and the child.

94.8. A residential facility shall review each service plan at least once every six (6) months and shall evaluate the degree to which the goals have been achieved. The service plan shall be revised as appropriate to the needs of the child or at request of the child or parent.

#### §78-3-95. Problem Management - Commentary.

95.1. Many of the problems involving children in residential facilities may be avoided by the establishment of a positive environment in the facility, an environment where all concerned feel a sense of participation.

95.2. Children do not, after all, cause difficulties without reason. Most difficulties with children may be traced to frustration, confusion, anger or sadness caused by some situation or event in the child's life. Facility staff can assist the child in channeling these feelings in constructive directions. Staff members must be able to see the situation from the child's point of view. To the adult, some of the child's concerns may seem trivial or unrealistic, but they are significant to the child.

95.3. When problems do occur -- and they will in the best managed facility -- the staff must be prepared to respond swiftly and humanely.

#### §78-3-96. Limitation on Potentially Damaging Responses - Commentary.

96.1. Our approach to the discipline and control of the children is non-punitive. Children often have been exposed to oppression and violence or to actual or threatened loss of love, before they join a residential facility. They need to be helped to overcome their own inner feelings of violence and oppression, or feeling they are "bad" which often may impel them to angry and hostile acts. Most people were brought up by adults who punished, threatened or perhaps even humiliated "bad" children. Under stress and pressure a worker may be tempted to revert to punishment and violence or be tempted to feel that a child is unworthy of love.

96.2. The only control worth having is inner self control; the only restraint that in the long run is both safe and effective is that which comes from a person's own understanding and acceptance of the need for restraint. Given the right type of guidance, every child has the capacity for self-discipline. When the adults around him respect rather than seek to dominate him, every child will be able to grow toward self-discipline. Patience combined

with firmness encourages self-control and provides the child with a worthy adult model for his own behavior.

96.3. All staff members of a residential facility must insist that a child shall never be subject to ridicule, humiliation, threats of physical or verbal punishment or any means of discipline which would diminish rather than strengthen the child's sense of his value and dignity as a person. The staff member must further agree that in each and all of his/her relationships with children in residence he/she will endeavor to carry out the truth expressed in the following statement by Pope John XXIII in his Encyclical "Pacem in Terris" "...one must never confuse error and the person who errs... the person who errs is always and above all a human being, and he retains in every case his dignity as a human person; and he must always be regarded and treated in accordance with that lofty dignity". We must be sure that when we disapprove of a "bad act," we in no way convey or imply disapproval of the child who committed the act.

96.4. Discipline should be an educational process by which the staff assists children in developing the experience and self-control necessary to gradually assume responsibilities, make daily living decisions and learn to live in reasonable conformity to accepted levels of social behavior.

96.5. A clear differentiation should be made between rights and privileges of children. Deprivation of privileges may be used as a disciplinary technique. Removal or discontinuation of a child's rights shall never be used for purposes of discipline, control or punishment.

96.6. A residential facility shall have written, comprehensive policies and procedures regarding conduct for children in care. These shall include policies and procedures for discipline and control, which shall be explained to all children, families, staff and placing agencies. The policies shall include measures for positive responses to appropriate behavior. (See Section 59.6c)

96.7. A residential facility shall prohibit all cruel and unusual punishments, including, but not limited to, the following:

- a. Punishments including any type of physical hitting or any type of physical punishment inflicted in any manner upon the body;
- b. Physical exercises such as running laps or any performing of push-ups, when used solely as a means of punishment.
- c. Requiring or forcing the child to take an uncomfortable position, such as squatting or bending, or requiring or forcing the child to repeat physical movements when used solely as a means of punishment;
- d. Group punishments for misbehaviors of individuals;
- e. Punishment which subjects the child to verbal abuse, ridicule, or humiliation;
- f. Excessive denial of on-grounds program services or denial of any essential program service solely for disciplinary purposes;
- g. Withholding of any meal;

- h. Denial of visiting or communication privileges with family solely as a means of punishment;
- i. Denial of sufficient sleep;
- j. Requiring the child to remain silent for long periods of time;
- k. Denial of shelter, clothing or bedding;
- l. Extensive withholding of emotional response or stimulation;
- m. Chemical, mechanical or excessive physical restraint;
- n. Exclusion of the child from entry to the residence;
- o. Assignment of unduly physically strenuous or harsh work.

96.8. Children in care of a residential facility shall not punish other residents except as part of an organized therapeutic self-government program that is conducted in accordance with written policy and is supervised directly by staff.

96.9. A residential facility shall ensure that administering of the discipline is not delegated to persons who are not known to the child.

96.10. A residential facility shall ensure that disciplinary measures are administered as soon after the offensive behavior as possible and that these measures are reasonably related to the nature of the offense and are not excessive.

**§78-3-97. Passive Physical Restraint - Commentary.**

97.1. Residential facilities should rely on therapeutic relationships with concerned staff members to provide children with the control and security that they need, rather than walls, fences or mechanical devices.

97.2. Physical aggression, the usual reason for placing a child under restrictive control, can often be prevented in a therapeutic setting that provides adequate control, consistency and nurturance.

97.3. Lack of trained staff, poor physical design and inadequate programming can lead an agency to the imposition of unduly harsh and restrictive measures. Unfortunately, there will be occasions when it may not be possible to avoid the use of force in helping a child control himself. Children may under these circumstances need to be physically restrained. Passive physical restraint of a child may be used in the proportion necessary:

- a. to end a disturbance that threatens physical injury to the child himself/herself;
- b. to end a disturbance that threatens physical injury to others;
- c. to take from a child a dangerous object which the child has threatened to use against others.

97.4. A residential facility shall ensure that all direct service staff members are trained in crisis management, the appropriate use of passive physical restraint methods and after

management. Any use of passive, physical restraint shall be documented in the child's case records.

97.5. A residential facility shall not use any form of restraint other than passive physical restraint without the prior approval of the regulatory body. Prior approval of regulatory body of use of other than passive, physical restraint shall be written and on file.

**§78-3-98. Time-Out Procedures - Commentary.**

98.1. Time-out procedures involved the isolation of a child for a brief period in an unlocked room. These procedures should be in accordance with written policies of the facility and should be carefully supervised.

98.2. Time-out procedures should exist in the context of a carefully designed behavior management program. Within this program a range of less restrictive responses should be available.

98.3. Time-out should be viewed as a removal of the child from the positive reinforcements of his/her own normal program, rather than as a means of punishment.

98.4. A residential facility shall only use the time-out procedures (forced separation from the group in a confined area) when these procedures are in accordance with written policies of the facility. These policies shall include procedures for recording each incident involving the use of time-out. Facility policies shall outline other less restrictive responses to be used prior to the use of time-out.

a. Each use of time-out procedures shall be directly supervised by supervisory staff.

b. The facility's chief administrative officer shall approve any use of time-out procedures exceeding thirty (30) minutes in duration.

**§78-3-99. The Process of Care: Discharge and Aftercare - Commentary.**

99.1. Unfortunately, more attention is almost always given to means of entry into residential care than to termination of care. Too often, the implicit approach is to treat care in the program as the end in itself. A conscious and concerted effort should be made by all residential programs, and those services linked to them, to view the child's placement as a means toward an end. Discharge planning should begin at the moment of intake.

99.2. In order to accomplish transitions from one (1) program to another, or to community life, considerable planning and preparation must take place. This is not solely the responsibility of the residential program. However, the program can play an important advocacy role in ensuring that the benefits derived by the child from participation in the program are not negated or reversed through lack of sufficient support during the transition.

99.3. The importance of aftercare cannot be overemphasized. At discharge the child must adjust to the loss of people who have been central to his life. The initiative to telephone and visit should not be left to the child. Occasional positive demonstration of continued caring on the part of the program staff, especially during the initial separation

period, may reassure the child and help him/her adjust to a new living arrangement without encouraging excessive dependency.

99.4. At least one (1) month prior to planned discharge of a child, the planning group shall formulate an aftercare plan specifying the supports and resources to be provided to the child. Aftercare plans are to be kept in the child's case record.

a. Prior to discharge, the planning group shall ensure that the child is aware of and understands his/her aftercare plan.

b. When a child is being placed in another program following discharge, representatives of the program prior to the child's discharge to share information concerning the child.

99.5. A residential facility shall have a written policy concerning emergency discharge and/or all other discharges not in accordance with a child's service plan. This policy shall ensure that emergency discharges take place only when the health and safety of a child or other persons might be endangered by the child's further placement at the facility.

a. The facility shall give at least seventy-two (72) hours notice of discharge to the responsible agency the parent(s) or guardian and the appropriate educational authorities;

b. When arranging an emergency placement, the facility shall consult with the responsible agency, placing the child in a program that reasonably meets the child's needs.

99.6. When a child in care is discharged, a residential facility shall compile a complete written discharge summary within a month of the date of discharge, such summary to be included in the child's case record. This summary shall include:

a. The name, address, telephone number and relationship of the person to whom the child is discharged;

b. When the discharge date was in accordance with the child's service plan:

1. A summary of services provided during care;

2. A summary of growth and accomplishments during care;

3. The assessed needs which remain to be met and alternate service possibilities which might meet those needs;

4. A statement of an aftercare plan and identification of who is responsible for follow-up services and aftercare with documentation of the implementation of the aftercare plan.

c. When the discharge date was not in accordance with the child's service plan, the following items shall be added to the summary;

1. The circumstances leading to the unplanned discharge;

2. The actions taken by the program and the reason for these actions.

100.1. Most of the children who are placed in residential facilities have histories of serious difficulties at school. In many cases the child's personal and social adjustment is the genesis of these difficulties. A child who presents continual behavior problems is unlikely to learn very much in the classroom. Other children in care of residential facilities have physical, mental or psychological handicaps. The placement of a child who has a successful educational background is a rare occurrence. The residential facility has an important responsibility for ensuring an appropriate educational program, a program which addresses child's needs and capabilities. Many facilities discharge this responsibility by providing a variety of on-grounds educational programs. The following requirements are intended to apply to such facilities.

100.2. If a child's educational needs can be appropriately met at a school in the community, the child should not be placed in an on-grounds educational program. On the other hand, a community school may not necessarily be an appropriate environment for a particular child. In such situations, it is imperative that the facility work closely with local educational authorities to ensure a coordinated approach. The decision to place the child in a residential program with an on-grounds school must obviously be made on the basis of a careful consideration of the priorities in the particular case.

100.3. A residential facility with an on-grounds school provides a total environment for the child. While this has many positive aspects, it may restrict development of independence. Many children who cannot survive in a community school can thrive within an on-grounds program. The on-grounds program must however be designed to properly prepare each child for his/her future educational placement or for independent living.

100.4. There is an unfortunate tendency to totally separate educational and residential functions within a residential facility. Particular facilities emphasize either one or the other in varying degrees. The point is that all staff working directly with a child should do so according to a comprehensive plan designed to meet the child's individual needs. This plan is neither the Individual Education Program (IEP) nor the facility's service plan, if that service plan does not include the IEP. This comprehensive plan should outline a clear, balanced approach to the child's needs with clearly defined priorities.

#### §78-3-101. Education.

101.1. A residential facility shall make all reasonable efforts to ensure that every child in care of a residential facility attends an appropriate educational program in accordance with state law.

101.2. A residential facility shall have a written description of its educational program which shall be provided to the child and his/her parent(s) or guardian prior to the child's admission.

101.3. A residential facility shall maintain children in the public school system unless such program is deemed inappropriate by the direct serve team involved with a child in care and county Board of Education representative.

101.4. A residential facility shall ensure route communications between the direct service team involved with a child in care and any educational program in which the child is placed.

101.5. A residential facility shall provide appropriate space and supervision for quiet study after school hours. The facility shall ensure that the child has access to necessary reference materials.

101.6. A residential facility shall ensure that vocational preparation services and/or life skills training are available to a child. Such training and services shall be appropriate to the age and abilities of the child.

**§78-3-102. Administration and Organization - Commentary.**

102.1. A residential facility with an on-grounds school should give careful thought to designing an administrative structure characterized by a clear definition of the relationship between the school and the residential program. It is particularly important that all staff members of the facility who work directly with a particular child communicate regularly and cooperate closely in the formulation and implementation of comprehensive plans for providing service to the child.

102.2. The mission of the school program is, however, not identical with that of the residential program. The completion of the school's mission requires skills and materials that may be different from the skills and materials required by the residential program.

102.3. For this reason, the school should be an identifiable function within the administrative structure of the facility. A person(s) designated by the chief administrator or the governing body of the facility should be responsible for all aspects of the provision for educational services. The facility should be able to determine the actual and projected costs of educational services. An education program must keep accurate records of pupil attendance and performance.

102.4. Either the chief administrator or the governing body of a residential facility which has an on-grounds educational program shall designate a person to assume overall responsibility for that program. This person shall be ultimately responsible to the chief administrator of the facility.

102.5. A residential facility which has an on-grounds educational program shall have a written, annually updated budget which clearly identifies all costs related to the provision of educational services.

102.6. An educational program shall keep accurate records on each child in the program including the following:

- a. Records of the child's actual attendance at the educational program;
- b. Reports relating to the child;
- c. A current written IEP developed and signed in accordance with the plan policy for the child including any revisions or review of the IEP and any reports on progress relative to the IEP, if applicable;
- d. A current written instructional plan including strategies and materials used and any revisions or reviews of this plan and any reports on progress relative to this plan, if applicable. This plan may be incorporated in the IEP.

**§78-3-103. The Physical Environment and Safety - Commentary.**

103.1. An educational program should have appropriately decorated and equipped instructional spaces which are reasonably free of distractions.

103.2. An educational program shall provided space for instruction and related services which is clean, adequately illuminated, appropriately equipped, reasonably free of distractions, appropriately decorated and properly maintained.

103.3. The dimensions of instructional spaces shall be adequate for the number of pupils served and constructed with proper regard for the pupil's handicapping conditions as required by applicable state and/or local standards. In the absence of such standards, the facility shall provide a written justification of the allocations and construction of educational space.

#### §78-3-104. Human Resources - Commentary.

104.1. Educational personnel in a residential facility are subject to much the same pressures as anyone else who works directly with trouble children. Though the actual hours in the classroom may be brief, the relationship between pupil and teacher is remarkably intense. The child may approach school with a profound sense of failure, hopelessness and/or hostility. Educational personnel must be prepared to deal with these feelings.

104.2. Educational personnel have four (4) essential tasks. The first and most obvious is the teaching of children and all that that implies. Secondly, educational personnel, in common with other staff, must manage the children's behavior. Thirdly, educational personnel will be called upon to perform supportive counseling with the children. Finally, educational personnel must communicate effectively with the other staff who work directly with a child, as well as with parents and other involved agencies and persons.

104.3. A residential facility which has an on-grounds educational program shall have a description of lines of authority and other personnel relationships between staff of the educational program and that of the facility as a whole.

104.4. An educational program shall employ a sufficient number of qualified staff and delegate sufficient authority to such staff to carry out the responsibilities it undertakes.

104.5. An educational program shall, at a minimum, provide staff in its educational program in compliance with the ratios required by the state in which it is located, or in the absence of such standards, shall provide a written justification of the program's student-teacher ratios.

104.6. A residential facility which has an on-grounds educational program shall ensure that all staff who work directly with a child in care shall have an opportunity for participation in a comprehensive planning process, related services and all other forms of service planning.

104.7. A residential facility which has an on-grounds educational program shall maintain a system of routine daily communication among all staff members of the facility working directly with a child in care. This communication system shall include educational personnel.

a. The daily communication system shall be designed to ensure that all involved staff are informed of any of the following:

1. Change in a child's program or living environment;
2. Significant incidents, changes, or accomplishments, including requests by youth or significant others;
3. Behaviors requiring staff intervention;
4. Forthcoming plans of possible significance including planned home visits.
5. Review and/or modification of the IEP, if applicable.

104.8. An educational program shall assure that all personnel hold appropriate certification and licensure as required by the state. If no requirements exist for a particular position, the facility shall provide a written job description of the position and shall have evidence that the person currently employed possesses sufficient experience and has sufficient ability to perform his/her duties satisfactorily.

104.9. An educational program shall provide an orientation program for all educational staff and shall ensure that all staff are aware of the following:

- a. The overall philosophy and goals of the facility;
- b. All features of the facility's program;
- c. Emergency and crises procedures;
- d. Acceptable behavior and crises management strategies.

#### §78-3-105. Quality of Life - Commentary.

105.1. An on-grounds educational program exists as a component of a residential facility. As such, the educational program should not use strategies or methods that conflict with the overall philosophy of the agency. All staff who work directly with a child should relate to that child within the consistent framework provided by the child's service plan. This does not imply that staff members must react to similar situations in the same manner.

105.2. A residential facility with an on-grounds school program is a total institution. Care must be taken to ensure that the child is exposed to a stimulating variety of individual differences and allowed to select, from those available, the people with whom he chooses to form close relationships. Consistency may not require every person to take an identical approach.

105.3. Though all staff who work directly with a child should be fully informed of any significant incident involving the child, it is not necessarily effective to continually confront a child with a particular issue both at school and in the residence, unless, of course, such confrontation is a feature of the child's service plan.

105.4. The educational program in common with any other service component of the facility, has a basic responsibility to provide any service that the program has agreed to

provide. The program must have sufficient equipment and any necessary materials required for the provision of such service.

105.5. In addition, the program must provide certain essential services. Each child in an on-grounds school program, in addition to receiving instruction in basic academic subjects, should receive physical education, career education and training in social and life skills as appropriate. If appropriate to his/her age and needs, each child should also receive vocational education. Career education, instruction in areas related to working life, is of particular importance.

105.6. The educational program's philosophy and methods of instruction shall be consistent with the general purpose, goals and philosophy of the overall organization. Services shall be integrated in such a manner as to enhance consistency.

105.7. An educational program shall provide instruction in all specific curriculum areas which are identified in the IEP or other educational plan of any child in care where the program has specifically agreed to provide such instruction.

a. An educational program shall inform the placing agency if the program cannot provide instruction in a specific curriculum area identified in the IEP or other educational plan of any child in care.

105.8. An educational program shall provide sufficient and diverse materials, equipment and instructional programs to ensure effective instruction in curriculum areas.

a. An educational program shall have an effective system of organizing and disseminating curriculum materials.

105.9. A residential facility which has an on-grounds education program shall ensure that the educational program provides hours and a calendar of instruction in compliance with state regulations.

a. An educational program shall not place any child in any program involving less than the normal instructional hours as defined by state laws or regulations, without clearly demonstrating that the child requires such a program and unless a program is in accordance with the child's IEP or other educational plan.

105.10. In addition to instruction in basic academic subjects as required by state law, an educational program shall ensure that each child receives instruction in the following essential areas:

- a. Physical education or adaptive physical education;
- b. Social and life skills;
- c. Career education as well as vocational skill training appropriate for the age of the child;
- d. Related services which will enable the child to benefit from special educational programs.

§78-3-106. Direct Service Management - Commentary.

106.1. A residential facility which has a school program must provide complete, accurate descriptions of that program and the admissions criteria of that program in order to assist agencies attempting to make placement decisions.

106.2. A residential facility which has an on-grounds educational program shall have a written statement of admissions criteria of the program and each separate service component of that program.

106.3. A residential facility which has an on-grounds educational program shall have a current, written description of the program, including the following:

- a. Pupil population, including ages and handicapping conditions;
- b. Annual instructional schedule and number of instructional hours per day;
- c. Fees;
- d. Range of related services;
- e. Staff-pupil ratios;
- f. Curriculum areas offered;
- g. Curriculum and behavior management strategies;
- h. Extracurricular and community activities;

106.4. The educational program shall have a current description of the on-going pupil educational assessment policies and procedures.

a. The educational program shall ensure that any pupil's IEP or other educational plan or program in which the facility participates is based on appropriate assessment.

b. The program shall administer tests and evaluation procedures in the child's native language.

106.5. The educational program shall clearly define in writing all major classroom strategies and maintain guidelines for their implementation.

a. There shall be such definitions and guidelines for all major curriculum/instructional strategies.

b. There shall be such definitions and guidelines for all major behavioral management strategies.

106.6. A residential facility which has an on-grounds educational program shall provide written progress reports at least twice a year to parent(s) or guardian(s) and involved agencies.

a. Progress reports shall be written with reference to the IEP goals.

b. Progress reports shall make reference, on an annual basis, to the appropriateness of the program for the pupil.

c. The language in the progress reports shall be in a form easily understood by parents.

d. Progress reports shall note the pupil's attendance record.

**§78-3-107. Individualized Education Program - Commentary.**

**107.1.** Public Law 94-142 gives assurance that appropriate educational planning will take place for each child who is need of special education and related services. If a child in care is not classified as educationally handicapped according to Public Law 941-42, he/she should still be assessed educationally and should still be the subject of an individualized, time-limited, goal-oriented educational plan.

**107.2.** If a child is educationally handicapped, the Local Education Agency within which the child resides prior to placement has the responsibility for assessing that child and formulating and IEP prior to placement. The results of the assessment should be discussed with the child parent(s) or guardian and, if appropriate, the child, in language that they can understand. The child and his/her family should be properly informed of and prepared for the educational placement. In addition, the accepting facility should have an opportunity to participate fully in the planning process.

**107.3.** The facility should receive the IEP prior to placement and, if it accepts the child, should agree to provide the required services, in accordance with a specific agreement with the referring agency. An on-grounds school program has the same basic responsibilities as any other school -- to effectively implement the child's IEP and to keep all parties with a compelling interest in the child's education informed of the child's progress. The development of an IEP for a child is a positive step but it is only the beginning. Development must be followed by effective implementation, regular review and modification as necessary.

**107.4.** An education program shall, as a component of the individual service plan, maintain an individualized education program for each pupil for whom an IEP is legally required.

a. The program shall have an educational plan similar to the IEP for any child for whom an IEP is not legally required.

**107.5.** An IEP or other educational plan shall include:

a. A statement of the child's present levels of educational performance;

b. A statement of annual goals, including short-term instructional objectives;

c. A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational program.

d. The projected dates for initiation of services and the anticipated duration of the services;

e. Objective criteria and evaluation procedures and schedules for determining whether the short-term instructional objectives are being achieved.

107.6. The educational program shall ensure that the legally designated individuals have an opportunity to participate in the educational planning process. This includes the following:

- a. A representative of the public school, other than the child's teacher, who is qualified to provide, or supervise the provision of special education. The local education agency may delegate this responsibility to the private school administrator after placement;
- b. The child's teacher;
- c. One or both the child's parent(s) or advocate designee;
- d. The child, where appropriate;
- e. Appropriate direct service staff;
- f. Other individuals at the discretion of the parent(s), child or agency.

107.7. Objectives specified in a pupil's IEP or other educational plan shall be designed to lead toward placement in the least restrictive environment that provides appropriate educational services.

107.8. An educational program shall have written procedures for encouraging and supporting the involvement of the pupil and the pupil's parent(s) or guardian in the development, review and implementation of the IEP or other educational plan.

#### §78-3-108. Program Implementation.

108.1. An educational program shall have policies that promote systematic instructional planning by the teaching staff.

a. Any teacher shall be able to exhibit day-to-day records in each curriculum area describing student progress (which may be in the form of anecdotal notes, charts, worksheets, or other data) and be able to describe orally how this information is used to make instructional decisions.

b. Each student's daily instructional activities shall be reviewed and updated periodically, based on the student's progress. The teacher and his/her supervisor shall conduct this review.

c. A written schedule or plan review shall be in evidence indicating review of each pupil's progress at least twice a year.

#### §78-3-109. Related Services.

109.1. A residential facility which has an educational program shall assure that each related service (except transportation) in a pupil's IEP or other educational plan, where that service is provided directly by the program shall:

- a. Establish annual goals and short-term objectives;
- b. Communicate on a systematic basis with teaching staff and other direct service staff;

- c. Provide written progress reports at least twice a year.

109.2. A residential facility shall monitor educational services provided by agencies outside the facility. In the event that such services are not being provided, the facility shall notify the local education agency or other funding agencies.

**§78-3-110. Parent/Agency Rights - Commentary.**

110.1. Parents have a basic right to be informed of and involved in any significant decisions concerning a child's school program. Placing and funding agencies have a right to know if any basic change in the services to be provided to a child is contemplated. Both parents and placing and funding agencies have right to question the decisions of the school program.

110.2. An educational program shall have written procedures to safeguard the rights of parent(s) or guardian of a child in care, the child, the placing agency and the funding agency, to be given prior notice of and have their opinions heard regarding the following:

- a. Suspension of the pupil from the educational program for more than one (1) day at a time or frequently;
- b. Termination of enrollment in the educational program;
- c. Parent rights specified in Public Law 94-142
- d. Significant change in overall program or individual program;
- e. The program shall inform the parent(s) or guardian of a child in care, the placing agency and the funding agency of such procedures.
- f. The program shall ensure that all parent(s) or guardian(s) of students have access to all education records relating to the child.

**§78-3-111. General Commentary - Shelter Care.**

111.1. Shelter care facilities are designed to provide placements lasting less than thirty (30) days for children who require short-term care, including youthful offenders who do not require secure care. For the purposes of these requirements, shelter care facilities include emergency group homes, runaway shelters, diagnostic centers and transitional programs for children awaiting placement in residential facilities. For these purposes, short-term residential treatment programs, medical facilities and secure care facilities are not considered shelter care facilities. Foster care, professional or otherwise, is not covered by these requirements. Aftercare and half-way house programs that are designed to assist children in re-integrating into the community after institutional care are not considered shelter care programs.

111.2. Since shelter care facilities do not provide some of the services provided by residential facilities, there has been an unfortunate tendency to regard shelter care as a relatively inexpensive proposition. For a variety of reasons good shelter care is an expensive form of care and should not be considered a cheap alternative to residential placement.

111.3. In a long term residential program direct service staff learn to anticipate the behavior of a particular group of children with a fair degree of accuracy. To a large degree the art of residential care involves the sensitive manipulation of the group towards the maintenance of positive social values and a supportive atmosphere.

111.4. The shelter care facility usually deals with unknown quantities. The high turnover of children dictates reliance on increased levels of external control and intense staff alertness. Direct physical supervision of children at all times is a necessity.

111.5. Continual supervision requires, of course, relatively high staff ratios. Staff supervision and support systems are of considerable importance. The rewards of watching the children grow and change are generally denied to shelter care staff. Staff morals must be maintained by other means.

111.6. An effective internal communications system is an important priority of the shelter care facility. The facility must, after all, get to know a particular child as rapidly as possible. Good reporting and effective dissemination of information are critical features of the shelter care program.

111.7. If the child in shelter care is not exposed to the pressures that he/she encounters in daily life, the child is also deprived of most of his/her familiar places, people and activities. The facility, to the extent possible, should provide a wide variety of educational recreational alternatives. These should include supervised contact with the community.

111.8. The additional services provided by shelter care facilities mean additional costs. As well, the very nature of the service results in empty beds and empty beds are costly. A long term residential facility can control intake to ensure maximum utilization of available space and resource. A shelter care facility, or any other facility which accepts emergency placements, simply cannot. The facility may be at capacity during one (1) month and nearly empty during the next.

#### §78-3-112. The Philosophy of Shelter Care - General Commentary.

112.1. Shelter care placements are designed to be short-term. Shelter care facilities must provide programs designed to meet the needs of a shifting population of children who have experienced or are experiencing a broad range of human problems.

112.2. Children who are placed in shelter care are not very different from other children who are placed in residential facilities. They have essentially the same needs. Most, however, are in crises. For a time, life in the facility may be very frightening and confusing, particularly for the child who has no previous experience in small group care. The facility must make its expectations clear.

112.3. A shelter care facility must, above all else, provide an opportunity for quiet, orderly, supportive environment. Children come into shelter care usually without much choice and usually because of serious problems in their families or living situations. Whatever control the child exercised over his/her environment has vanished. The child needs time and space to think things over. The child needs supportive counseling from caring adults. Given time constraints, shelter care programs, unlike other residential programs, may not be able to make any dramatic changes in a child's means of dealing with the world. It is neither wise nor fair to strip a person of his/her defenses if circumstances do not allow the time to help him/her find new ways to deal with other

people. As a rule of thumb, the shelter care program should carefully avoid making any promises to a child that cannot be kept. Nothing should be started that cannot be completed.

112.3. The maintenance of an orderly environment has a special importance in shelter care facilities. The children are transients and have a limited stake in the physical condition of the facility. Children in a long term residential facility may be convinced to go to great lengths to preserve or improve their environment. Children in shelter care have less reason to involve themselves.

112.4. Shelter care staff must make a correspondingly greater effort to maintain the physical environment.

112.5. Shelter care staff may generally make no assumptions concerning the potential behavior of children in care. They must provide constant supervision of the children and maintain a constant level of alertness to the needs and problems of residents.

112.6. The shelter care program should strive to provide children in care with an honest and accurate idea of what to expect in the future. Children awaiting placement should be kept informed regarding the status of their referral. Children undergoing an assessment process should be told what the process entails and should be informed well in advance of any proposed move.

112.7. Shelter care facilities should not strip a child of his/her individuality. Careful supervision and clear routine do not preclude self-expression. Most children placed in shelter care already feel powerless. Rules and routines should be designed to ensure a healthful, safe environment, not to increase the child's feeling that he/she cannot influence his/her life. The shelter care facility must take care to balance the necessary orientation toward rule and routine with a provision for the need of the child to express his/her individuality in an appropriate manner.

112.8. Children placed in shelter care facilities, like all people in crises, are malleable. They are especially vulnerable to new people and new ideas. For this reason, the shelter care facility has an extraordinary responsibility. The child's subsequent reactions to helping people and agencies may be formed during this difficult period in his/her life.

112.9. Children in shelter care, like all other children, need warmth and caring from concerned adults. The shelter care facility must not become a warehouse for children. Shelter care staff must maintain a continuing sensitivity to the human needs of children.

112.10. A good shelter care facility may cost more than an ordinary residential facility, but the potential savings to society, both in tax dollars and human resources are incalculable. Shelter care placement may, indeed, prevent an expensive long-term placement. In addition, a shelter care program can provide a useful and necessary period of adjustment for the child awaiting placement.

#### 578-3-113. Administration and Organization - Commentary.

113.1. The following requirements address the special needs of shelter care facilities in the areas of administration and organization.

113.2. In general a shelter care program that is part of a larger organization should be an identifiable entity. The shelter care program should have its own advisory board and

should have a separate budget. The shelter care facility must have direct and immediate access to appropriate support services.

113.3. When a shelter care facility is part of a larger organization which provides services other than shelter care, there shall be a designated person to act as administrator of the shelter care facility.

- a. Health and medical services, including mental health, drug/alcohol, and emergency dental services;
- b. Food services;
- c. Building and grounds maintenance service.

113.4. When a shelter care facility is part of a larger organization which provides other services, the shelter care facility shall have a written annual budget reflecting the actual total cost of shelter care services.

#### §78-3-114. Physical Environment and Safety - Commentary.

114.1. Shelter care facilities must place an increased emphasis on the maintenance of buildings, grounds, and equipment. The shelter care program usually suffers more loss and damage to the physical plant than the typical residential program. Ongoing programs of maintenance, repair and replacement must be a feature of the facility's program.

114.2. The physical structure of a shelter care facility should allow a reasonable amount of modification and personalization of the child's living spaces. Shelter care requires an increased concentration on safety procedures and emergency practices. In an emergency many of the children in the facility might be unfamiliar with the structure of the facility, the location of exits, the availability of assistance or facility emergency procedures.

114.3. A shelter care facility shall have a routine program to minimize and correct vandalism and ensure the maintenance of an orderly environment for children in care.

114.4. A shelter care facility shall show evidence of a routine program designed to ensure that all staff of the facility and all children in care of the facility are aware of the facility's emergency procedures and the location of emergency exits.

- a. The facility shall assign a staff member to orient each newly arrived child to facility emergency procedures and the location of emergency exits during the first full day of the child's stay at the facility. The staff member shall file a written confirmation in the child's case record that such orientation has taken place.

#### §78-3-115. Human Resources - Commentary.

115.1. Shelter care is certainly one of the most demanding and least rewarding forms of residential care from the point of view of the staff member. A staff member of an ordinary residential program knows that if he/she works very hard with a particular child or group of children, there may, over a period of time, be visible results. For one thing, as the children respond, the staff member's job often becomes considerably easier.

115.2. The staff role in shelter care is essentially to ensure the stability of the environment by exerting a fair amount of external control over the behavior of the children.

Shelter care staff must maintain constant alertness. They do not know the children and cannot make any assumption about their behavior. And, in the end, the child moves on and they do not see the results of their efforts to help him/her.

115.3. Staff must, however, not lose sight of the needs all children have for positive human contact. External controls should be applied with an awareness of the dignity and humanity of the individual. Above all, shelter care staff must be warm, supportive people. The shelter care worker can expect to spend a considerable portion of his/her working life handling crises and confrontations. The job of the shelter care worker is highly demanding. The facility must provide good staff support and supervision services to offset the pressures of the job.

115.4. A shelter care facility shall provide at least one (1) direct service worker for every five (5) children in care during waking hours.

115.5. A shelter care facility must have an accessible staff member in each sleeping area of the facility during sleeping hours.

115.6. A shelter care facility shall have written policies and procedures to ensure the immediate availability of additional staff in the event of an emergency or crisis.

115.7. A shelter care facility shall ensure that each direct service worker has a minimum of four (4) scheduled days off in a fourteen (14) day period.

115.8. Training programs in shelter care facilities shall reflect special emphasis on the following areas:

- a. Passive physical restraint techniques;
- b. Crisis intervention;
- c. Crisis and emergency procedures.

#### §78-3-116. Quality of Life - Commentary.

116.1. Shelter care facilities, to a greater degree than other residential facilities, run the risk of becoming excessively institutional and simply "processing" children. There is unfortunately no easy prescription for the maintenance of humanistic values. Constant re-evaluation of the particular facility's program in light of the needs of the children served is necessary.

116.2. The presence of clear, consistent daily routines ensures the stability of a facility. Clear and consistent rules for behavior are equally important. And yet, rules and routines must not and need not stifle the creativity and freedom of either the children or the staff. Routines and rules must adequately cover the basic necessities but should not be allowed to proliferate unchecked into all areas of life.

116.3. The shelter care facility should have a clear routine for each child. This routine should be carefully explained to the child on his/her first day in the facility. At this time all rules governing the child's behavior should be explained to the child. Each child should know exactly what is expected of him/her. The child should receive a complete orientation to the facility. Contacts with the community should be carefully supervised by staff.

Such contact should ideally be based on the child's readiness to participate in community life.

116.4. The shelter care facility must provide a range of recreational and leisure activities for children in care. Since a child's usual resources are unavailable to him/her, the facility must provide alternatives. A shelter care facility should have access to a stock of clothing of varying sizes to provide to children admitted on an emergency basis. Children often arrive with nothing more than the clothes on their backs. Providing the child with clothing reassures the child and establishes that the facility will take care of him/her.

116.5. The facility may have little or no prior relationship with children accepted on an emergency basis. Each child admitted should be examined by a physician as soon as possible.

116.6. In the absence of a physician, a child accepted on an emergency basis should be observed by staff for signs of illness, injury or vermin. Any child who appears to be ill should be given an immediate emergency medical examination. All required medical treatment which can be reasonably done while the child is in the shelter care should be done. This should, if possible, include routine dental care.

116.7. Children currently taking prescribed medication should continue doing so pending evaluation by a physician.

116.8. A shelter care facility shall provide and/or make provision for a recreational program offering a wide variety of indoor and outdoor activities suited to the interests and abilities of children in care.

a. The facility shall allow each child a period of free unprogrammed time to pursue his/her own interests.

116.9. A shelter care facility shall develop a written plan for the provision of medical care to residents. This plan shall be approved by the licensing authority.

a. The facility shall ensure that each newly admitted child is checked by facility staff for signs of illness and the presence of vermin. (See Section 73.1)

116.10. A shelter care facility shall not change, alter or fail to dispense any prescribed medication previously taken by a child without consulting a physician. Reasons for non-compliance shall be documented.

#### §78-3-117. Direct Service Management - Commentary.

117.1. Shelter care should not exceed thirty (30) days. We are mindful that some children are forced to remain in shelter beyond thirty (30) days because of lack of adequate resources or lack of effective and timely referral procedures, or both.

117.2. Regardless of the reason, the responsible government agency should perceive any pattern of longer placements with a particular facility as evidence that the status of the facility as a shelter requires immediate view.

117.3. All concerned should also be aware that the longer child remains in a setting the more difficult it becomes for the child to make the separation from that setting. In the

case of short-term shelter care, a lengthy stay significantly diminishes the benefit of the program to the child.

117.4. The process of shelter care from admission to discharge is considerably different from the process of long-term residential placement. Shelter care facilities accept emergency placements. As a rule shelter care admissions policies are relatively open.

117.5. The shelter care facility generally has much less control over discharge planning than other residential facilities. The shelter care facility normally depends on other agencies to seek appropriate placements or formulate other discharge plans.

117.6. Shelter care facilities should provide written reports on a child's stay to both the placing agency and the facility in which the child is subsequently placed.

117.7. A shelter care facility shall not maintain any child in care for longer than thirty (30) days, except in cases of emergency, and with permission of the Division of Social Services.

#### §78-3-118. Education - Commentary.

118.1. Education programs in shelter care facilities should reflect the short-term character of the shelter care program. In general, children should not be placed in permanent educational placements unless there is a reasonable assurance that they will be able to continue in the educational placement after leaving the facility. If possible and desirable, however, a child should continue in his former educational placement.

118.2. Educational programs in shelter facilities should present the child with a variety of stimulating alternatives. It is justifiable, considering the short period involved and the likelihood that many of the children are experiencing severe emotional turmoil, to place correspondingly less stress on academic achievement in a traditional sense. Shelter care provides a good opportunity to assess the child's academic strengths and weaknesses and assist in the process of future educational planning.

118.3. A shelter care facility shall ensure that each child is provided with an educational program in accordance with state and local laws.

118.4. Any educational program provided by a shelter care facility shall comply with all applicable state and local laws.

#### §78-3-119. Exceptions - Commentary.

119.1. Shelter care facilities shall be exempt from the following core requirements and subsections of core requirements. Shelter care facilities shall also be exempt from all subsections of the following requirements: 20.1.g., 20.1.i., 20.1.j., 20.1.k., 20.1.l., 20.1.m., 20.1.o., 22.1., 59.6., 63.1., 64.3., 66.5., 68.3., 72.1., 73.1., 74.1., 75, 76, 78.2., 88.4., 88.6., 92.1., 94.4., 94.5., 94.6., 94.7., 94.8., 99.4., 99.6. and 101.6.

#### §78-3-120. Secure Residential Care - Secure Care - General Commentary.

120.1. A secure residential facility is any facility which employs, on a regular basis, locked doors or other physical means to prevent children in care from leaving the facility. For our purposes, secure facilities include both correctional and health facilities where the

program of the facility regularly includes confinement of children in care to the physical spaces and/or grounds of the facility.

120.2. The Department strongly believes that no child should be placed in a residential program involving radical deprivation of freedom without the benefits of the same rights of due process that would be accorded to an adult under similar circumstances. Both the state and the facility have a responsibility to maintain these rights.

120.3. The community must indeed be protected from the actions of some individuals and some individuals require protection from the probable consequences of their actions in the community. Children who commit repeated serious violent acts against either themselves or others and who are likely to go on doing so require secure care. Severely emotionally disturbed children may require secure care.

120.4. A secure care placement should be demonstrably necessary for the child and should be continually reviewed to determine if the child might be able to function in a less restrictive environment. Children should not be placed in secure facilities unless they clearly need restriction. Children should be kept in secure facilities only as long as they continue to need restriction.

120.5. The Department believes that the presence of sufficient numbers of caring, competent, properly trained staff persons is the most meaningful type of security that a facility can provide. Excessive reliance on other types of security measures is, in our opinion, ineffective. The direct supervision of a competent direct service worker cannot be replaced by any other method. Secure facilities require more intensive staffing patterns and more intensive programming than other residential facilities. The child placed in secure care is cut off from the community. The secure residential facility must provide a broad range of stimulating recreational and educational programs to replace the child's usual activities. Children in secure care must not be forced, through lack of stimulation, to adopt a pattern of bare routine survival.

120.6. The secure facility provides an opportunity for meaningful treatment of children, who, in the community, might well be untreatable. In the secure facility they are free from many of the temptations and pressures of the community. The secure facility should make maximum use of this opportunity. The children in secure facilities represent a serious and continuing problem for our society, a problem that must be addressed with urgency and energy. The design of secure facilities must reflect an awareness of the fact that these children are sometimes violent and can be dangerous. Such designs must heed the warning of the popular modern proverb, "If anything can possibly go wrong, it will."

120.7. This concentration on security must not, however, undermine the provision of good child care. Although children have a paramount need for safe, trustable, secure surroundings, this does not lessen their other needs.

120.8. A secure facility can be warm and stimulating. Creating a warm, stimulating environment with safe materials is a challenge, but the dividends, both in human terms and in terms of enhancing the actual safety of staff and children, are great.  
§78-3-121. Administration.

121.1. A secure residential facility shall have a statement identifying the specific security measures employed by the facility and clearly demonstrating that these measures are necessary in order to provide appropriate service to children. 121.2. A secure residential facility shall have an advisory board.

a. The administration of the residential facility shall report to the advisory board on all aspects of the facility's operation at least twice annually.

b. Members of the advisory board shall be permitted to visit the facility on request and shall be allowed to speak to staff members of the facility and children in care of the facility.

c. The membership of the advisory board shall include representatives of the community in which the facility is located.

d. The membership of the advisory board shall include representatives of varying racial and cultural backgrounds reflecting the racial and cultural background of children in care.

**§78-3-122. Physical Environment and Safety - Commentary.**

122.1. The secure care environment should be large and should include a variety of places for the child to be. The environment must be stimulating and must provide for an appropriate variety of both indoor and outdoor activities. The secure residential facility must also place an increased emphasis on the maintenance of buildings, grounds and equipment. Secure facilities usually have serious problems with vandalism. The facility must do everything possible to maintain an orderly environment.

122.2. Locked facilities are generally less physically safe than other facilities. For obvious reasons, fire and similar hazards pose an increased threat. The facility must formulate procedures to ensure prompt and effective response to potential disasters.

122.3. A secure residential facility shall have immediate easy access to an indoor and outdoor recreation area that is sufficient in size to accommodate all children in care. The facility shall ensure that children use the outdoor area daily, weather permitting.

122.4. A secure residential facility must show evidence of a routine program designed to ensure that all staff of the facility and all children are aware of the facility's emergency procedures and the location of emergency exits.

a. The facility shall assign a staff member to orient each newly arrived child to facility emergency procedures and the location of emergency exits during the first full day of the child's stay at the facility. The staff member shall file a written confirmation that such orientation has taken place in the child's case record.

122.5. A secure facility shall conduct fire drills at least once every thirty (30) days. A written report noting the date and time of the drill and the general effectiveness of the evacuation shall be on file.

**§78-3-123. Human Resources - Commentary.**

123.1. Good secure residential care required intensive staffing patterns. Secure care serves an exceptionally difficult, exceptionally troubled population. Adequate numbers of trained, competent, direct service workers provide the only reasonable means of ensuring the safety and well-being of the children. Reliance on "security" measures of any other type is demonstrably unwise. Electronic systems, though they may provide a good "back-

up" to conventional methods, can never take the place of direct one-to-one contact between staff and children.

123.2. Secure residential facilities must provide support systems and training programs to make secure care work a positive and rewarding experience.

123.3. A secure residential facility shall provide one (1) direct service worker with no assigned responsibilities other than direct supervision of the children for every eight (8) or fewer children during waking hours and one (1) awake worker with no other responsibilities than direct supervision of the children for every sixteen (16) or fewer children during sleeping hours.

a. Direct service workers provided in fulfillment of minimum staffing requirements shall not be assigned to cover more than one (1) living unit when there are children present in more than one (1) of the units assigned.

123.4. A secure residential facility shall have at least one (1) additional person on-call at all times to assist on-duty staff in an emergency.

123.5. Training programs in secure residential facilities shall reflect special emphasis on the following areas:

- a. Crisis management including passive physical restraints;
- b. Crisis and emergency procedures.

**§78-3-124. Direct Service Management - Commentary.**

124.1. Placement of any child in any residential facility is a matter requiring very serious consideration and careful planning. Placement of a child in a secure residential facility, a highly restrictive environment, requires even more careful and more thorough decision-making. No person should be deprived of his/her freedom without benefit of due process.

124.2. The secure residential facility has an important responsibility to not accept children for placement unless they clearly need secure residential care. If the facility is not able to refuse placement, the facility still has a responsibility to advocate for the child's best interests. The facility should continually review the cases of all children in care and should strive to place children in less secure environments or in the community as soon as possible.

124.3. A long-term secure residential facility shall not accept any child for placement except by order of the circuit court.

a. A secure facility providing short-term detention shall comply with applicable state laws and regulations governing such placements. (Chapter 49, Public Welfare Code)

124.4. A secure residential facility shall continually review the progress of each child in care in relation to the stated goals of the child's service plan in order to determine the feasibility of placing the child in a less secure environment or in the community. (At least weekly after fifteen (15) days for detention and monthly for long-term facilities.) When the facility accepts a child through commitment by the court, the facility shall report the findings of this review to the court.

- a. The proper use and application of restraint, if applicable.

**§78-3-125. Quality of Life - Commentary.**

**125.1.** The secure residential facility must provide a variety and stimulating program. In most other respects the secure residential facility is very similar to any other residential facility. Good secure care is much the same as good residential child care in any form. This does not imply, however, that there are not problems and situations peculiar to secure environments.

**125.2.** A secure residential facility shall provide a recreational program offering a wide variety of activities suited to the interests and abilities of children in care.

- a. The facility shall allow each child a reasonable period of free unprogrammed time to pursue his/her own interests.

**125.3.** Secure residential facility shall ensure that children locked in rooms during sleeping hours are directly, but unobtrusively, monitored by a staff member every fifteen (15) minutes.

- a. Monitoring children by electronic means shall not be considered compliance with requirements for monitoring of children during night-time lock-up.

- b. The facility shall institute a routine of at least monthly supervisory visits to ensure that children are properly monitored during sleeping hours. Written reports of such inspection visits shall be maintained on file.

**125.4.** A secure residential facility which uses night-time lock-up shall not be required to comply with the requirements concerning locked isolation when confining children during sleeping hours.

**§78-3-126. Education - Commentary.**

**126.1.** Most of the children who are placed in secure residential facilities have had extremely negative experiences at school. The facility must put considerable effort and planning into providing educational programs that will interest and involve these children. The facility should also be prepared to serve the child who is a strong student.

**126.2.** From a practical point of view, educational programs in long-term secure facilities should stress vocational and prevocational training and life skills. Educational programs in short-term facilities should reflect the short-term nature of care.

**126.3.** A secure residential facility shall ensure that each child in care has access to appropriate educational opportunities in accordance with federal, state and local laws.

- a. Any educational program provided by a secure residential facility shall comply with all relevant state and local laws.

**126.4.** A secure residential facility shall ensure that each child has the opportunity for continuing education and career counseling.

**§78-3-127. Restraint - Commentary.**

127.1. For the purposes of this document restraint is defined as the extraordinary restriction of a child's freedom or freedom of movement. The forms of restraint which may be used within a secure residential facility are limited to:

- a. passive physical restraint;
- b. locked isolation;
- c. mechanical restraint;
- d. chemical restraint.

127.2. Nonsecure facilities are not permitted the use of any form of restraint other than passive physical restraint. Passive physical restraint refers to the least amount of direct physical contact required on the part of a staff member to prevent a child from harming himself/herself or others.

127.3. Locked isolation involves the confinement of a child in a locked room when there is no staff member physically present in the room at all times.

127.4. "Time-out procedures" - the isolation of a child for a period of less than thirty (30) minutes in an unlocked room-are not considered a form of restraint. Requirements concerning time-out procedures are contained in the "Core". Mechanical restraint involved the restriction by mechanical means of a child's mobility and/or ability to use his/her hands, arms or legs. For our purposes, devices designed primarily for the prevention or treatment of physical injury are not considered mechanical restraint where these devices are utilized to promote a child's functioning in a less restrictive environment than would be possible without the use of such devices. Placing a child who is inclined to mutilate himself/herself in a crash helmet or other form of body armor to prevent self-injury and permit and child's placement in a relatively normal group setting is not considered mechanical restraint. Medical procedures and therapeutic equipment where such procedures and equipment are used and applied by order of a physician are not mechanical restraint.

127.5. Chemical restraint involves the use of psychotropic agents as a form of restraint. The therapeutic use of psychotropic medications as a component of a service plan for a particular child is not chemical restraint.

127.6. The restriction of basic personal freedom must always be subjected to the closest possible scrutiny. No person with any experiences of front-line work in a residential facility would dispute the point that such restrictions are occasionally necessary. It is further evident that the use of any form of restraint opens the possibility of abuse.

127.7. The key factor in any use of restraint is the manner in which the determination to use restraint is made. It is equally important that this determination be immediately and continually reviewed throughout the period of restraint. A facility must have clearly defined policies and procedures for the entire process.

127.8. There is only one (1) acceptable rationale for the use of any form of restraint. Restraint may only be used to control a child who presents a clear and present danger to himself/herself or others. Restraint may not be used as a disciplinary or punitive measure.

127.9. Restraint is, further, justifiable only for as long as it is necessary according to this initial criterion. When the child ceases to present a danger to himself/herself or others, the child must be released from restraint. Restraint is clearly an emergency measure for a child in crisis. Restraining the child solves the immediate problem, but does little to address the underlying causes of that problem. Restraint is not a substitute for the presence of caring adults who will attempt to help the child work the problem out. In a sense, restraint is only a means of ensuring the child's continued availability for such help.

127.10. The selection of the particular form of restraint to be applied for a particular child must be carefully considered. The child should be placed in the least restrictive form of restraint appropriate to control his/her dangerous behavior. The selection of the appropriate form depends very much on the personality of the child. A boy who has profound anxieties concerning his sexuality might have an extreme reaction to passive physical restraint by a male staff member. A child who is afraid of enclosed spaces would find locked isolation a frightening experience. Many people have a very negative reaction to the constriction of bodily movement involved in mechanical restraint. Individual reactions to psychotropic agents vary widely; some individuals will experience undesirable side-effects.

127.11. In selecting the forms of restraint which it will use, the facility must consider the general characteristics of its population. In selecting an appropriate form of restraint for a particular child, the facility must consider the child's personality and past experience.

127.12. In general, chemical restraint is extremely restrictive. Controls applied to the body may be removed at any time. Chemical restraint implies an unalterable commitment to restraint for an unspecified period of time. As well, there is increasing concern in professional circles about the long-term side-effects of chemical agents.

127.13. Facilities which use restraint must keep careful records on all uses of restraint including passive restraint. A child who is placed in locked isolation, mechanical restraint or chemical restraint has probably experienced passive physical restraint as part of the succession of events leading up to a more restrictive form of restraint. It is desirable that the facility be able to identify patterns in the use of restraint, both for an individual child and for the population in general. This will assist the facility in preventing future uses of restraint, choosing the correct form of restraint and preventing abuses in the use of restraint. There are no "nice" forms of restraint. Restraint is a radical emergency procedure to be used in situations where there are frightening few options. On the positive side, an intelligent use of restraint may make it possible for a facility to maintain a child in a less restrictive environment than might otherwise be possible. On the negative side, reliance on such techniques leads directly to abuse.

127.14. Any secure facility which uses extraordinary forms of restraint should strive to maintain sensitivity among all staff members to the real issues involved in depriving children of basic human freedoms.

127.15. A secure residential facility shall not use any form of restraint other than passive physical restraint unless prior approval of the use of that form of restraint by the facility has been granted by the regulatory body.

a. At quarterly intervals, the Administrators/Dir shall review the usage of all forms of restraint in an attempt to determine its appropriateness.

127.16. A secure residential facility shall not use, apply or administer restraint in any manner which is abusive to a child in care.

127.17. A secure residential facility which uses any form of restraint other than passive physical restraint shall have a comprehensive written policy on the use of restraint at the facility. This policy shall include:

a. A statement specifically identifying the forms of restraint in use at the facility and clearly demonstrating that these forms of restraint are required by the facility in order to appropriately service children in care;

b. General criteria for use of restraint;

c. Specific criteria for use of each form of restraint in use at the facility;

d. Identification of staff authorized to approve placement of children in each form of restraint;

e. Identification of staff authorized and qualified to administer or apply each form of restraint;

f. Approved procedures for application or administration of each form of restraint;

g. Procedures for training staff in the use and application or administration of each form of restraint;

h. Procedures for monitoring a child who has been placed in restraint for each form of restraint;

i. Time limitations and other limitations on the use of each form of restraint;

j. Procedures for immediate, continual review of restraint placements for each form of restraint except passive physical restraint;

k. Procedures for comprehensive record keeping on all incidents of use of restraint including incidents of passive physical restraint which leads to placement within any other forms of restraint.

127.18. A secure residential facility shall not apply or administer any form of restraint unless the child is a clear and present danger to himself/herself or others persons or property.

a. Mechanical restraint of a child in care of a secure facility while that child is being transported by facility staff to a point outside the facility is permitted when there is serious risk of the child absconding from custody. The facility shall place a written report on each such use in the child's case record. This report shall document the necessity for such use of restraint. All such uses of restraint shall be recorded in the facility's record keeping system on the use of restraint.

b. The facility shall not use restraint as a disciplinary or punitive measure under any circumstances.

**127.19.** A secure residential facility shall place a child in care in the least restrictive form of restraint available to the facility which is appropriate to control the child's dangerous behavior.

a. The facility shall ensure that a child is not placed in any form of restraint unless all other less restrictive methods of controlling the child's dangerous behavior have either been attempted and failed or are diagnostically eliminated.

**127.20.** A secure residential facility which uses any form of restraint other than passive physical restraint shall ensure that all direct service staff are adequately trained in the following areas:

a. The appropriate use and application or administration of each approved form of restraint;

b. The facility's policies and procedures related to restraint;

c. Crisis management techniques.

**127.21.** A secure residential facility shall continually review the need for any placement of a child in any form of restraint other than passive physical restraint.

a. The facility shall immediately release the child from restraint when the situation precipitating restraint no longer exists.

**127.22.** A secure residential facility which uses any form of restraint other than passive physical restraint shall maintain a comprehensive record keeping system on all uses of any form of restraint. This system shall include the following information for each use:

a. Date of incident;

b. Name of child;

c. Form(s) of restraint employed;

d. Total duration of restraint including the time that the child was placed in restraint and the time that the child was released from or determined no longer to be in restraint;

e. Name of person authorizing use of restraint;

f. Name of person(s) requesting use of restraint;

g. Name of person(s) applying or administering restraint;

h. Name of person(s) responsible for monitoring the child while in restraint;

i. Description of the sequence of event leading up to use of restraint;

j. Description of the child's behavior while placed in restraint;

k. Description of child's condition, appearance and behavior upon release from or determination no longer to be in restraint;

1. The facility shall compile a separate report for inclusion into the child's case record and the administrative file for each use of restraint except passive physical restraint in incidents where this is the only form of restraint employed. The report shall include all of the above information and shall examine the effectiveness of this placement in restraint in the context of the goals and objectives outlined in the child's service plan. This report shall conclude with recommendations concerning possible future use of restraint for the child and shall, if possible, outline alternatives to such use.

§78-3-128. Locked Isolation - Commentary.

128.1. There is considerable controversy concerning the use of locked isolation. Many facilities which formerly used locked isolation no longer use it. Others make the claim that disuse of locked isolation would only result in use of other, more restrictive forms of restraint.

128.2. The Department recognizes that the poles of this argument may simply reflect differing conditions within the facilities.

128.3. We do believe, however, that locked isolation may be damaging for children who have experienced long-term rejection from the adults in their lives. From this point of view, we cannot see the value of long periods of isolation for any child.

128.4. The point that locked isolation may prevent the use of more restrictive forms of restraint is, however, well taken. Locked isolation may often be less restrictive than other forms of restraint.

128.5. The greatest reservation that we have concerning the use of locked isolation is the threat to the physical safety of the child that such a situation entails. A facility which uses locked isolation must have an effective means of evacuating a child who has been placed in an isolation room in the event of a fire or other emergency. A child who has been placed in locked isolation must be continuously monitored to ensure his/her continued well-being. Isolation rooms must be equipped and constructed to minimize the danger of the child injuring himself/herself.

128.6. A secure residential facility which uses locked isolation shall ensure that a child placed in locked isolation is not in possession of belts, matches, weapons or any other object or materials which might be used to inflict self-injury;

128.7. A secure residential facility which uses locked isolation shall provide a staff person whose responsibility it is to monitor a child who is placed in locked isolation.

a. This staff person shall maintain visual or auditory contact with the child at all times. No more than fifteen (15) minutes shall elapse without direct observation and assessment of the child's readiness to return to the group.

b. This staff person shall ensure that all personal needs of the child are satisfactorily met. The child shall have prompt access to washroom facilities.

c. This staff person shall ensure that the child receives all meals and snacks provided to other children in care.

d. Whenever possible, a staff person shall be physically present in the isolation room to assist the child in controlling his/her behavior.

**128.8. Initial placement in locked isolation shall require supervisor approval.**

- a. Hourly reports on the child shall be made to the Administrator/Director;
- b. Purpose is to change behavior. The child should not be denied rights and privileges such as visits from parents or service personnel.
- c. The child shall be removed when it has been determined that he/she is in control

**128.9. When a child has been placed in locked isolation for eight (8) hours in any twelve (12) hour period and further placement or continuation of placement in locked isolation is considered necessary, a secure residential facility shall take the following actions:**

a. The Administrator/Director shall immediately call an emergency meeting to discuss the appropriateness of the child's continued placement in locked isolation and develop an emergency plan for the child. This meeting shall take place at least within ten (10) hours of the initial placement of the child in locked isolation. The chief administrator of the facility or a person designated by the administrator and all appropriate staff persons shall attend this meeting. A report of this meeting signed by all persons attending shall be on file.

b. The facility shall make every effort to notify the responsible agency and the parent(s) or guardian of the child of this situation. Documentary evidence of the attempts made to notify responsible agency and the parent(s) or guardian shall be placed in the child's case record.

**NOTE: Detention and correctional facilities shall notify the court in these instances. The on-duty nurse shall check any child in locked isolation beyond an eight (8) hour period.**

c. For the purposes of these requirements, when a child is in locked isolation at the time of routine night time lock-up, the child shall be considered in locked isolation for the duration of night time lock-up.

**128.10. A secure residential facility shall ensure that any room used for locked isolation is designed and constructed to ensure the health, safety and well-being of children placed in locked isolation.**

a. The floor space of an isolation room shall not be less than seventy-four (74) square feet; ceiling height shall not be less than eight (8) feet.

b. The walls must be kept completely free of objects.

c. A lighting fixture, equipped with a minimum of a seventy-five (75) watt bulb, shall be mounted in the ceiling and be screened to prevent tampering by an occupant of the isolation room.

d. The door of an isolation room shall be equipped with a window mounted in a manner which allows inspection of the entire room. Glass in such windows shall be impact resistant and shatterproof.

e. An isolation room must be adequately ventilated either by natural or mechanical means.

**§78-3-129. Mechanical Restraint - Commentary.**

129.1. There are individual differences in reactions to forms of restraint. For some children, mechanical restraint is far less negative than the prospect of isolation in a locked room.

129.2. On the whole, mechanical restraint should be used very sparingly. The decision to use mechanical restraint should be made on an individual basis according to clearly stated criteria.

129.3. One (1) further area of controversy concerns the forms of mechanical restraint that should be used. Any form of mechanical restraint should be carefully tested, both by the facility and the regulatory body, to ensure that the device does not inflict pain and is not likely to cause injury.

129.4. A secure residential facility which uses mechanical restraints shall use only those forms of mechanical restraint which are approved by the regulatory body.

a. The facility shall not use any form of mechanical restraint or apply any form of mechanical restraint in a manner or for a period of time which inflicts physical pain or is likely to cause personal injury.

129.5. A secure residential facility which uses mechanical restraint shall assign a staff member whose primary responsibility is to continuously monitor any child placed in restraint.

a. The staff member shall ensure that the child's physical needs are promptly met.

b. The staff member must remain in continuous auditory and visual contact with the child.

129.6. The chief administrative officer of a secure residential facility which uses mechanical restraint or a person designated by that officer must authorize each use of mechanical restraint and be notified immediately. Each authorization shall be only the period of time in which the child is out of control.

a. Mechanical restraints shall be used while transporting if the child is considered a security risk.

b. The facility shall prepare a written report within twenty-four (24) hours of each use of any form of mechanical restraint.

**§78-3-130. Chemical Restraint - Commentary.**

130.1. Chemical restraint can generally be considered to be an extremely restrictive form of restraint. A child in locked isolation of mechanical restraint can be released at any time. A child under chemical restraint will remain so for an unspecified period.

130.2. Any use of chemical agents as a means of control deserves careful scrutiny. The potential abuse is extremely high. Psychotropic drugs are a poor substitute for caring adults as a means of helping children who have problems. There is, as well, mounting evidence that many psychotropic drugs have undesirable long term side-effects.

**130.3.** A secure residential facility which uses chemical restraint shall ensure that such restraint is administered by intramuscular injection by a person qualified and trained in the administration of intramuscular injections.

a. A child who is capable of accepting an oral administration of chemical restraint shall not be deemed to require chemical restraint.

**130.4.** A residential facility which uses emergency chemical restraint shall ensure that each administration of chemical restraint is specifically ordered by a physician who has personally examined the child.

a. There shall not be standing orders related to the use of chemical restraint.

b. The child shall be monitored continuously by a person trained and qualified to observe potential adverse side effects. This person shall have no other immediate responsibilities.

**130.5.** A physician shall authorize each use of chemical restraint and an immediate, written report shall be sent to the chief administrative officer within twenty-four (24) hours.

**130.6.** When a child in care requires chemical restraint on more than four (4) occasions during any thirty (30) day period or requires frequent chemical restraint, a residential facility shall hold an immediate emergency meeting to discuss the appropriateness of the child's continued placement at the facility. This meeting shall take place within twenty-four (24) hours of the fourth incident requiring chemical restraint and shall include the chief administrator of the facility or his/her representative, a physician and all appropriate staff. A report of this meeting, signed by all persons attending, shall be on file.

a. The facility shall make every effort to notify the responsible agency and the child's parent(s) or guardian of this situation. If possible, a representative of the responsible agency and the child's parent(s) or guardian shall attend the emergency meeting. Documentary evidence of the attempts to notify the placing agency and the child's parent(s) or guardian shall be placed in the child's case record.

#### **§78-3-131. Maternity Home - Commentary.**

**131.1.** Maternity home is a licensed residential facility other than a general hospital that primarily offers prenatal care, education, and recreation for four (4) or more, including minors with or without their babies. The home counsels prospective parent(s) in the solution of problems related to parenthood, in making decisions and planning for their child and in implementing their decisions and plans and may secondarily provide services for newborn infants and their mothers and/or adoption services, if so licensed.

#### **§78-3-132. Physical Environment.**

**132.2.** All facilities shall be located in areas easily accessible to transportation, schools, churches, medical and recreational facilities. Hospitals and necessary ancillary medical services shall be within fifteen (15) minutes of the maternity home.

132.2. An office shall be made available to the nurse for charting and for the safe guarding and preparation of medication. Locks and any other means of safe guarding records and medication must be made available.

132.3. A sanitary method for the disposal of waste and soiled linens shall be provided by the facility.

**§78-3-133. Human Resources - Personnel.**

133.1. Director of Nursing Services -shall be an R.N., B.S.N. with experience in obstetrics or community health nursing and licensed in West Virginia. He/she shall be responsible for the development and education of nursing procedures in the home as well as the supervision of nursing care of all residents. He/she shall also direct diets prescribed by obstetricians and consult with dietician or nutritionist regularly.

133.2. There shall be one (1) houseparent per ten (10) residents twenty-four (24) hour/day.

133.3. There shall be one (1) L.P.N. or nurse's aide on each shift for residents health care.

133.4. Medical services supervised by licensed OB/GYN specialist.

133.5. When confinement care is given in the home, there shall be an R.N. on duty at all times. Current West Virginia license - diploma or A.D. with two (2) years experience OB/GYN. There shall be on duty at all times one (1) attendant for every ten (10) mothers on call system with Head R.N.

**§78-3-134. Administration.**

134.1. The options available to the expectant parent(s) regarding the unborn child shall be written in the agency program description.

**§78-3-135. Quality of Life.**

135.1. Family involvement.

a. Written policies and procedures shall be established to encourage family involvement where appropriate.

6 1. Services shall be extended to the family including the biological father of the child and his parent(s) where applicable.

135.2. Facilities and equipment in maternity homes.

a. A maternity home shall contain at least one (1) room separate from living rooms for the routine examination and treatment of maternity patients. It shall provide:

1. Privacy for the patient;
2. Adequate lighting;
3. Equipment and supplies for routine examinations and emergency care.

b. All equipment used in the care of maternity patients shall be cleaned and sterilized in accordance with accepted medical standards.

**§78-3-136. Direct Service Management.**

**136.1. Intake and admission.**

a. Each expectant mother shall have a written positive serum pregnancy test result submitted to the agency prior to admission. A complete medical examination including V.D.R.L., G.C. smear, pap smear, C.B.C., type and cross match, urinalysis, blood pressure, weight and pelvic measurements shall be provided within one (1) week of the date of admission. The resident shall be under observation until such examination is completed.

b. Extensive counseling shall be provided the incoming resident regarding plans for the unborn child within the first week of placement.

1. The service plan shall be developed within two (2) weeks of admission.

2. The facility shall address discharge planning as a part of intake and admission.

c. The home shall provide prenatal and postpartum care and treatment as medically required and recommended for the immediate and future well-being of the mother.

d. Each service plan shall establish procedures whereby the maternity patient shall be seen in consultation by appropriate members of the medical staff and other health professionals as needed.

e. Where standing orders are utilized they shall be documented in writing and signed by the consulting physician.

f. Work assignments shall be based on the recommendations of the physician.

g. All residents shall have the opportunity to attend health educational classes. Instruction in the care of infants shall be available, and mothers who plan to keep their babies shall be encouraged to attend.

h. A member of the home's staff shall accompany the resident to the hospital at the time of delivery.

i. The home shall establish policies and procedures and training programs that adequately equip staff with the knowledge for handling emergency medical procedures as they relate to obstetrics, pregnancy and delivery.

j. All deliveries shall occur in an established recognized hospital setting due to the nature of the clientele generally described as "high risk".

k. The facility shall make provisions for aftercare services for a minimum of two (2) weeks.

**§78-3-137. Glossary.**

**137.1. Advisory board** - An association of persons which makes recommendations regarding the policies and procedures of a residential facility to the governing body of that facility, but having no proprietary interest in the facility or actual management or administrative authority.

**137.2. Appropriate state or governmental authority** - A state or local agency that has responsibility for or authority over an aspect of the operation of a residential facility.

**137.3. Approval** - A written certification of a residential facility's authorization to operate under state law, together with the conditions of such authorization.

**137.4. Bedroom space** - A distinct area used as a sleeping area for children; a dormitory-style bedroom may be broken into several bedroom spaces using partitions.

**137.5. Board of Directors** - An association of persons which has the ultimate administrative managerial control of a residential facility but does not collectively own that facility. This board normally discharges its responsibilities by employing a chief executive officer and formulating policies for the facility's operation.

**137.6. Burn-out** - Refers to the point at which a staff member of a residential facility is no longer able to perform his/her duties effectively due to fatigue and prolonged exposure to job pressures; may also refer to an employee's leaving a job for such reasons.

**137.7. Chemical restraint** - The use of psychotropic agents as a form of restraint.

**137.8. Child** - Any person legally defined as a child under State law; a child residing in a residential facility.

**137.9. Child abuse or neglect** - The improper treatment of children, as defined by State law.

**137.10. Child's case record.** - A unified, comprehensive collection of information concerning a child in care of a residential facility.

**137.11. Discipline** - A system of rules governing conduct which usually prescribes consequences for the violation of particular rules.

**137.12. Direct service management** - The act of controlling the various aspects of a residential facility involving direct services to children in order to ensure effective care and treatment.

**137.13. Direct service worker** - Any employee of a residential facility who works directly with children as a major function of his/her job.

**137.14. Family** - The basic unit in society, having as its nucleus one (1) or more adults with a long-term commitment to caring for and rearing children; an extended network of related people.

**137.15. Governing body** - A person or persons with the ultimate responsibility for conducting the affairs of a residential facility.

**137.16. Guideline** - A statement which assists a person or facility in interpreting a particular requirement. Guidelines are not conditions of licensure and/or approval.

**137.17. Human resources** - All persons providing services within a residential facility including all employees, volunteers, student interns and consulting professionals.

**137.18.** An individualized education program required by Federal and State law for educationally handicapped children; the plan for such a program.

**137.19. License** - A written certification of a residential facility's authorization to operate under state law together with the conditions of such authorization.

**137.20. Living unit** - An integral living space utilized by a particular group of children in care of a residential facility who reside in that space.

**137.21. Locked isolation** - The confinement of a child in a locked room when there is no staff member physically present in the room at all times except when such confinement is part of routine nighttime lock-up.

**137.22. Mechanical restraint** - The restriction by mechanical means of a child's mobility and/or ability to use his/her hands, arms or legs except when such restriction is primarily for the prevention or treatment of physical injury.

**137.33. On-grounds educational program** - An educational program operated by a residential facility.

**137.34. Parent(s) or guardian** - That person or those persons with an ongoing legal responsibility for caring for a child, usually the child's natural mother and/or father, or a court-appointed person.

**137.35. Passive physical restraint** - The least amount of direct physical contact required on the part of a staff member to prevent a child from harming himself/herself or others; approved methods of making such physical contact.

**137.36. Placement agreement** - A written document specifying the terms of a child's placement in a residential facility, usually signed by the parent(s) or guardian, a representative of the facility and the placing agency.

**137.37. Placing agency** - An organization either publicly or privately operated, legally authorized to place a child in the care of a residential facility.

**137.38. Preferred practice** - A statement of opinion concerning high quality residential child care that is not considered a requirement and is not a condition of licensure and/or approval.

**137.39. Prime worker** - The staff member of a residential facility who has the responsibility for overseeing the implementation of a particular child's service plan. This staff member also sometimes assumes an advocacy role for that child.

**137.40. Provider** - A person or agency involved in providing residential care for children.

**137.41. Psychotropic medication** - A drug or substance which acts on the mind.

**137.42. Public funds** - Money provided to a residential facility by any governmental body.

**137.43. Purchaser** - A person or agency involved in purchasing residential care for children.

**137.44. Regulatory body** - A governmental agency with the ongoing responsibility for the formal authorization of the operation of a residential facility.

**137.45. Restraint** - The extraordinary restriction of a child's freedom or freedom of movement.

**137.46. Requirement** - The specific minimal condition or standard that must be met by a residential facility as a condition of licensure and/or approval.

**137.47. Residential facility** - Any body licensed and/or approved to provide residential care for children under state law; a body applying for licensure or approval to provide residential care.

**137.48. Responsible agency** - An agency with continuing overall responsibility for the child during placement.

**137.49. Secure care** - A form of residential care which employs, on a regular basis, locked doors or any other physical means to prevent children in care from leaving the facility.

**137.50. Service plan** - A comprehensive time-limited, goal-oriented, individualized plan for the care, treatment and education of a child in care of a residential facility. The service plan is based on a current comprehensive evaluation of the child's needs.

**137.51. Shelter care** - A form of short-term residential care for children including youthful offenders who do not require secure care.

**137.52. Standards** - A measure of comparison for qualitative value.

**137.53. Time-out procedure** - The isolation of a child for a period of less than thirty (30) minutes in an unlocked room.

**137.54. Treatment strategy** - An orientation or set of clinical techniques informed by a particular therapeutic model and used to meet a diagnosed need of a child in care over and above the provision of basic care.