

John D. Rockefeller IV
Governor



L. Clark Hansbarger, M.D.
Director

State of West Virginia

DEPARTMENT OF HEALTH

CHARLESTON 25305

NOTICE OF PUBLIC HEARING

Pursuant to Section five, Article three, Chapter twenty-nine-A of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, the West Virginia Department of Health shall convene a public hearing at 10:00 a.m. on January 16, 1984, in the first floor Conference Room 14 of the P & G Building, 2019 Washington Street, East, Charleston, West Virginia for the purpose of taking evidence pertaining to the filing of proposed Rules of Procedure for Contested Case Hearings for Community Behavioral Health Services Provided through Department of Health Purchase of Service Contracts, Chapter 16-1, Series II (1984).

Any citizen or other interested party may appear in person to present evidence. Any citizen or other interested party may submit written evidence to the Regulatory Services Program of the West Virginia Department of Health, by mail to 1800 Washington Street, East, Charleston, West Virginia 25305 not later than 4:30 p.m., January 16, 1984. All comments, written and oral, will be made part of the public record of comments received and will be considered as a part of the public hearing. The Department requests that parties wishing to comment make an effort to submit written copies of their comments in order to facilitate review of the comments.

The issues to be heard shall be limited to the actual information contained in the proposed and abovementioned regulations. Copies of the regulations may be obtained from the address heretofore appearing or by telephoning 304-348-3223 or from the Office of the Secretary of State, Capitol Complex, Charleston, West Virginia 25305, telephone 304-345-4000.

A handwritten signature in cursive script, appearing to read "L. Clark Hansbarger", written over a horizontal line.

L. Clark Hansbarger, M. D.
Director of Health

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 12-16-83
Administrative Law Division

Entered

FISCAL NOTE FOR PROPOSED RULES

Rules of Procedure for contested Case Hearings
for Community Behavioral Health Services Pro-
vided through Department of Health Purchase o

Rule No. Procedural 16-I, Series II Subject Service Contracts, Chapter 16-1, Series II
Type of Rule: Legislative Interpretive Procedural (1984)

Agency Health Department Address 1800 Washington Street, East
Charleston, West Virginia 25305

Authorized Representative _____ Phone _____

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Others					

2. Explanation of above estimates.

A very minimal travel cost might incurred to send a department staff to a hearing at the local level. This can be absorbed into the existing operational budget.

3. Date December 16, 1983 Agency Health Department

Signature of Agency Head
L. Clark Hansbarger, M.D.
Director

Signature of Authorized Representative

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 12/16/83
Administrative Law Division

STATEMENT OF ECONOMIC IMPACT OF PROPOSED RULES OR REGULATIONS

Agency Health Department

Rule No. 16-1, Series II, Procedural

Rules of Procedure for Contested Case
Hearings for Community Behavioral
Health Services Provided through Depart-
ment of Health Purchase of Service
Subject Contracts, Chapter 16-1, Series II
(1984)

1. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

None

C. Economic Impact on Citizens/Public at Large.


None

Date December 16, 1983

Agency Health Department

Signature of Agency Head

Signature of Authorized Representative



L. Clark Hansbarger, M.D.
Director

WEST VIRGINIA PROCEDURAL RULES
BOARD OF HEALTH

Rules of Procedure for Contested Case Hearings
for Community Behavioral Health Services
Provided through Department of Health Purchase
of Service Contracts

Chapter 16-1
Series II
(1984)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 12/16/83
Administrative Law Division

WEST VIRGINIA PROCEDURAL RULES
BOARD OF HEALTH

Rules of Procedure for Contested Case Hearings
for Community Behavioral Health Services
Provided through Department of Health Purchase
of Service Contracts

Chapter 16-1
Series II
(1984)

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WEST VIRGINIA PROCEDURAL RULES
BOARD OF HEALTH

Chapter 16-1
Series II
(1984)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 12-16-83
Administrative Law Division

Subject: Rules of Procedure for Contested Case Hearings for
Community Behavioral Health Services Provided through
Department of Health Purchase of Service Contracts

Section 1. General

1.1. Scope - These procedural rules establish the general procedures for conducting contested case hearings on any complaint regarding community behavioral health services provided by the department of health through purchase of service contracts with community behavioral health service providers. The purpose of these rules is to facilitate the resolution of complaints in a just, speedy and inexpensive manner.

1.2. Authority - These procedural rules are issued under the authority of Chapter 16, Article 1, Section 7, and Chapter 29A, Article 5, Section 1(a), and are related to Chapter 27, Article 2A, of the West Virginia Code of 1931, as amended.

1.3. Filing Date - These procedural rules were promulgated on the 16th day of December, 1983, and were filed on the _____ day of _____, 19____, in the Secretary of State's office.

1.4. Effective Date - These procedural rules became effective on the _____ day of _____, 1984.

Board of Health
Procedural Rule 16-1
Series II

Section 2. Application - These procedural rules shall apply to every person, partnership, association, corporation or public corporation affected by community behavioral health services provided through department of health purchase of service contracts with community behavioral health service providers.

These rules are not intended to alter or amend in any way the authority or procedures for refusal, suspension, or revocation of a license as specified in the West Virginia Legislative Rules, Board of Health; Regulations for Licensing Psychiatric and Other Related Facilities and Programs, Chapter 27-9, Series I (1983), or the proposed Legislative Rule: Licensure of Behavioral Health Centers, West Virginia Board of Health Legislative Rules, Chapter 17-9, Series 1 (198_), should such proposed rule be made final and become effective.

Section 3. Definitions

3.1. Board of Directors - Shall mean the board of directors or other governing body of a community behavioral health service provider which provides community behavioral health services through a purchase of service contract with the Department of Health and about which a complaint has been directed.

3.2. Community Behavioral Health Service Provider - Shall mean any person or entity licensed to provide behavioral health services in the State of West Virginia which provides community behavioral health services through a purchase of service contract with the Department of Health.

3.3. Department - Shall mean the West Virginia Department of Health.

3.4. Office of Behavioral Health Services - Shall mean the West Virginia Department of Health, Office of Behavioral Health Services.

3.5. Director - Shall mean the director of the West Virginia Department of Health.

Section 4. Hearings Before the Board of Directors

4.1. Request for Hearing - Any party with a complaint regarding services provided or not provided by a community behavioral health service provider shall first present the complaint and a request for a hearing in writing to the board of directors of the provider.

4.2. Notice of Hearing - Upon receipt of the written complaint and request for a hearing, the board of directors shall schedule a hearing to be held within thirty (30) days of the date the complaint was received. Notice of the time and place of the hearing shall be given to the complainant and to the office of behavioral health services no less than ten (10) days prior to the hearing. Such notice shall also specify: (1) the respective rights of the complainant and the board of directors; (2) the procedures to be followed at the hearing; and (3) a statement of the matters asserted.

4.3. Prehearing Conference; Informal Resolution - Prior to the hearing, the board of directors or a designated representative shall hold a prehearing conference to be attended by the

Board of Health
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complainant or the complainant's representative. The purpose of this conference will be to simplify or resolve issues, if possible, by consent of the parties. At any time prior to the hearing or thereafter, a representative of the board of directors and the complainant or the complainant's representative may meet, at the request of either party, to attempt to resolve any or all issues informally.

4.4. Conduct of Hearing - The hearing shall be before a duly constituted quorum of the board of directors. At this hearing, the complainant shall have the right to be represented or assisted by a person of his choice, to present evidence, to introduce and cross-examine witnesses and, if necessary, to compel attendance of employees of the community behavioral health service provider. The board of directors shall have the right to direct questions to the complainant or any witnesses and may call witnesses of its own.

4.5. Minutes of Hearing - Minutes of the hearing shall be made and kept on file at the community behavioral health providers' office for twelve (12) months. Such minutes shall be available to any complainant for purposes of appeal.

4.6. Written Report - The board of directors shall evaluate the evidence presented at the hearing and shall prepare and adopt a written report within forty-five (45) days after the hearing summarizing its findings and conclusions. A copy of this report shall be mailed to the complainant and to the office of behavioral health services.

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reason for such refusal. Appeal may be taken from such Order as provided in Chapter 29A, Article 5, Section 4, of the West Virginia Code of 1931, as amended.

5.3. Notice of Hearing - Upon the receipt of a request for a hearing as described in Subsection 5.1 of this Section, the director shall within twenty (20) days provide the complainant, the board of directors and the office of behavioral health services with a notice of hearing providing the director has not entered an Order denying a hearing as provided in Subsection 5.2 of this Section. Such notice shall contain:

- (A) the date, time and place of the hearing;
- (B) a short plain statement of the matters asserted; and
- (C) a statement of intention to appoint a hearing examiner if one is to be appointed pursuant to Subsection 5.9 herein; such notice shall be given at least ten (10) days in advance of the date of the hearing.

5.4. Prehearing Conference - Prior to the hearing, the director or his duly appointed hearing examiner shall hold a prehearing conference as authorized by Subsection 5.10 of these rules. The conference shall be attended by representatives of the complainant, the board of directors and the office of behavioral health services. The role of the representative of the office of behavioral health services will be to assist the parties in trying to simplify or settle issues by consent of the parties.

5.5. Conduct of Hearing - Hearings shall be conducted as follows:

4.7. Establishment of Procedures by Board of Directors -

The board of directors of a community behavioral health service provider may establish and utilize procedures for responding to complaints and requests for hearings as long as such procedures are not inconsistent with these procedural rules and include the minimum requirements set forth in Section 4 of these rules.

Section 5. Hearing Before the Department

5.1. Request for a Hearing - Any complainant who disagrees with the decision rendered by the board of directors may appeal that decision to the department by filing a written request for a hearing with the director. The request shall briefly state the specific areas of disagreement with the written report adopted by the board of directors, and the grounds relied upon as a basis for the relief requested.

5.2. Determination by Director of Whether to Hold Hearing - When the director is presented with a request for a hearing as described in Subsection 5.1 of this Section, he shall conduct a hearing within forty-five (45) days of receipt by him of such written request, unless postponed to a later date by mutual agreement. However, if the director shall determine that the hearing requested:

(A) Would involve an exercise of authority in excess of that available to him under law; or

(B) Would serve no useful purpose, he shall, within twenty (20) days of the receipt of such demand enter an Order refusing to grant the hearing as requested, incorporating therein his

Board of Health
Procedural Rule 16-1
Series II

(A) The complainant and the board of directors shall have the right to be represented by an attorney at law, duly qualified to practice in the State of West Virginia or by any other person chosen by the complainant or the board of directors;

(B) The office of behavioral health services may be represented by the office of the attorney general;

(C) The rules of evidence as applied in civil cases in the circuit courts of this State shall be followed;

(D) When necessary to ascertain facts not reasonably susceptible to proof under said rules of evidence, evidence not admissible thereunder shall be admitted, except where precluded by statute, or by the rules of privilege recognized by the courts of this State, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs;

(E) Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference;

(F) The complainant, the board of directors, and the office of behavioral health services shall each have the opportunity to present evidence, to introduce and cross-examine witnesses, and to present rebuttal evidence;

(G) Following the presentation of all the evidence, the complainant, the board of directors, and the office of behavioral health services shall have the right to offer argument, not to exceed a reasonable time limit as determined by the director or the hearing examiner.

5.6. Continuation and Adjournment - Hearings may be continued from one day to another or adjourned to a later date or a different place by announcement thereof at the hearing or by appropriate notice to all parties. A written motion for a continuance shall be filed at least five (5) days prior to the hearing date.

5.7. Transcription of Reported Testimony and Evidence

(A) What Reported - All testimony, evidence, arguments, and rulings on the admissibility of testimony and evidence shall be reported by stenographic notes and characters or by mechanical means.

(B) Request for Transcript Where No Hearing Examiner Has Been Appointed - Where no hearing examiner has been appointed, upon the written request to the director from any party to the hearing, all reported materials shall be transcribed and a copy thereof furnished to such party at his expense.

(C) Transcription, Request for Transcript in the Event a Hearing Examiner is Appointed - In all cases where a hearing examiner is appointed, all reported material shall be transcribed and forwarded to the director. Any party may request in writing a copy of the transcript which shall be furnished to such party at his expense.

(D) Responsibility for Transcript - The department shall have the responsibility for making arrangements for the transcription of the reported testimony and evidence. In the event

transcription is required pursuant to this Section, it shall be accomplished with all dispatch.

(E) Correction of Error in Transcript - Upon the motion of any party, or the director or hearing examiner, if one has been appointed, assigning error or omission in any part of any transcript, the director or the hearing examiner, if one has been appointed, shall settle all differences arising as to whether such transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and revised in the respects designated, if necessary, so as to make it conform to the whole truth.

5.8. Submission of Proposed Findings of Fact and Conclusions of Law; Time for Submission - Any party may submit to the director or hearing examiner, if one has been appointed, proposed findings of fact and conclusions of law within thirty (30) days of the conclusion of a hearing or, in the event the proceedings of a hearing are transcribed, within twenty (20) days from the date the final transcript is available.

5.9. Appointment of Hearing Examiner; Function of Hearing Examiner - The director may, in his discretion, appoint a hearing examiner who shall be empowered to subpoena witnesses and documents, to administer oaths and affirmations, to examine witnesses under oath, to rule on evidentiary questions, to hold conferences for the settlement or simplification of issues by consent of the parties and to otherwise conduct hearings as provided in Section 5 herein.

5.10. Conferences; Informal Disposition of Cases - At any time prior to the hearing or thereafter, the director, or his duly appointed hearing examiner may hold conferences called on his own motion or upon the request of any party:

- (A) to dispose of procedural requests or similar matters;
- (B) to simplify or settle issues by consent of the parties;

or

(C) to provide for the informal disposition of cases by stipulation, agreed settlement, or consent order.

5.11. Depositions Permitted - Evidentiary depositions may be taken and read into evidence to the extent permitted in civil actions in the circuit courts of this State.

5.12. Subpoenas

(A) Where Permitted by Chapter 16 - In accordance with any provision contained in the West Virginia Code of 1931, as amended, authorizing the director to issue subpoenas or subpoenas duces tecum, the director or his duly appointed hearing examiner shall have the power to issue subpoenas or subpoenas duces tecum pursuant to the provisions set forth in Chapter 29A, Article 5, Section 1(b), of the West Virginia Code of 1931, as amended.

(B) Time for Requesting the Issuance of Subpoenas - Written requests for the issuance of subpoenas or subpoenas duces tecum as provided in Subsection 5.12(A) of this Section shall be made no later than ten (10) days prior to a scheduled hearing.

5.13. Orders; Content - Every final order entered by the director, following a hearing conducted pursuant to these rules,

Board of Health
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Series II

shall be made pursuant to the provisions of Chapter 29A, Article 5, Section 3, of the West Virginia Code of 1931, as amended.

Such orders shall be entered within forty-five (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts and proposed findings of fact and conclusions of law.

5.14. Appeal - An appeal from any final order entered in accordance with these regulations may be filed in the circuit courts of this State in accordance with the provisions of Chapter 29A, Article 5, Section 4, of the West Virginia Code of 1931, as amended.

Section 6. Severability - If any provision of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity thereof shall not affect the provision or application of these regulations which can be given effect without the invalid provision or application and to this end the provisions of these regulations are declared to be severable.

John D. Rockefeller IV
Governor



L. Clark Hansbarger, M.D.
Director

State of West Virginia

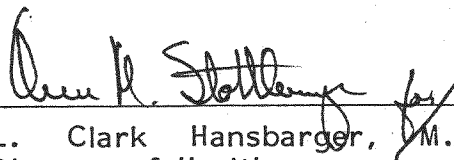
DEPARTMENT OF HEALTH
CHARLESTON 25305

NOTICE OF PUBLIC HEARING

Pursuant to Section five, Article three, Chapter twenty-nine-A of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, the West Virginia Department of Health shall convene a public hearing at 10:00 a.m. on January 16, 1984, in the first floor Conference Room 14 of the P & G Building, 2019 Washington Street, East, Charleston, West Virginia for the purpose of taking evidence pertaining to the filing of proposed Rules of Procedure for Contested Case Hearings for Community Behavioral Health Services Provided through Department of Health Purchase of Service Contracts, Chapter 16-1, Series II (1984).

Any citizen or other interested party may appear in person to present evidence. Any citizen or other interested party may submit written evidence to the Regulatory Services Program of the West Virginia Department of Health, by mail to 1800 Washington Street, East, Charleston, West Virginia 25305 not later than 4:30 p.m., January 16, 1984. All comments, written and oral, will be made part of the public record of comments received and will be considered as a part of the public hearing. The Department requests that parties wishing to comment make an effort to submit written copies of their comments in order to facilitate review of the comments.

The issues to be heard shall be limited to the actual information contained in the proposed and abovementioned regulations. Copies of the regulations may be obtained from the address heretofore appearing or by telephoning 304-348-3223 or from the Office of the Secretary of State, Capitol Complex, Charleston, West Virginia 25305, telephone 304-345-4000.


L. Clark Hansbarger, M. D.
Director of Health

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE Dec. 16, 1983
Administrative Law Division

Entered

FISCAL NOTE FOR PROPOSED RULES

Rules of Procedure for contested Case Hearings
for Community Behavioral Health Services Pro-
vided through Department of Health Purchase of

Rule No. Procedural 16-I, Series II Subject Service Contracts, Chapter 16-1, Series II

Type of Rule: Legislative

Interpretive Procedural (1984)

Agency Health Department

Address 1800 Washington Street, East

Charleston, West Virginia 25305

Authorized Representative _____

Phone _____

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Others					

2. Explanation of above estimates.

A very minimal travel cost might incurred to send a department staff to a hearing at the local level. This can be absorbed into the existing operational budget.

3. Date December 16, 1983

Agency Health Department

Signature of Agency Head

Signature of Authorized Representative

L. Clark Hansbarger for

L. Clark Hansbarger, M.D.
Director

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 12-16-83
Administrative Law Division

STATEMENT OF ECONOMIC IMPACT OF PROPOSED RULES OR REGULATIONS

Rules of Procedure for Contested Case Hearings for Community Behavioral Health Services Provided through Department of Health Purchase of Service Subject Contracts, Chapter 16-1, Series II (1984)

Agency Health Department

Rule No. 16-1, Series II, Procedural

1. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

None

C. Economic Impact on Citizens/Public at Large.

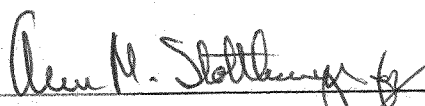
None

Date December 16, 1983

Agency Health Department

Signature of Agency Head

Signature of Authorized Representative


L. Clark Hansbarger, M.D.
Director

WEST VIRGINIA PROCEDURAL RULES
BOARD OF HEALTH

Rules of Procedure for Contested Case Hearings
for Community Behavioral Health Services
Provided through Department of Health Purchase
of Service Contracts

Chapter 16-1
Series II
(1984)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 12-16-83
Administrative Law Division

WEST VIRGINIA PROCEDURAL RULES
BOARD OF HEALTH

Rules of Procedure for Contested Case Hearings
for Community Behavioral Health Services
Provided through Department of Health Purchase
of Service Contracts

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WEST VIRGINIA PROCEDURAL RULES
BOARD OF HEALTH

Chapter 16-1
Series II
(1984)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 12-12-83
Administrative Law Division

Subject: Rules of Procedure for Contested Case Hearings for
Community Behavioral Health Services Provided through
Department of Health Purchase of Service Contracts

Section 1. General

1.1. Scope - These procedural rules establish the general procedures for conducting contested case hearings on any complaint regarding community behavioral health services provided by the department of health through purchase of service contracts with community behavioral health service providers. The purpose of these rules is to facilitate the resolution of complaints in a just, speedy and inexpensive manner.

1.2. Authority - These procedural rules are issued under the authority of Chapter 16, Article 1, Section 7, and Chapter 29A, Article 5, Section 1(a), and are related to Chapter 27, Article 2A, of the West Virginia Code of 1931, as amended.

1.3. Filing Date - These procedural rules were promulgated on the 16th day of December, 1983, and were filed on the _____ day of _____, 19____, in the Secretary of State's office.

1.4. Effective Date - These procedural rules became effective on the _____ day of _____, 1984.

Section 2. Application - These procedural rules shall apply to every person, partnership, association, corporation or public corporation affected by community behavioral health services provided through department of health purchase of service contracts with community behavioral health service providers.

These rules are not intended to alter or amend in any way the authority or procedures for refusal, suspension, or revocation of a license as specified in the West Virginia Legislative Rules, Board of Health; Regulations for Licensing Psychiatric and Other Related Facilities and Programs, Chapter 27-9, Series I (1983), or the proposed Legislative Rule: Licensure of Behavioral Health Centers, West Virginia Board of Health Legislative Rules, Chapter 17-9, Series 1 (198_), should such proposed rule be made final and become effective.

Section 3. Definitions

3.1. Board of Directors - Shall mean the board of directors or other governing body of a community behavioral health service provider which provides community behavioral health services through a purchase of service contract with the Department of Health and about which a complaint has been directed.

3.2. Community Behavioral Health Service Provider - Shall mean any person or entity licensed to provide behavioral health services in the State of West Virginia which provides community behavioral health services through a purchase of service contract with the Department of Health.

3.3. Department - Shall mean the West Virginia Department of Health.

3.4. Office of Behavioral Health Services - Shall mean the West Virginia Department of Health, Office of Behavioral Health Services.

3.5. Director - Shall mean the director of the West Virginia Department of Health.

Section 4. Hearings Before the Board of Directors

4.1. Request for Hearing - Any party with a complaint regarding services provided or not provided by a community behavioral health service provider shall first present the complaint and a request for a hearing in writing to the board of directors of the provider.

4.2. Notice of Hearing - Upon receipt of the written complaint and request for a hearing, the board of directors shall schedule a hearing to be held within thirty (30) days of the date the complaint was received. Notice of the time and place of the hearing shall be given to the complainant and to the office of behavioral health services no less than ten (10) days prior to the hearing. Such notice shall also specify: (1) the respective rights of the complainant and the board of directors; (2) the procedures to be followed at the hearing; and (3) a statement of the matters asserted.

4.3. Prehearing Conference; Informal Resolution - Prior to the hearing, the board of directors or a designated representative shall hold a prehearing conference to be attended by the

complainant or the complainant's representative. The purpose of this conference will be to simplify or resolve issues, if possible, by consent of the parties. At any time prior to the hearing or thereafter, a representative of the board of directors and the complainant or the complainant's representative may meet, at the request of either party, to attempt to resolve any or all issues informally.

4.4. Conduct of Hearing - The hearing shall be before a duly constituted quorum of the board of directors. At this hearing, the complainant shall have the right to be represented or assisted by a person of his choice, to present evidence, to introduce and cross-examine witnesses and, if necessary, to compel attendance of employees of the community behavioral health service provider. The board of directors shall have the right to direct questions to the complainant or any witnesses and may call witnesses of its own.

4.5. Minutes of Hearing - Minutes of the hearing shall be made and kept on file at the community behavioral health providers' office for twelve (12) months. Such minutes shall be available to any complainant for purposes of appeal.

4.6. Written Report - The board of directors shall evaluate the evidence presented at the hearing and shall prepare and adopt a written report within forty-five (45) days after the hearing summarizing its findings and conclusions. A copy of this report shall be mailed to the complainant and to the office of behavioral health services.

4.7. Establishment of Procedures by Board of Directors -

The board of directors of a community behavioral health service provider may establish and utilize procedures for responding to complaints and requests for hearings as long as such procedures are not inconsistent with these procedural rules and include the minimum requirements set forth in Section 4 of these rules.

Section 5. Hearing Before the Department

5.1. Request for a Hearing - Any complainant who disagrees with the decision rendered by the board of directors may appeal that decision to the department by filing a written request for a hearing with the director. The request shall briefly state the specific areas of disagreement with the written report adopted by the board of directors, and the grounds relied upon as a basis for the relief requested.

5.2. Determination by Director of Whether to Hold Hearing -
When the director is presented with a request for a hearing as described in Subsection 5.1 of this Section, he shall conduct a hearing within forty-five (45) days of receipt by him of such written request, unless postponed to a later date by mutual agreement. However, if the director shall determine that the hearing requested:

(A) Would involve an exercise of authority in excess of that available to him under law; or

(B) Would serve no useful purpose, he shall, within twenty (20) days of the receipt of such demand enter an Order refusing to grant the hearing as requested, incorporating therein his

reason for such refusal. Appeal may be taken from such Order as provided in Chapter 29A, Article 5, Section 4, of the West Virginia Code of 1931, as amended.

5.3. Notice of Hearing - Upon the receipt of a request for a hearing as described in Subsection 5.1 of this Section, the director shall within twenty (20) days provide the complainant, the board of directors and the office of behavioral health services with a notice of hearing providing the director has not entered an Order denying a hearing as provided in Subsection 5.2 of this Section. Such notice shall contain:

(A) the date, time and place of the hearing;

(B) a short plain statement of the matters asserted; and

(C) a statement of intention to appoint a hearing examiner if one is to be appointed pursuant to Subsection 5.9 herein; such notice shall be given at least ten (10) days in advance of the date of the hearing.

5.4. Prehearing Conference - Prior to the hearing, the director or his duly appointed hearing examiner shall hold a prehearing conference as authorized by Subsection 5.10 of these rules. The conference shall be attended by representatives of the complainant, the board of directors and the office of behavioral health services. The role of the representative of the office of behavioral health services will be to assist the parties in trying to simplify or settle issues by consent of the parties.

5.5. Conduct of Hearing - Hearings shall be conducted as follows:

Board of Health
Procedural Rule 16-1
Series II

(A) The complainant and the board of directors shall have the right to be represented by an attorney at law, duly qualified to practice in the State of West Virginia or by any other person chosen by the complainant or the board of directors;

(B) The office of behavioral health services may be represented by the office of the attorney general;

(C) The rules of evidence as applied in civil cases in the circuit courts of this State shall be followed;

(D) When necessary to ascertain facts not reasonably susceptible to proof under said rules of evidence, evidence not admissible thereunder shall be admitted, except where precluded by statute, or by the rules of privilege recognized by the courts of this State, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs;

(E) Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference;

(F) The complainant, the board of directors, and the office of behavioral health services shall each have the opportunity to present evidence, to introduce and cross-examine witnesses, and to present rebuttal evidence;

(G) Following the presentation of all the evidence, the complainant, the board of directors, and the office of behavioral health services shall have the right to offer argument, not to exceed a reasonable time limit as determined by the director or the hearing examiner.

5.6. Continuation and Adjournment - Hearings may be continued from one day to another or adjourned to a later date or a different place by announcement thereof at the hearing or by appropriate notice to all parties. A written motion for a continuance shall be filed at least five (5) days prior to the hearing date.

5.7. Transcription of Reported Testimony and Evidence

(A) What Reported - All testimony, evidence, arguments, and rulings on the admissibility of testimony and evidence shall be reported by stenographic notes and characters or by mechanical means.

(B) Request for Transcript Where No Hearing Examiner Has Been Appointed - Where no hearing examiner has been appointed, upon the written request to the director from any party to the hearing, all reported materials shall be transcribed and a copy thereof furnished to such party at his expense.

(C) Transcription, Request for Transcript in the Event a Hearing Examiner is Appointed - In all cases where a hearing examiner is appointed, all reported material shall be transcribed and forwarded to the director. Any party may request in writing a copy of the transcript which shall be furnished to such party at his expense.

(D) Responsibility for Transcript - The department shall have the responsibility for making arrangements for the transcription of the reported testimony and evidence. In the event

transcription is required pursuant to this Section, it shall be accomplished with all dispatch.

(E) Correction of Error in Transcript - Upon the motion of any party, or the director or hearing examiner, if one has been appointed, assigning error or omission in any part of any transcript, the director or the hearing examiner, if one has been appointed, shall settle all differences arising as to whether such transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and revised in the respects designated, if necessary, so as to make it conform to the whole truth.

5.8. Submission of Proposed Findings of Fact and Conclusions of Law; Time for Submission - Any party may submit to the director or hearing examiner, if one has been appointed, proposed findings of fact and conclusions of law within thirty (30) days of the conclusion of a hearing or, in the event the proceedings of a hearing are transcribed, within twenty (20) days from the date the final transcript is available.

5.9. Appointment of Hearing Examiner; Function of Hearing Examiner - The director may, in his discretion, appoint a hearing examiner who shall be empowered to subpoena witnesses and documents, to administer oaths and affirmations, to examine witnesses under oath, to rule on evidentiary questions, to hold conferences for the settlement or simplification of issues by consent of the parties and to otherwise conduct hearings as provided in Section 5 herein.

5.10. Conferences; Informal Disposition of Cases - At any time prior to the hearing or thereafter, the director, or his duly appointed hearing examiner may hold conferences called on his own motion or upon the request of any party:

- (A) to dispose of procedural requests or similar matters;
- (B) to simplify or settle issues by consent of the parties;

or

(C) to provide for the informal disposition of cases by stipulation, agreed settlement, or consent order.

5.11. Depositions Permitted - Evidentiary depositions may be taken and read into evidence to the extent permitted in civil actions in the circuit courts of this State.

5.12. Subpoenas

(A) Where Permitted by Chapter 16 - In accordance with any provision contained in the West Virginia Code of 1931, as amended, authorizing the director to issue subpoenas or subpoenas duces tecum, the director or his duly appointed hearing examiner shall have the power to issue subpoenas or subpoenas duces tecum pursuant to the provisions set forth in Chapter 29A, Article 5, Section 1(b), of the West Virginia Code of 1931, as amended.

(B) Time for Requesting the Issuance of Subpoenas - Written requests for the issuance of subpoenas or subpoenas duces tecum as provided in Subsection 5.12(A) of this Section shall be made no later than ten (10) days prior to a scheduled hearing.

5.13. Orders; Content - Every final order entered by the director, following a hearing conducted pursuant to these rules,

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shall be made pursuant to the provisions of Chapter 29A, Article 5, Section 3, of the West Virginia Code of 1931, as amended. Such orders shall be entered within forty-five (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts and proposed findings of fact and conclusions of law.

5.14. Appeal - An appeal from any final order entered in accordance with these regulations may be filed in the circuit courts of this State in accordance with the provisions of Chapter 29A, Article 5, Section 4, of the West Virginia Code of 1931, as amended.

Section 6. Severability - If any provision of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity thereof shall not affect the provision or application of these regulations which can be given effect without the invalid provision or application and to this end the provisions of these regulations are declared to be severable.