WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Health TITLE-SERIES: 64-11

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 64-11 Behavioral Health Centers Licensure

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Code §§27-9-1, et seq., 27-17-1, et seq., 27-1A-4(g) and 27-1A-6(6) and -7.

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The rule is necessary because these services and supports serve a large population of West Virginians who are often particularly vulnerable. This rule is also necessary to ensure the health, safety, and wellbeing of these individuals.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/21/2018

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/21/2018

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

N/A

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule sets forth standards, requirements and procedures for the licensure of behavioral health facilities and operation of behavioral health services and supports. These amendments constitute a substantive rewrite and modernization of an outdated rule.

This is a comprehensive revision of a rule that has not been updated since 2000.
64-11-3, the definitions section, has been updated to modern terminology, with irrelevant or unnecessary terms removed., delete obsolete provisions, and add provisions for background checks through WV Clearance for Access: Registry and Employment Screening.
64-11-4 is amended to clarify and update the licensing, inspection, and complaint procedures as well as update the process for plans of correction.
64-11-5 is amended to incorporate the language for consumer rights found in the current version of the rule.
64-11-6 updates provisions related to managing risk, including provisions for insurance, bonding of employees, and other risk reduction measures.
64-11-7 is amended to govern legal compliance with federal, state and local laws, zoning, fire, and safety codes, and the protection of consumer information and records.
64-11-8 is amended to govern the handling of consumer finances.
64-11-9 is amended to address staffing and personnel requirements and practices as well as training requirements.
64-11-10 is revised to address the physical environment of covered facilities
64-11-11 is amended to address compliance with legal, health, and regulatory requirements.
64-11-12 is a new section of the rule, which address the requirements of the services that are provided, including intake, assessment, planning, documentation, discharge planning and more.
64-11-13 is a new section of the rule which provides for license actions and administrative due process.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The rule is necessary because these services and supports serve a large population of West Virginians who are often particularly vulnerable. This rule is also necessary to ensure the health, safety, and wellbeing of these individuals.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This rule establishes general standards and procedures for the licensure of behavioral health facilities and operation of services and supports under the provisions of W.Va. Code §27-1A-7 and related federal and state codes.

This rule has been revised to update definitions and add provisions for background checks through WV Clearance for Access: Registry and Employment Screening. The revision clarifies and updates the licensing, inspection, and complaint procedures, as well as updates the process for corrective actions. It outlines the grounds for penalties as well as grievance and appeals procedures for providers who are

penalized. It updates provisions related to managing risk, including provisions for insurance, bonding of employees, and other risk reduction measures. It is amended to govern legal compliance with federal, state and local laws, zoning, fire, and safety codes, and the protection of consumer information and records, and to govern the handling of consumer finances. The amendment addresses staffing and personnel requirements and practices as well as training requirements. It addresses the physical environment of covered facilities and compliance with legal, health, and regulatory requirements. This revision creates two new sections of the rule. The first addresses the requirements for the services that are provided, including intake, assessment, planning, documentation, discharge planning and more. The final provides administrative due process.

The Department's Office of Inspector General (OIG) anticipates no fiscal impact to its operations resulting from these revisions.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

N/A

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2018 Increase/Decrease (use "-")	2019 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0		0
Personal Services			
Current Expenses			
Repairs and Alterations			

Assets			
Other			
2. Estimated Total Revenues	0		0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The OIG anticipates no fiscal impact to its operations.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Heather J Mcdaniel -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 64
LEGISLATIVE RULE
~~DIVISION~~ DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 11
BEHAVIORAL HEALTH CENTERS LICENSURE

§64-11-1. General.

1.1. Scope. -- This rule establishes general standards and procedures for the licensure of behavioral health services and ~~programs~~ supports ~~. This rule should be read in conjunction with the definitions in~~ under the provisions of W. Va. Code ~~27-1-1 et seq. and the provisions of W. Va. Code §§27-9-1 and 27-17-1 et seq.~~ §27-1A-7 and related federal and state codes. The West Virginia Code is available in public libraries and on the Legislature's web page at http://wvlegislature.gov/.

1.2. Authority. -- W. Va. Code §§27-9-1, *et seq.*, ~~and 27-17-3~~ 27-17-1, *et seq.*, ~~and~~ 27-1A-4(g), ~~in conjunction with~~ and 27-1A-6(6) and -7.

1.3. Filing Date. -- ~~April 13, 2000.~~

1.4. Effective Date. -- ~~July 1, 2000.~~

1.5. Sunset Date -- This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

~~1.5.~~ 1.6. Repeal and Replacement of Former Rule. -- This legislative rule repeals and replaces "Licensure of Behavioral Health Centers," W. Va. Code R. §§64-11-1, *et seq.*, effective ~~April 6, 1990.~~ July 1, 2000.

1.7. Purpose -- These standards are the basis for the licensing and approval of behavioral health services and supports in West Virginia. Licenses are issued if the standards and applicable rules and regulations are met. The purpose is to protect the health, safety, and wellbeing of consumers receiving care from providers of behavioral health services and supports, to regulate the providers of such services through the formulation, application, and enforcement of licensing requirements, and to ensure the provision of services and supports that are individualized and person-centered.

§64-11-2. Application and Enforcement.

2.1. Application. -- ~~This rule applies to a Center, as defined by this rule, that offers services to individuals with mental illness, mental retardation, behavioral disabilities, developmental disabilities or addiction, or offers preventive services for these disabilities.~~ The core requirements of sections 1 through 14 of this rule apply to all providers of behavioral health services and supports, both public and private. Each provider included in this rule shall comply with core requirements in addition to specialized modules as applicable to each program.

2.2. This rule contains the requirements to obtain a license to provide behavioral health services and supports for consumers in West Virginia.

2.3. This rule applies equally to profit, nonprofit, publicly funded, and privately funded facilities.

2.~~2~~.4. Enforcement. -- This rule is enforced by the Secretary of the Department of Health and Human Resources or his or her designee.[~~1~~] For the purposes of this rule, the secretary designates the Director of the Office of Health Facility Licensure and Certification.

2.5. Exemptions. -- The following programs or services are exempt from the requirements of this rule:

2.5.1. A program exempted by state or federal statute;

2.5.2. Services provided through a Medicaid self-directed community-based waiver;

2.5.3. Federally Qualified Health Centers, designated rural health centers, and federally designated rural "look alike" centers providing clinic-based outpatient behavioral health services within the scope of practice described by federal standards at a federally designated location;

2.5.4. A program operated by a state or federal governmental entity or a circuit court, with the exception of day report programs or as otherwise provided;

2.5.5. Family protection programs licensed by the Family Protection Services Board under W.Va. Code §48-26-404;

2.5.6. Adult emergency shelters and homeless outreach programs serving adults and accompanying minors;

2.5.7. Hospitals operating within the scope of their license under W. Va. Code §§16-1-1, *et seq.*;

2.5.8. Individuals or groups of behavioral health or health practitioners functioning within the scope of their license under W. Va. Code §§30-1-1, *et seq.*;

2.5.9. Birth-to-Three services otherwise monitored by the Department;

2.5.10. Specialized Family Care providers providing only services to individuals in Specialized Family Care settings, or Natural Family or Adoptive Family Homes providing IDDW services;

2.5.11. Legally Unlicensed Health Care Homes as defined in W. Va. Code R. §§64-50-1, *et seq.*;

2.5.12. Opioid Treatment Programs providing only the services delineated in W. Va. Code R. §69-11-1, *et seq.*;

[~~1~~] ~~The Department of Health and Human Resources (DHHR) was created by the Legislature's reorganization of the executive branch of state government in 1989, and the department of health was renamed the division of health and made a part of the DHHR (W. Va. Code §5F-1-1 *et seq.*). Administratively within the DHHR, the bureau for public health through its commissioner carries out the public health functions of the division of health.~~

2.5.13. Peer support programs operated as not-for-profit agencies;

2.5.14. Programs designed solely to provide education to consumers or family members, or both;

2.5.15. Case management services and service coordination as defined in this rule; and

2.5.16. Nursing homes, long-term care facilities, and residential care homes.

2.6. The Secretary will deem the license of all facilities operating as Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) serving only children to be in compliance with federal certification standards and of residential children's programs functioning within the scope of their license as described in W. Va. Code R. §§78-3-1, *et seq.*

§64-11-3. Definitions.

3.1. Abuse. -- ~~Physical Abuse. Means any physical motion or action (hitting, slapping, punching, kicking, pinching, etc.) by which bodily harm or trauma occurs. It includes use of corporal punishment as well as the use of any restrictive, intrusive procedure to control inappropriate behavior for purposes of punishment.~~ The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial wellbeing. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain, or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse, including abuse facilitated or enabled through the use of technology. *Willful*, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

~~3.1.b. Psychological Abuse. Means humiliation, harassment, and threats of punishment or deprivation, sexual coercion, intimidation, whereby individuals suffer psychological harm or trauma.~~

~~3.1.c. Verbal Abuse. Means any use of oral, written or gestured language by which abuse occurs. This includes demeaning and derogatory terms to describe persons with disabilities. Verbal abuse includes, but is not limited to:~~

~~3.1.c.1. Yelling or using demeaning, derogatory, vulgar, profane or threatening language;~~

~~3.1.c.2. Threatening tones in speaking;~~

~~3.1.c.3. Teasing, pestering, molesting, deriding, harassing, mimicking or humiliating a consumer in any way; or~~

~~3.1.c.4. Making sexual innuendo.~~

~~3.2. Administrator. Means the person responsible for carrying out the governing body=s policy and the day-to-day operation of the Center.~~

3.2. Addiction. -- A disease characterized by the individual's pursuing reward or relief, or both, by substance use or other behaviors. Addiction is characterized by impairment in behavioral control, craving, inability to consistently abstain, and diminished recognition of significant problems with one's behaviors

and interpersonal relationships; likely to involve cycles of relapse and remission.

3.3. Adult Basic Skills Coaching. -- Coaching or prompting of individuals in their home or group home environment in areas including, but not limited to, money management, safety, housekeeping, personal care, nutrition, cooking, and medication education. This is considered to be a supportive service.

3.3. Advocate. -- Means a person or agency that acts on behalf of a consumer to establish, expand, protect, and enforce his or her human, legal, and civil rights in a consumer's best interest.

3.4. Alteration. -- A change to a provider location that affects the usability of the building or facility or any part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility. Administrative offices and buildings are not included.

3.5. Assessment. -- An evaluation of a consumer by a qualified person working within his or her scope of practice using skills of examination including appraisal and analysis of data collected to provide care and services.

3.6. Aversive Procedures. -- Means restrictive procedures that impose consequences a consumer finds undesirable in a treatment program to decrease inappropriate behaviors. What is undesirable varies with each consumer but generally includes such measures as fines or loss of privileges. Aversive procedures include, but are not limited to, physical and chemical restraint, time-out, and seclusion.

3.~~5~~7. Behavioral Health Services. -- ~~Means an inpatient, residential or outpatient service for the care and treatment of persons with mental illness, developmental disabilities or substance abuse.~~ A direct service provided as an inpatient, residential or outpatient service, to an individual with mental health, addictive, behavioral, or adaptive challenges that is intended to improve or maintain functioning in the community. The service is designed to provide treatment, habilitation, or rehabilitation.

3.~~6~~8. Behavioral Intervention ~~Plan~~. -- ~~Means a~~ A written behavior support plan ~~whose outcome is to teach adaptive behaviors and reduce or extinguish maladaptive behaviors in order to allow the individual to function successfully in the environment.~~ approved by the service planning team, the consumer, and the designated legal representative if applicable. A behavioral intervention must be based on a functional assessment of the targeted behavior and must be specific and measurable.

~~3.7. Center. -- Means an entity that provides behavioral health services. Exceptions are:~~

~~3.7.a. Hospitals governed by the Division of Health.~~

~~3.7.b. Twenty four (24) hour inpatient services located within a general or psychiatric hospital. These services are licensed under the Division of Health;~~

~~3.7.c. Nursing homes governed by the Division of Health;~~

~~3.7.d. Personal care homes governed by the Division of Health;~~

~~3.7.e. Residential board and care homes governed by the Division of Health;~~

~~3.7.f. Non-supervised apartment living quarters occupied by consumers of the Center;~~

~~3.7.g. Specialized family care homes under the supervision of the West Virginia Department of Health and Human Resources;~~

~~3.7.h. Self help groups;~~

~~3.7.i. Information and referral services;~~

~~3.7.j. A private practice as defined in this rule; or~~

~~3.7.k. Entities operated by the state or federal government.~~

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~~3.7.k. Entities operated by the state or federal government.~~

~~3.9. Consumer. Means an individual receiving treatment or services in or from the Center.~~

~~3.10. Consumer Record. Means a dated and signed written compilation of information that describes and documents the evaluation and present and prospective treatment of a consumer.~~

~~3.11. Corporal Punishment. Means the application of painful stimuli to the body in an attempt to~~

~~terminate behavior or as a penalty for behavior but not including aversive procedures.~~

~~3.13. Detoxification. -- Means the process of eliminating the toxic effects of drugs and alcohol from the body.~~

~~3.14. Discharge. -- Means the termination of a consumer's affiliation with the Center.~~

~~3.15. Discharge Planning. -- Means the organized process of identifying the approximate length of stay and the criteria for exit of a consumer from the current service, and less restrictive alternatives for a later date. Discharge planning begins upon admission to the Center's services and includes provision for appropriate follow-up services.~~

~~3.16. Documentation. -- Means a written record relating to compliance with this rule.~~

~~3.17. Emergency Procedures. -- Means procedures necessary to control severely aggressive or destructive behaviors that place a consumer or others in imminent danger of physical harm when the timing of those behaviors reasonably could not have been anticipated.~~

~~3.18. Functional Analysis. -- Means a comprehensive assessment process that includes at least: an analysis of the problem behavior, a history of the problem, the antecedent, and consequence of the behavior and an hypothesis as to the function of the behavior.~~

~~3.19. Goal. -- Means an expected result or condition that is specified in a statement of relatively broad scope, and provides guidance in establishing intermediate objectives toward its attainment.~~

~~3.20. Governing Body. -- Means a person or persons with the legal authority and responsibility to set policy and oversee the operations of the Center~~.

3.9. Case Management. -- A non-clinical service that helps the consumer arrange for appropriate services and supports. This service may involve, but is not limited to, assistance with completion of applications and forms, transportation, assistance in making appointments for medical or other care and telephone calls but is not a direct clinical service provided to a consumer. Case management is not considered to be a service unique to a health care setting and is therefore not a behavioral health or supportive service.

3.10. Chemical Restraint. -- A medication used to control behavior or to restrict the consumer's freedom of movement when the medication is not a standard treatment for the consumer's medical or psychological condition. Doses of any medication prescribed at levels beyond that recommended for normal clinical use shall also be evaluated for inclusion as a chemical restraint.

3.11. Chief Executive Officer. -- The individual designated by the governing body to be responsible for the provider's daily operations. The chief executive officer may also be referred to as the provider's president, executive director, or chief administrative officer.

3.12. Civil Rights. -- Means the rights of personal liberty guaranteed by the Constitutions of the United States and the state of West Virginia, by federal and state law.

3.13. Comprehensive Mental Health Center. -- A provider designated by the Secretary to provide mandatory specific mental health services to an identified target population in a designated region of the state of West Virginia in accordance with W. Va. Code §§27-2A-1, *et seq.*

3.14. Comprehensive Plans of Services. -- A written description of the behavioral health services and supports provided to the consumer accompanied by a description of the measurable goals of the supports the consumer is receiving. These services may be provided by more than one agency acting in coordination. The comprehensive plan is utilized for consumers receiving both behavioral health services and supports.

3.15. Consumer. -- An individual who receives services or supports, or both, from a provider licensed under this rule.

3.16. Crisis Services. -- Twenty-four-hour availability of certification screenings for commitment; telephone answering for behavioral health crises, with clinician follow up as necessary within 15 minutes; and personalized screening as necessary and appropriate by trained staff on 24-hour basis.

3.17. Critical Incident. -- Means the alleged, suspected, or actual occurrence of any of the following involving a consumer:

3.17.1. Abuse;

3.17.2. Neglect;

3.17.3. Death due to any cause;

3.17.4. Attempted suicide;

3.17.5. Behavior that will likely lead to serious injury or significant property damage;

3.17.6. Fire resulting in injury, relocation or an interruption of services;

3.17.7. Any major involvement with law enforcement authorities;

3.17.8. Injury that requires hospitalization or results in permanent physical damage;

3.17.9. Life-threatening reaction because of a drug or food;

3.17.10. A serious consequence resulting from an apparent error in medication or dietary administration;

3.17.11. Extended and unauthorized absence of a consumer that exceeds his or her treatment plan provision for community access; or

3.17.12. Removal of a consumer from either residential or program services without the consent of a consumer or his or her legal representative.

3.18. Critical Treatment Juncture. -- The occurrence of an unusual or significant event which may have an impact on the process of treatment. A critical treatment juncture will result in a documented meeting between the provider and the consumer or Designated Legal Representative (DLR), or both, and may cause a revision of the plan of services.

3.19. Designated Legal Representative (DLR). -- Parent of a minor child, conservator, legal guardian (full or limited), health care surrogate, medical power of attorney, power of attorney, or other individual authorized to make certain decisions on behalf of a consumer and operating within the scope of his or her authority.

3.20. Disaster Relief. -- Provision of community-based behavioral health services to individuals who are the victims of a natural or other disaster. Disaster relief may include emergency interventions with first responders experiencing distress due to their participation in recovery activities subsequent to a disaster.

3.21. Elopement. -- Any occurrence when the consumer is out of the care, custody, and protective oversight of provider's staff during times the provider is responsible for providing care.

3.22. Emergency. -- A situation or set of circumstances which presents a substantial and immediate risk of death or serious injury to a consumer.

3.23. Employee. -- All persons who work or provide services at or for the provider. Employees include owners, associates, contracted agents, and volunteers.

3.24. Expanded Plan of Service. -- A description of the treatment, habilitation, or rehabilitation goal(s) of the behavioral health services provided to the consumer stated in measurable terms, accompanied by a brief description of any supportive services to be provided. The expanded plan of service is developed at the conclusion of the assessment process and may be preceded by an initial plan of service.

3.25. Governing Body. -- A clearly identified group of people (or person or partnership when applicable) which ensures accountability, exercises authority over, and has responsibility for the provider's operation, policies, and practices. The provider shall designate the governing body at the time of licensure. If an entity is a corporation with an out-of-state ownership or management structure, the provider shall identify the governing body in conjunction with the Secretary.

3.26. Habilitation. -- A direct service to enhance the functional level of individuals by promoting the acquisition of skills or emotional or behavioral self-management abilities that the person did not develop at an appropriate developmental phase.

3.27. Human Rights Committee. -- Means a committee or committees whose primary function is to assist the provider in the promotion and protection of a consumer's rights, and to review, approve, and monitor individual programs designed to manage inappropriate behaviors and other programs that are intrusive or involve risks to a consumer's protection and rights.

3.28. Inappropriate behavior. -- A behavior that is disruptive or increases the risk of harm to a consumer or individuals in his or her environment; a maladaptive behavior that interferes in the ability of the consumer to lead an integrated life in the community to an optimally independent degree.

3.29. Incapacitated Adult. -- Any person who, by documented reason of physical, mental, or other infirmity, is unable to independently carry on the daily activities of life necessary to sustaining life and reasonable health.

3.30. Informed Consent. -- Means the written verification:

3.30.1. That a consumer has or does not have the legal capacity to give informed consent;

3.30.2. That a consumer or his or her legal representative has been informed of the advantages and disadvantages of all aspects of the treatment provided to a consumer; and

3.30.3. That a consumer or his or her legal representative agrees to the treatment.

3.31. Initial Plan of Service. -- The plan developed during the admissions process that describes the services or supports, or both, the consumer is to receive until the assessment process is complete and the expanded plan of service is developed.

3.32. Intensive Community-Based Stabilization and Maintenance Programs. -- Multi-disciplinary programs for in-home habilitation, rehabilitation, stabilization, and maintenance of individuals with behavioral health challenges.

3.~~23.~~33. Interdisciplinary Team. -- ~~Means a~~ A group including a consumer ~~and/~~ or his or her legal representative, or both, and representatives from the disciplines and services that design a consumer's treatment plan.

~~3.24. Legal Representative[2]. B Means a person or agency with legal authority to exercise some degree of control over a consumer=s affairs; namely, one of the following that is the most appropriate to the decision to be made:~~

~~3.24.a. A conservator, temporary conservator or limited conservator appointed pursuant to the West Virginia Legal Guardianship and Conservatorship Act, W. Va. Code §44A-1-1 et seq., within the limits set by the order;~~

~~3.24.b. A guardian, temporary guardian or limited guardian appointed pursuant to the West Virginia Guardianship and Conservatorship Act, W. Va. Code §44A-1-1 et seq., within the limits set by the order;~~

~~3.24.c. An individual appointed as committee or guardian prior to June 9, 1994, within the limits set by the appointing order and W. Va. Code §44A-1-2(d);~~

~~3.24.d. person having a medical power of attorney pursuant to the West Virginia Medical Power of Attorney Act, W. Va. Code §16-30A-1 et seq., within the limits set by the law and the appointment;~~

~~[2] Owners and administrators should note that the various types of legal representatives do not necessarily have the lawful authority to act on behalf of the resident in all matters that shall require action by a legal representative. For example, a conservator shall have responsibility for financial affairs, but not personal affairs, such as medical care.~~

~~3.24.e. A representative payee under the U.S. Social Security Act, Title 42 US Code § 301 et seq., within the limits of the payee's legal authority;~~

~~3.24.f. A surrogate decision maker appointed pursuant to the West Virginia Health Care Surrogate Act, W. Va. Code §16-30B-1 et seq., or the West Virginia Do Not Resuscitate Act, '16-30C-1 et seq., within the limits set by the appointment;~~

~~3.24.g. An individual having a durable power of attorney pursuant to W. Va. Code §39-4-1, or a power of attorney under common law, within the limits of the appointment;~~

~~3.24.h. An individual identified pursuant to W. Va. Code §16-3C-4 to grant consent for HIV related testing and for the authorization of the release of test results;~~

~~3.24.i. A parent or guardian of a minor; or~~

~~3.24.j. An individual lawfully appointed in a similar or like relationship of responsibility for a consumer under the laws of this State, or another legal jurisdiction, within the limits of the applicable law.~~

~~3.24.k. Mechanical Supports. Means devices used to support or align proper body position.~~

3.34. Linkage and Aftercare. -- Establishment of a relationship between a CMHC and a committed individual while the consumer is still in the hospital; subsequent case management and provision of services designed to prevent rehospitalization and promote stabilization and maintenance of function.

3.35. Medication Error. -- Means ~~occurring with:~~ failure to follow the six rights of medication administration.

~~3.26. The failure to administer a drug ordered by a physician; or~~

~~3.26.a. The administration of a drug:~~

~~3.26.b. Without a physician's order;~~

~~3.26.b.1. In the wrong dosage;~~

~~3.26.b.2. In the incorrect form;~~

~~3.26.b.3. By the incorrect method; or~~

~~3.26.b.4. That is incorrect itself.~~

~~3.27. Neglect. A negligent act or a pattern of actions or events that caused or may have caused injury or death to a consumer, or that placed a consumer at risk of injury or death, that was committed by an individual responsible for providing services in a behavioral health service. Neglect includes, but is not limited to:~~

~~3.27.a. A pattern of failure to establish or carry out a consumer=s individualized program plan or treatment plan that placed or may have placed a consumer at risk of injury or death;~~

~~3.27.b. A pattern of failure to provide adequate nutrition, clothing, or health care;~~

~~3.27.c. Failure to provide a safe environment; and~~

~~3.27.d. Failure to maintain sufficient, appropriately trained staff.~~

~~3.28. Objective. — Means an expected result or outcome that is stated in measurable terms, has a specified time for achievement and is related to the attainment of a goal.~~

~~3.29. Partial Hospitalization. — Means a comprehensive structured day program that uses a interdisciplinary team to provide comprehensive coordinated services within an individual treatment plan to individuals diagnosed with one or more psychiatric disorders. A partial hospitalization program is designed to treat consumers who exhibit severe or disabling conditions related to an acute psychiatric/psychological condition or an exacerbation of a severe and persistent mental disorder.~~

~~3.30. Policy. — Means a statement of the principles that guide and govern the activities, procedures and operations of a program.~~

~~3.31. Positive Programming. — Means an educational process for behavior change that is based on a functional analysis of the presenting problems and involves systematic instruction in more effective ways of behaving.~~

~~3.32. Private Practice. — Means the individual or group practice of a healing art or behavioral health profession by professionals licensed under State law.~~

~~3.33. Procedures. — Means the methods by which policies are implemented.~~

~~3.34. Program. — Means a system of services designed to address the treatment needs of consumers.~~

~~3.35. Psychiatric Emergency. — Means an incident during which a consumer loses control and behaves in a manner that poses substantial likelihood of physical harm to himself or herself or to others.~~

~~3.36. Protective Device. — Means any appliance such as a brace, pad, helmet, covering, bandage, etc., that is used to aid in the healing of an injury.~~

~~3.37. Psychotropic Drugs — Means medications prescribed by physicians to reduce depression, anxiety, and other manifestations of mental or emotional disturbance.~~

~~3.38. Quality Assurance. — Means a program designed to objectively monitor and evaluate the quality and appropriateness of consumer services and identify methods to improve services and resolve problems.~~

3.36. Neglect. -- The failure of the facility, its employees, or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress.

3.37. Non-Critical Incident. -- Any unusual event or injury of unknown origin involving a consumer

that needs to be recorded and investigated for risk management or quality improvement purposes but does not meet the definition of abuse, neglect, or critical incident.

3.38. Non-Methadone Medication-Assisted Programs for Addictions and Co-occurring Disorders. -- A program that provides medications other than methadone to assist consumers with withdrawal symptoms and on-going cravings for substances of misuse, typically opioids; not to include programs utilizing medications for the purpose of short term (less than seven days) detoxification.

3.39. Personal Attendant. -- A supportive service in which a provider assists a consumer with the activities of daily living, which may include prompting. The service may assist the individual to maintain his or her skills and abilities but does not carry the expectation of habilitation or rehabilitation as the result of the receipt of the service.

3.40. Physician Extender. -- A medical professional including an advanced practice registered nurse or a physician assistant functioning within his or her legal scope of practice.

3.41. Plan of Service. -- A written description of the behavioral health services or supports, or both, that the consumer is to receive.

3.42. Provider. -- An entity (including staff and individuals employed or contracted to provide consumer services on behalf of the entity) that provides behavioral health or supportive services, or both, under this rule.

3.43. Rehabilitation. -- A direct service that promotes re-acquisition of skills or emotional or behavioral self-management abilities that the person has lost due to mental illness, traumatic brain injury, institutionalization or long-term addiction.

3.~~39.~~44. Residential Treatment ~~Facility.~~ Program for Addictions and Co-occurring Disorders. -- ~~Means a structure in which is provided an inpatient, interdisciplinary, psychotherapeutic treatment program on a twenty four (24) hour a day basis for severe behavioral, anxiety, affective, impulse control, chemical dependency and other mental or emotional disorders. This definition includes, but is not limited to, group residential facilities.~~ A 24-hour per day program conducted to stabilize, educate and treat individuals with addictions and co-occurring disorders. The program is time limited or the length of the program is dependent upon consumer progress toward the goal of stability or sobriety, or both. The consumer does not consider the program to be a place of temporary or permanent residence.

3.45. Respite. -- A supportive service designed to provide temporary substitute care for an individual whose primary care is normally provided by the family of a consumer. The services are to be used on a short-term basis due to the absence of or need for relief of the primary caregiver or consumer, or both. Respite consists of temporary care services and supervision for an individual who cannot provide for all of his or her own needs and may be provided in the consumer's home location, in the community, or in a location owned, rented or leased by the respite provider.

3.~~40.~~46. Restraint. -- ~~Means a temporary behavior control intervention for reducing or eliminating inappropriate behavior.~~

~~3.40.a. Chemical Restraint. -- Means the use of medications for behavior control.~~

~~3.40.b. Physical or Mechanical Restraint. -- Means any manual method or mechanical device for behavior control that restricts free movement. Examples of manual methods include therapeutic or basket holds and prone or supine containment. Examples of mechanical devices include arm splints, posey mittens, helmets and straight jackets. Physical guidance and prompting techniques of brief duration and mechanical supports are excluded.~~ Any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a consumer to move his or her arms, legs, body, or head freely, or a drug or medication that is used as a restriction to manage the consumer's behavior or restrict the consumer's freedom of movement and is not a standard treatment or dosage for the consumer's condition. A restraint does not include devices used to treat a medical condition.

3.~~41.~~47. Seclusion. -- ~~Means when a consumer is placed alone in an enclosed space, with doors that a consumer cannot open from inside, for his or her protection or the protection of another.~~ The involuntary confinement of a consumer alone in a room or area from which the consumer is physically prevented from leaving.

3.~~42.~~48. Secretary. -- ~~Means the~~ The Secretary of the ~~State~~ Department of Health and Human Resources or his or her designee.

~~3.43. Service. -- Means a functional division of a program; the delivery of care.~~

~~3.44. Staff or Employee. -- Means personnel paid by the center to provide services.~~

~~3.45. Substance Abuse. -- Means a pattern of psychoactive substance misuse indicated by at least one of the following:~~

~~3.45.a. Continued use despite knowledge of having a social, occupational, psychological, or physical problem that is caused or exacerbated by use of the substance; or~~

~~3.45.b. Recurrent use in hazardous situations, such as driving.~~

~~3.46. Substantial Compliance. -- Means a level of compliance with the requirements of this rule so as to not to impose a risk to the rights, health and safety of a consumer.~~

3.49. Service Coordination. -- A skilled service in which the professionally trained worker assesses the needs of the consumer and the consumer's family, when appropriate, and arranges, coordinates, monitors, evaluates, and advocates for a package of multiple services to meet the specific consumer's complex healthcare needs. This service involves the preparation of a detailed plan of services with specified objectives and time frames.

3.50. Student. -- A student of a community or technical college, college or university, health services intern, or medical student or medical intern or resident for the purposes of this rule.

3.51. Supportive Service. -- A service provided exclusively to individuals with intellectual disabilities, developmental disabilities, on-going mental health or addictive challenges or traumatic brain injury. This service is designed to assist the individual to live in the community in a manner that is socially inclusive, optimally independent and self-directed while preserving his/her health, safety and quality of life. These services are not designed to change behavior or emotional functioning to support the individual in his or her community-based settings. Supportive services may include coaching or prompting of age appropriate

living skills.

~~3.47. Time Out. -- Means a procedure in which a consumer is isolated from an environment to reduce or eliminate a behavior thought to be reinforced by that environment. Different types of time-out include:~~

~~3.47.a. Placing a consumer in a quiet corner of the room; and~~

~~3.47.b. Removing the consumer to another room which is not locked.~~

3.52. Treatment. -- ~~Means a broad range of planned habilitative and/or rehabilitative services, including diagnostic evaluation, counseling, medical, psychiatric, psychological, training, education, and social service care, that are provided to enable a consumer to meet identified goals and objectives.~~ A direct medical, behavioral, or psychotherapeutic service designed to ameliorate the effects of a mental illness, addiction, or behavioral disorder or sustain the positive effects of interventions.

~~3.49. Treatment Plan. -- Means a written design based on the assessment of a consumer=s needs and strengths that identifies problems, sets client-centered goals and objectives and describes all services, programs and activities currently required to support the achievement of the goals and objectives.~~

3.~~50~~.53. Variance. -- ~~Means a declaration that a rule may be accomplished in a manner different from the manner set forth in the rule. --~~ A declaration that compliance with a rule may be accomplished in a manner different from the manner set forth in the rule.

3.~~51~~.54. Volunteer. -- ~~Means a person who provides direct services for no direct financial remuneration, and who meets the Center's employment qualifications for health, safety and training.~~ An individual who offers to provide assistance and support for consumers without pay. Natural support systems such as friends, neighbors, and family members are not to be considered volunteers.

3.~~52~~55. Waiver ~~- Means a declaration that a certain rule is inapplicable in a particular circumstance.~~ A declaration that a certain rule is inapplicable in a particular circumstance.

§64-11-4. State Administrative Procedures.

4.1. General Licensure Provisions.

4.1.~~a.~~1. Before establishing, operating, maintaining, or advertising within the State of West Virginia as a provider of behavioral health services and supports as defined in this rule, a ~~Center~~ provider shall first obtain from the Secretary a license authorizing the operation.

~~4.1.b. If the Secretary determines not to issue a license as applied for, the applicant is notified.~~

4.1.~~c.~~2. A license is valid for the ~~Center~~ provider named in the application and is not transferable.

~~4.1.d. An expired or otherwise invalid license shall be surrendered to the Secretary on written demand.~~

4.1.3. The provider shall surrender an invalid license to the Secretary upon written demand.

4.1.4. The provider shall notify the Secretary prior to the sale or merger of the entity if the ownership of a provider changes. The Secretary will require that a new license be obtained.

4.1.5. The Secretary will make a decision on each complete application within 60 days of its receipt, provided a positive recommendation has been received from the Fire Marshal, and will provide to unsuccessful applicants written reason for the decision.

4.1.6. The Secretary will perform an onsite inspection prior to issuing initial, renewal, amended If applicable, or provisional licenses. Such inspection will be performed within 60 days of receipt of a complete application, provided a positive recommendation has been received from the Fire Marshal.

4.1.7. The Secretary may enter the premises of any practice, office, or facility if the Secretary has reasonable belief that it is being operated or maintained as a behavioral health center without first obtaining a license.

4.1.8. If the owner or person in charge of a licensed behavioral health center or of any other unlicensed practice, office, or facility, which the Secretary has reasonable belief is being operated or maintained as a behavioral health center refuses entry pursuant to this rule, the Secretary shall petition the Circuit Court of Kanawha County or the county in which the facility is located for an inspection warrant.

4.1.9. If the Secretary finds on the basis of an inspection that any person, partnership, association, or corporation is operating as a behavioral health center without a license, the behavioral health center shall apply for a license within 10 days.

4.1.10. A behavioral health center that fails to apply for a license is subject to the penalties established by section 13 of this rule.

~~4.1.e.~~4.2. License Application.

~~4.1.e.1. An application shall identify all service locations and offices operated by the Center.~~

~~4.1.e.2. Initial applications shall be received by the Secretary not less than thirty (30) days and not more than sixty (60) days prior to the initiation of services.~~

~~4.1.e.3. Renewal applications shall be received by the Secretary not less than sixty (60) days prior to the expiration of the current license.~~

~~4.1.e.4. Amended license applications are required by the Secretary under the following circumstances:~~

~~4.1.e.4.A. A change in the geographic location of a service or facility; or~~

~~4.1.e.4.B. A change in bed capacity.~~

~~4.1.e.5. An application for an initial or renewal license shall identify the governing body, and administrator of the Center.~~

~~4.1.e.6. After a complete application with required fee for a renewal license has been~~

~~received, the existing license shall not expire until the new license has been issued or denied.~~

4.2.1. The provider shall submit an application for license, along with the required fee, when establishing a new location for service provision, initiating or relocating a program, or renewing an expiring license. Providers shall submit an application at least 60 days in advance of the need for licensure.

4.2.2. The provider shall notify the Secretary 60 days in advance of the following:

4.2.2.a. A change in location of administrative offices;

4.2.2.b. A change in ownership;

4.2.2.c. A significant change in the population served or intensity of service provided; or

4.2.2.d. Termination of operation.

4.2.3. An amended license application shall be submitted to the Secretary for a change in the geographic location of a service or facility, a change in the services to be provided or a change in the bed capacity of a residential service location.

4.2.4. The provider shall submit all required information, or the application is invalid.

4.2.5. The application shall be signed by a member of the governing body or the chief executive officer, or both.

~~4.1.f. Issuance.~~

~~4.1.f.1. Neither an initial, renewal or a provisional license shall be issued unless an inspection has been made.~~

~~4.1.f.2. Following an application review, and any onsite inspections and plans of correction, the Secretary shall, if there is substantial compliance with this rule, issue a license in one (1) of three (3) categories:~~

~~4.1.f.3. An initial six (6) month license shall be issued to Centers establishing a new program or service for which there is insufficient consumer participation to demonstrate substantial compliance with this rule;~~

~~4.1.f.4. A provisional license shall be issued when a Center seeks a renewal license, and a Center is not in substantial compliance with this rule but does not pose a significant risk to the rights, health and safety of a consumer. It shall expire not more than six (6) months from date of issuance, and not be consecutively reissued, unless the provisional recommendation is that of the state fire marshal.~~

~~4.1.f.5. A renewal license shall be issued when a Center is in substantial compliance with this rule, and shall expire not more than two (2) years from date of issuance.~~

~~4.1.f.6. The Secretary may grant a waiver or variance to the provisions of this rule if its application clearly would be impractical and if any alternate arrangements are not detrimental to the~~

~~health or safety of the consumers or employees of the Center. The Secretary may provide consultation in obtaining compliance with this rule.~~

~~4.1.f.7. The Center shall notify the Secretary within thirty (30) days after the name of the Center is changed and apply for license renewal.~~

4.3. Issuance. If an applicant meets all provisions of this rule, the Secretary shall issue a license in accordance with this section.

4.4. Types of Licenses. -- Following application and review, the Secretary will issue a license in one of three categories:

4.4.1. Initial License. -- The Secretary will issue an initial license to providers establishing a new service found to be in compliance with regard to policy, procedure, provider, record keeping, and service environment rules. An initial license shall expire not more than six months from date of issuance and will not be re-issued. After a complete application for a regular license with required fee has been received, the existing initial license shall not expire until the regular license has been issued or denied.

4.4.2. Regular license. -- The Secretary will issue a regular license to providers complying with this rule. It expires not more than two years from the date of issuance. The Secretary may issue a regular license of shorter duration than two years to a provider.

4.4.2.a. A regular license may be amended at any time during the cycle to reflect changes in the provider's service classification, programs, structure or population.

4.4.2.b. A valid initial or regular license shall be considered in effect until the Secretary temporarily extends or denies in writing renewal of the license or until the Secretary initiates formal action to terminate or otherwise modify the license and all due process actions have been resolved.

4.4.3. Provisional license. -- The Secretary may place a program, classification of service, or agency on provisional license status if the provider is not in substantial compliance with this rule but does not pose a significant risk to the rights or health and safety of a consumer.

4.4.3.a. Such status shall expire not more than six months from date of issuance and will not be consecutively re-issued unless the provisional recommendation is that of the state fire marshal.

4.4.3.b. If a program or service is issued provisional license status, notification of that provisional status shall be publicly posted in the location of the program or service receiving provisional status for the duration of the provisional status.

4.4.3.c. The Secretary will re-evaluate a program or service operating under a provisional status before or near the end of the provisional period.

4.4.3.d. Once the program or service is deemed to be in substantial compliance with this rule, the provisional status of the program or service will be lifted.

4.4.3.e. If the program or service does not regain substantial compliance with this rule within the provisional period, the license for the program or service will be terminated: *Provided,* That if the review has not yet been completed by the Secretary within the designated time frame, the program or service may continue to operate until such time as the review has been completed and due process options, if any, are pursued to completion.

4.~~2.~~5. Construction and ~~Renovation~~ Alteration.

~~4.2.a. The Secretary shall inspect new locations for all residential treatment facilities and additions to existing residential treatment facilities prior to the architect's beginning work on final drawings and specifications.~~

~~4.2.b. Before construction and extensive renovation begin, an applicant shall submit to the Secretary for approval a complete set of drawings and specifications for the architectural, structural and mechanical work.~~

~~4.2.c. All extensively renovated and new structures shall meet current Americans with Disabilities Act (ADA) standards.~~

4.5.1. Before new construction begins, a provider shall submit to the Secretary for approval a copy of the site drawings and specifications for the architectural structure and mechanical work.

4.5.2. Before alteration begins, the provider shall consult with the Secretary regarding construction objectives. If the alteration does not affect consumer care or does not have an effect upon areas of the building(s) in which consumer care is provided, the alteration will not be reviewable.

4.5.3. The Secretary may require site drawings or other materials depending on the extent and type of alteration, provided that normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility to provide consumer care.

4.5.4. All altered and new structures owned or leased by the provider shall conform to the Americans with Disabilities Act (ADA) as amended.

4.5.5. The Secretary will provide consultation and technical assistance in obtaining compliance with this rule.

4.~~3.~~6. Inspections and Records.

~~4.3.a. To carry out the intent of this rule, the Secretary requires inspections by authorized representatives.~~

~~4.3.b. Inspections shall include, but are not limited to:~~

~~4.3.b.1. Observation of service delivery;~~

~~4.3.b.2. Review of life safety and environment;~~

~~4.3.b.3. Review of clinical and administrative records; and~~

~~4.3.b.4. Interviews with consumers (with the consumer=s consent), staff and administrators.~~

~~4.3.c. Each licensed Center is inspected at least once every two (2) years, except for residential treatment facilities that are inspected at least once a year.~~

~~4.3.d. Inspections include every licensed location operated by the Center.~~

~~4.3.e. The Center shall comply with any reasonable requests from the Secretary to have access to the service, staff, consumers (with their permission), and records.~~

~~4.3.f. Within ten (10) working days of completion of an inspection, the Secretary shall issue a report.~~

~~4.3.g. Based on a Center's previous substantial compliance with this rule, an onsite inspection is not always required for issuance of an amended license.~~

4.6.1. The provider shall comply with any reasonable requests from the Secretary to have access to the service, staff, consumers, and relevant records of the agency. Consumers or their DLRs, or both, may be interviewed with their permission.

4.6.2. The provider may maintain files in an electronic medium.

4.6.3. The provider shall provide upon request all records required by the Secretary to determine compliance with this rule.

4.6.4. Current consumer records necessary to provide care shall be maintained at the location in which the consumer services are provided. Consumer records not necessary to provide care shall be maintained at the location in which the consumer services are provided, or a central administrative office.

4.6.5. The provider shall establish a process for maintaining current, easily accessible consumer records from intake through discharge.

4.6.6. The Secretary may conduct announced and unannounced inspections of all aspects of the provider's operation and premises. A consumer may deny access to his or her place of residence unless it is owned or leased by the provider or unless there is evidence of a clear and immediate danger to the health of a consumer.

4.6.7. A provider shall permit review and, upon request, provide a copy of a provider's medical records, employment records, and other relevant records as requested by the Secretary. The Secretary will ensure the confidentiality of such information, including consumer or employee protected health information.

4.6.8. The Secretary will inspect a licensed provider 30-to-90 days prior to the expiration of its license.

4.6.9. The Secretary will issue a report within 10 working days of completion of an inspection.

4.6.10. The report may result in a citation. The Secretary will describe the provider's non-compliance with the standard in detail and the provider shall be expected to supply the Secretary with a plan of correction as described in the provisions of this rule.

4.~~4.~~7. Complaint Investigation.

~~4.4.a.~~4.7.1. Any person may file a complaint with the Secretary alleging violation of applicable laws or rules by a ~~Center~~ provider. Incidents reported to the Secretary may be considered complaints at the discretion of the Secretary but are not required to be considered complaints. A complaint shall state the nature of the complaint and the ~~Center~~ provider by name.

~~4.4.b.~~4.7.2. The Secretary may conduct unannounced inspections of ~~Centers or services~~ providers involved in a complaint and any other investigations necessary to determine the validity of a complaint.

~~4.4.c.~~4.7.3. At the time of the investigation the investigator ~~shall~~ will notify the person in charge ~~administrator or person in charge~~ of the location ~~involved in the complaint~~ of the reason for the investigation.

~~4.4.d. Within ten (10) working days of the investigation, the Secretary shall provide to the Center a written report of the results of the investigation, along with any violations.~~

~~4.4.e. The Secretary may provide to the complainant a description of the corrective action the Center is required to take and of any disciplinary action the Secretary will take.~~

~~4.4.f. The names of a complainant and of any consumer involved in the complaint or investigation, and any information that could reasonably lead to their identification, shall be kept confidential and shall not be disclosed without their written consent, and before disclosure of investigative information to the public such identifying information shall be deleted, unless the public interest requires disclosure in the particular instance.~~

4.7.4. The Secretary will give the provider a written report of the results of the investigation along with specific findings, detailed analysis of licensure regulations implicated, a report of any violations, and a notice describing the provider's due process rights. The written report will be issued by the Secretary within 10 working days of completing the investigation. The complaint investigation may result in a citation, recommendation, both, or neither.

4.7.5. The Secretary will inform the complainant that an investigation was conducted and whether it was substantiated. The Secretary will keep the names of a complainant and of any consumer or DLR involved in the complaint or investigation and any information that could reasonably lead to the identification of the complainant, confidential, but will disclose the general nature of the complaint to the provider upon determining that a violation has occurred.

~~4.4.g.~~ 4.7.6. If a complaint becomes the subject of a judicial proceeding, nothing in this rule prohibits the disclosure of information that would otherwise be disclosed in judicial proceedings.

4.7.7. The provider shall not discharge or discriminate in any way against any individual or group of individuals who has been a complainant, on whose behalf a complaint has been submitted, or who has participated in an investigation process by reason of that complaint.

~~4.4.h. Centers are prohibited from discharging or discriminating in any way against a consumer or employee who has been a complainant, on whose behalf a complaint has been submitted or who has participated in an investigation process.~~

~~4.4.i. The Secretary may suspend or revoke a license for violating the prohibitions of this section.~~

4.~~5.~~8. Reports ~~and Records.~~ of Investigations and Inspections.

~~4.5.a. The Secretary shall keep on file a report of any inspection or investigation.~~

~~4.5.b. A report shall specify the deficiency and the provision of the rule it violates.~~

4.8.1. All investigations and inspections will result in a written report by the Secretary, even if no violation has been identified.

4.8.2. The report will specify the areas of non-compliance with the rule it violates, if any, and describe the precise data, observation, or interview to support the deficiency.

~~4.5.c.~~4.8.3. Information in reports or records is available to the public except:

4.8.3.a. As specified in this section regarding complaint investigations;

4.8.3.b. Information of a personal nature from a consumer or personnel ~~file~~ record; and

4.8.3.c. Information required to be kept confidential by state or federal law.

~~4.5.d. A report made public shall also state whether a plan of correction has been submitted to or approved by the Secretary.~~

4.8.4. The Secretary will not make a report or complaint public until the provider has the opportunity to review the report , submit a plan of correction, have that plan of correction approved, and obtain an approved plan of correction, if necessary.

4.~~6.~~9. Plans of Correction.

~~4.6.a.~~4.9.1. Within 10 working days after receipt of the inspection report, the ~~Center~~ provider shall submit to the Secretary for approval a written plan to correct all deficiencies that are in violation of this rule and described by citation. ~~unless a variance is requested by the Center and granted by the Secretary.~~ Citations being appealed through the identified methods of due process and not involving harm may not require a plan of correction until after due process. The plan shall specify:

~~4.6.a.1.~~4.9.1.a. Action taken, or procedures proposed to correct the ~~deficiencies~~ areas of non-compliance and prevent their reoccurrence;

~~4.6.a.2.~~4.9.1.b. Date of completion of each action taken or to be taken; and

~~4.6.a.3.~~4.9.1.c. Signature of the ~~administrator~~ chief executive officer or his or her designee.

~~4.6.b.~~4.9.2. The Secretary ~~shall~~ will approve, modify, or reject the proposed plan of correction in writing within 10 working days of receipt. ~~Modifications may be made by the Center in conjunction with the Secretary.~~ The provider shall make modifications to the plan as requested by the Secretary.

~~4.6.c.~~4.9.3. The Secretary ~~shall~~ will state the reasons for rejection or modification of any plan of correction.

~~4.6.d.~~4.9.4. ~~When the Secretary rejects a plan of correction, a revised plan shall be submitted within ten (10) working days upon receipt of the rejection.~~ The provider shall submit a revised plan of correction within 10 working days whenever the Secretary rejects a plan of correction. If the Secretary cannot approve the second submitted plan of correction, he or she shall supply a directed plan of correction. The final report shall denote that the plan of correction was directed.

~~4.6.e.~~4.9.5. ~~The Center shall immediately correct a violation that severely risks the health or safety of a consumer or other persons.~~ The provider shall immediately correct an area of non-compliance that clearly results in an immediate risk to the health or safety of a consumer or other persons.

~~4.6.f. The Secretary may determine if corrections have been made.~~

4.9.6. The Secretary may release a report to the public no less than 10 days after receipt of an approved plan of correction or a directed plan of correction unless the provider has elected to pursue due process appeals and has notified the Secretary of the intent to do so.

4.10. Waivers -- A provider shall comply with all relevant requirements unless a waiver or variance for a specific requirement has been granted through a prior written agreement. This agreement shall specify the specific requirement to be waived, the duration of the waiver, and the terms under which the waiver is granted.

4.10.1. Waiver of specific requirements will be granted only when the provider has documented and demonstrated that it complies with the intent of the particular requirement in a manner not permitted by the requirement.

4.10.2. The waiver shall contain provisions for a review of the waiver if necessary.

4.10.3. When a provider fails to comply with the waiver agreement, the agreement is subject to immediate cancellation, provided that such cancellation shall allow sufficient time to make alternative arrangements for consumers. The Secretary will immediately inform the provider in writing of cancellation of a waiver.

§64-11-5. ~~Governance.~~ Consumer Rights.

~~5.1. Operating Authority.~~

~~5.1.a. The Center has documentation of the source of its operating authority, e.g. certificate of incorporation, partnership agreement, prominently displayed.~~

5.1.b. The Center and all of its service locations shall prominently display a current license, except in residential treatment facilities where it shall be shown upon request.

5.2. Governing Body.

5.2.1. The Center shall have a governing body that sets policies, develops a mission statement, defines services, guides development and ensures the accountability of the Center.

5.2.b. The governing body shall evaluate implementation of policies.

5.2.c. The governing body shall appoint an administrator who has the authority and responsibility to manage the Center and implement policy.

5.3. Administration.

5.3.a. The administrator shall define structure and lines of authority.

5.3.b. The administrator shall develop a plan of operation with a mission statement, program goals and a description of services.

5.3.c. The administrator shall establish operational procedures that comply with legally applicable requirements regarding the protection of consumers= assets under the control of the Center.

5.3.d. When a board of directors is the governing body, policies, procedures and by laws shall provide for:

5.3.d.1. The orientation of new members to the operations of the Center;

5.3.d.2. The description of the board=s committee structure; and

5.3.d.3. A minimum of quarterly meetings with minutes recorded.

5.4. Financial.

5.4.a. Centers shall operate on an annual budget approved by the governing body.

5.4.b. Centers shall be audited at least annually by an independent certified public accountant.

5.4.c. Centers shall have insurance coverage to include general, professional and vehicular liability and property damage.

5.4.d. If a Center handles consumer funds or disburses non-fee-for-service funds, such as allowance funds, the Center is a fiduciary for the funds and shall maintain a current record and keep separate accounts of each consumer's funds. The Center shall provide to a consumer at least monthly and upon request, a statement of his or her account.

5.4.e. All money earned by a consumer shall be used for the sole benefit of that consumer.

5.4.f. Centers shall allow a consumer or his or her legal representative to use his or her personal funds.

5.4.g. Centers shall not commingle a consumer's funds with the Center's funds or with the funds of any person other than another consumer.

5.4.h. If a Center handles consumer funds in excess of twenty-five dollars ($25) per consumer and in excess of five hundred dollars ($500) for all consumers per month, the Center shall obtain a bond in an amount approved by the Secretary sufficient to cover all consumer accounts, and the amount shall not be less than two thousand five hundred dollars ($2,500). When the amount of any bond is insufficient to adequately protect the funds of consumers, the Center shall obtain an additional bond in such amount as necessary to adequately protect the funds of consumers.

5.5. Center Responsibility

5.5.a. Centers shall clearly define the population for whom services are designed so as to inform potential consumers and referral sources of the Center's capacities, availability, and the means required for payment of those services.

5.5.b. Centers shall develop and implement a code of ethics that includes, but is not limited to provisions regarding the following:

5.5.b.1. Informed consent and participation of a consumer in decisions about service, care and treatment;

5.5.b.2. The right of a consumer to refuse participation in clinical studies or other research;

5.5.b.3. Privacy and confidentiality of a consumer;

5.5.b.4. That decisions made about care are based solely on the assessment and treatment needs, including consideration of the consumer's wants and desires and other clinical documentation of the consumer=s health and behavioral health status;

5.5.b.5. Means of resolving differences with regard to care and treatment decisions; and

5.5.b.6. Right to file grievances in accordance with procedures prescribed by the Secretary.

5.5.c. At the time of, or prior to, service delivery, the Center shall inform a consumer in writing of charges for services.

5.5.d. The Center will release consumer information only according to its written policies and legal requirements.

5.5.e. Centers shall not discriminate in any matter of employment on the basis of race, color, national origin, ancestry, religion, physical disability or sex.

5.5.f. If the Center uses volunteers, it shall implement written policies and procedures for the utilization of volunteers.

5.5.g. All professional staff and consultants of the Center shall be in compliance with applicable State professional licensure requirements.

5.5.h. The Center shall ensure that all allegations of neglect or abuse, as well as injuries of unknown sources, are reported immediately to the administrator or to other officials in accordance with state law.

5.5.i. Except as required by law, before releasing information about a consumer, the Center shall obtain consent from the consumer, or his or her legal representative, that includes the following:

5.5.i.1. Specific information to be released;

5.5.i.2. The time period in which this consent is in effect;

5.5.i.3. The recipients; and

5.5.i.4. The purpose of the release.

5.5.j. The Center shall protect the confidentiality of a consumer by prohibiting:

5.5.j.1. A consumer=s participation in public performance without the consent of the consumer or his or her legal representative; and

5.5.j.2. The use of photographs or videotapes for public relations purposes without the consent of the consumer or his or her legal representative.

5.5.k. Except in cases of abuse, neglect or exploitation in which the Center has responsibility to report to protective services, a consumer or his or her legal representative shall be the primary source of information about the consumer=s service needs.

5.5.l. The Center shall have and periodically review and revise policies for effective service delivery and protection of consumer rights and shall provide a copy or make a copy of these policies available to all new personnel.

5.5.m. The Center shall implement a policy pertaining to communicable diseases affecting both consumers and staff.

5.5.n. A standard first aid kit shall be readily accessible at all times in each facility.

5.6. Personnel.

5.6.a. The Center shall provide an adequate number of qualified personnel during all hours of operation to support the functions of the Center and ensure the provisions of quality care.

5.6.b. The Center shall not employ individuals with a conviction of consumer or child abuse or neglect.

5.6.c. Staff providing direct care to consumers shall be eighteen (18) years of age or older and

~~capable of performing the duties assigned.~~

~~5.6.d. For all staff, the Center shall maintain a personnel record that includes:~~

~~5.6.d.1. The job description and application;~~

~~5.6.d.2. Identifying information and emergency contacts;~~

~~5.6.d.3. References;~~

~~5.6.d.4. Verification of education for staff;~~

~~5.6.d.5. Orientation and training records; and~~

~~5.6.d.6. Employee performance evaluations.~~

~~5.6.e. The Center shall provide to an employee, or to his or her designee, access to his or her personnel record.~~

~~5.7. Staff Training.~~

~~5.7.a. Beginning on the first day of employment, professional and direct care staff shall begin orientation and training on treatment policies and procedures, consumer rights and the use of emergency procedures, such as crisis intervention and restraints.~~

~~5.7.b. As part of staff orientation, all direct care staff shall be trained in emergency care, first aid, infectious disease control, cardiopulmonary resuscitation and Heimlich's maneuver.~~

~~5.7.c. Employees providing services to consumers shall be trained in the proper care of the consumers to whom they will be providing services (including special needs, health and behavioral health needs) prior to, or within ten (10) days after being assigned to work with the individual. Fully trained staff shall be available until newly hired staff are fully trained.~~

~~5.7.d. The Center shall have a training and development program that allows personnel to improve their knowledge, skills and abilities.~~

~~5.7.e. Staff shall be able to demonstrate the skills and techniques necessary for their jobs and provide evidence that they are qualified to perform the functions associated with them.~~

~~5.8. Requirements for Residential Staff.~~

~~5.8.a. In residential facilities, the Center shall provide onsite staff with:~~

~~5.8.a.1. Immediate access to relevant information in a consumer=s medical records in case of a medical or other emergency; and~~

~~5.8.a.2. Assure that the Center shall develop and implement policies and procedures for the transfer to an acute care facility, a consumer who poses an imminent physical danger to themselves or~~

~~others, or provide adequate coverage to manage a consumer at the residential facility.~~

~~5.9. Human Rights Committee.~~

~~5.9.a. The Center shall maintain a human rights committee to:~~

~~5.9.a.1. Hold meetings and keep written minutes of all meetings, including the names and titles of all members and guests present and members absent;~~

~~5.9.a.2. Report activities and recommendations, if any, at least annually to the governing body, or a standing committee of the governing body;~~

~~5.9.a.3. Review, approve (prior to implementation) and monitor individual consumer behavior plans that include aversive procedures, such as restraint and seclusion, for the control of inappropriate behaviors.~~

~~5.9.a.4. Review internal and external investigations of complaints and consumer grievances, including alleged abuse, mistreatment or neglect;~~

~~5.9.a.5. Review and approve (prior to implementation) research activities and monitor them every three (3) months, or when changes are contemplated; and~~

~~5.9.a.6. Ensure that aversive procedures are used only with the written consent of a consumer or his or her legal representative.~~

~~5.9.b. A Center with fewer than thirty (30) consumers shall have a minimum of three (3) members on the human rights committee, and a Center with more than thirty (30) consumers shall have a minimum of five (5) members.~~

~~5.9.c. At least one third of the committee members shall be consumers and no more than one third shall be staff of the Center.~~

~~5.9.d. Ensure that the members have training in confidentiality in order to review client records.~~

~~5.10. Transportation Services.~~

~~5.10.a. When transportation is provided for consumers, the Center shall maintain adequate insurance coverage and follow written procedures for:~~

~~5.10.a.1. Proper maintenance of vehicles;~~

~~5.10.a.2. Adequate passenger supervision;~~

~~5.10.a.3. A propriate passenger restraining systems; and~~

~~5.10.a.4. Licensure of drivers.~~

5.1. Basic Rights.

5.1.1. A consumer shall have rights including, but not limited to:

5.1.1.a. The right to treatment and services that support a consumer's liberty and result in positive outcomes to the maximum extent possible;

5.1.1.b. The right to an individualized, written treatment plan to be developed promptly after admission; treatment based on the plan; periodic review and reassessment of needs, and appropriate revisions of the plan including a description of the services that may be needed for follow-up.

5.1.1.c. The right to treatment and services in the least restrictive, most appropriate and potentially most effective setting;

5.1.1.d. The right to ongoing informed participation in the treatment plan process;

5.1.1.e. The right to refuse treatment at any time;

5.1.1.f. The right to a legal representative when unable to act on his or her own behalf;

5.1.1.g. The right to be free from involuntary experimentation;

5.1.1.h. The right to freedom from restraint or seclusion. Restraint and seclusion shall only be used in situations where there is imminent danger to the consumer or others and all less restrictive methods of control have been used;

5.1.1.i. The right to a humane treatment environment in which personal dignity and self-esteem are promoted;

5.1.1.j. The right to confidentiality of records, as provided in this rule;

5.1.1.k. The right to access his or her own consumer records in accordance with state law;

5.1.1.l. The right to assert grievances, orally or in writing, with respect to the infringement of all rights, including the right to have all grievances considered in a fair, timely and impartial procedure;

5.1.1.m. The right of access to an available advocate in order to understand, exercise and protect his or her rights;

5.1.1.n. The right to be informed in advance of any charges for services;

5.1.1.o. The right to all available services without discrimination because of race, religion, color, sex, sexual orientation, disability, age, national origin, or marital status;

5.1.1.p. The right to exercise his or her civil rights;

5.1.1.q. The right to referral, as appropriate, to other providers of behavioral health services;

5.1.1.r. The right to be free from physical, verbal, sexual or psychological abuse or punishment;

5.1.1.s. The right to be free from unnecessary or excessive medication;

5.1.1.t. The right to medication that is not used as punishment, for the convenience of staff, as a substitute for programming, or in quantities that interfere with the treatment program;

5.1.1.u. The right to be free from uncompensated labor, except for consumers in residential facilities who perform housekeeping tasks; and

5.1.1.v. The right to be informed orally, in writing and in appropriate language and terms, of the rights described in this section;

5.1.1.w. A residential consumer shall have:

5.1.1.w.1. The right to be housed with consumers of the same approximate ages, developmental levels and social needs;

5.1.1.w.2. The right to unimpeded access to his or her attorney or religious advisor;

5.1.1.w.3. The right to constant access to his or her personal possessions unless contraindicated by treatment needs; and

5.1.1.w.4. The right to private communication with others by mail, in person and by telephone.

5.1.2. Rights and personal liberties may be limited by established policies and procedures when the limitation of the right is clinically appropriate and clearly justified in writing.

5.1.3. A consumer's rights and responsibilities shall devolve only to a legal representative as defined in this rule and to the extent that the legal representative's acts are not hostile or adverse to the best interests of a consumer. This provision does not relieve the Provider of the responsibility of informing a consumer as required by this rule, to the extent that a consumer is capable of understanding the matter, nor does it in any way deprive a consumer of his or her legal rights granted under State or federal law;

5.2. Violation of Consumer Rights.

5.2.1. A consumer, an employee, or any other individual may make a complaint to the Provider. A supervisor shall report to the administrator within 24 hours regarding all violations, or suspected violations, of a consumer's rights, except in the case of physical abuse for which immediate notification shall be made.

5.2.2. The provider must have evidence that all violations, or suspected violations, of a consumer's rights are thoroughly investigated within a reasonable time period not to exceed 10 days. The administrator shall provide a written report to the human rights committee of his findings and of the actions taken to prevent further occurrences. A consumer or consumers shall be identified by case number only.

5.2.3. The provider shall make a notation of the incident and the effect of the incident on a consumer's illness or treatment in a consumer's record.

5.2.4. If the administrator's findings and actions on behalf of a consumer regarding a violation of the consumer's rights is unfavorable, insufficient or not forthcoming within a reasonable time, the consumer, or his or her legal representative, may appeal to the governing body of the Provider, the state licensure body, the West Virginia advocate or other appropriate resource.

5.3. Human Rights Committee.

5.3.1. The provider shall maintain a human rights committee to:

5.3.1.a. Hold meetings and keep written minutes of all meetings, including the names and titles of all members and guests present and members absent;

5.3.2.b. Report activities and recommendations, if any, at least annually to the governing body, or a standing committee of the governing body;

5.3.3.c. Review, approve (prior to implementation) and monitor individual consumer behavior plans that include aversive procedures, such as restraint and seclusion, for the control of inappropriate behaviors.

5.3.4.d. Review internal and external investigations of complaints and consumer grievances, including alleged abuse, mistreatment or neglect;

5.3.5.e. Review and approve (prior to implementation) research activities and monitor them every three months, or when changes are contemplated; and

5.3.6.f. Ensure that aversive procedures are used only with the written consent of a consumer or his or her legal representative.

5.3.2. A provider with fewer than 30 consumers shall have a minimum of three members on the human rights committee, and a provider with more than 30 consumers shall have a minimum of five members.

5.3.3. At least one-third of the committee members shall be consumers, and no more than one-third shall be staff of the provider.

5.3.4. Ensure that the members have training in confidentiality in order to review consumer records.

§64-11-6. ~~Health and Safety.~~ Risk Management and Quality Assurance.

6.1. ~~General.~~ The provider shall purchase or self-fund appropriate types of insurance including as appropriate, but not limited to: general liability, fire and theft, professional liability, officer's or director's liability, and automobile liability for vehicles owned or leased by the provider.

~~6.1.a. The Center shall implement programs in an environment that is safe, accessible and appropriate for the needs of the consumers.~~

~~6.1.b. The Center shall provide adequate housekeeping, laundry, maintenance, storage, and other administrative support functions required to carry out its services.~~

~~6.1.c. The Center shall demonstrate through infection control, emergency preparedness and other means that it identifies, monitors, reduces and eliminates health and safety risks.~~

~~6.1.d. The Center shall evaluate the likelihood of exposure to blood borne pathogens for all persons likely to come in contact with blood.~~

~~6.1.e. The Center shall have written procedures to deal with fire, medical emergencies, natural disasters and other life-threatening situations.~~

~~6.1.f. The Center shall post by the telephone in all direct care and residential service locations, emergency telephone numbers for the fire department, local police and on-call staff, and capable consumers shall be instructed on how to use them.~~

~~6.1.g. The Center shall be in compliance with Title III of the Americans with Disabilities Act, and shall develop a plan to address the most significant issues of access, i.e., the removal of structural barriers through ramps, widened doorways and accessible parking, removal of obstructing furniture, widening of toilet stalls, installation of grab bars, and other modifications that are readily achievable within the resources of the Center.~~

6.2. ~~Fire Code.~~ The provider shall ensure that all staff who handle or manage consumer funds are bonded at the provider's expense or that the provider maintains appropriate insurance coverage to cover potential losses unless the aggregate amount of consumer funds is less than $500.

~~6.2.a. The Center shall have evidence that facilities rented, owned or used for services are in full compliance with the State Fire Code.~~

~~6.2.b. The Center shall conduct quarterly fire drills in its residential and daytime group setting locations, some of which shall be held during rest or sleeping periods.~~

6.3. ~~Requirements for Physical Environment.~~ Parents acting in their legal capacity as conservators for their children or protected adults, even if employed by the provider, are not included in the requirement for bonding.

~~6.3.a. Water Supply.~~

~~6.3.a.1. All water supply systems shall comply with the applicable rules of the Department of Health and Human Resources.~~

~~6.3.a.2. All drinking water facilities shall be sanitary and accessible.~~

~~6.3.b. Sewage Disposal.~~

~~6.3.b.1. All facilities shall be served by an approved public sewage system or by a sewage disposal system that has been approved by the Secretary according to the design standards and rules of the Department of Health and Human Resources.~~

6.4. ~~Structures, Grounds, Equipment.~~ The provider may elect to self-insure but must guarantee replacement of losses of consumer funds.

~~6.4.a. All structures, grounds, and equipment shall comply with applicable building and health codes, and the State Fire Code.~~

~~6.4.b. The Center shall be kept in good repair and maintained in a clean, safe and sanitary condition.~~

6.5. ~~Lighting, Ventilation~~, ~~Heating~~. All bonding policies shall be adequate to replace the aggregate of consumer funds managed by the provider or if the provider elects to self-insure, there must be evidence of sufficient financial capacity to replace consumer funds.

~~6.5.a. By natural or mechanical means, all rooms shall provide adequate heating, illumination and ventilation.~~

~~6.5.b. The following shall be prohibited:~~

~~6.5.b.1. Unvented, fume-producing heating devices; and~~

~~6.5.b.2. Unprotected open heaters.~~

~~6.6. Requirements for Group Homes and Residential Treatment Facilities (24 Hour).~~

~~6.6.a. Bedrooms shall be adequately furnished and provide a minimum of eighty (80) square feet of floor space per person for one (1) person occupancy and a minimum of sixty (60) square feet of floor space per person for two (2) or more person occupancy~~.

~~6.6.b. Each occupant of a facility shall be provided a permanent, separate bed with a clean, comfortable, covered mattress, clean bedding, clean towels and other furnishings appropriate to the length of stay and needs of the occupant.~~

~~6.6.c. Each room shall be arranged in consideration of the occupants' clinical needs.~~

~~6.6.d. Each bedroom window shall have covering for privacy.~~

~~6.6.e. Furnishings shall be homelike and personalized.~~

~~6.6.f. Facilities shall have appropriate storage areas for items such as: foodstuffs, utensils, work materials, cleaning supplies, clothing, linens, medicines and toxic materials.~~

~~6.6.g. Poisons and other potentially hazardous items shall be kept in a locked place, but may be used by consumers who have been trained to use them.~~

~~6.6.h. A facility shall provide a sufficient number of accessible, safe, comfortable and clean lavatories, bathtubs and showers, equipped with hot and cold running water and a mixing faucet to ensure a water temperature not to exceed one hundred ten (110) degrees Fahrenheit~~

~~6.6.i. Solid waste storage shall be sufficient to contain all solid waste in a safe and sanitary manner.~~

~~6.6.j. Solid waste, including garbage and refuse, shall be removed from the premises weekly, or more often, if necessary.~~

~~6.6.k. All plumbing shall meet the requirements of local plumbing codes, or in the absence thereof, the National Plumbing Code.~~

~~6.6.l. Grounds and structures shall be maintained free of insects and rodents of public health significance.~~

~~6.6.m. Food shall be stored, prepared and served in a sanitary manner.~~

~~6.6.n. Food services, when provided, shall:~~

~~6.6.n.1. Meet or exceed national nutritional standards;~~

~~6.6.n.2. Be planned with regularly documented assistance of a dietitian; and~~

~~6.6.n.3. Provide well balanced meals and snacks.~~

6.6. Transportation. -- A provider that provides transportation in vehicles owned or leased by the provider for use with consumers as part of a service shall have procedures for ensuring:

6.6.1. The use of age-appropriate passenger restraint systems and adequate vehicle modifications including lifts;

6.6.2. Adequate passenger supervision relative to the ages, genders, behavioral challenges, and disabilities of the consumers being transported;

6.6.3. Proper and timely licensure and inspection of the vehicles;

6.6.4. First aid kits in each vehicle;

6.6.5. Proper and timely maintenance of vehicles;

6.6.6. That the number of persons in any vehicle used to transport consumers shall not exceed the number of available safety restraint systems;

6.6.7. Sufficient liability insurance;

6.6.8. Secure anchoring for wheelchairs; and

6.6.9. Annual validation of driver licenses of individuals driving vehicles that transport consumers.

6.7. The provider shall maintain evidence that staff or contracted individuals transporting consumers in their own vehicles as part of their duties are properly insured either personally or through the provider's insurance in case of automobile accident, have a valid state inspection sticker, and are legally registered. No firearm may be present in any vehicle while the vehicle is used to transport a consumer.

~~6.7. Consumer Grouping.~~

~~6.7.a. Within programs, groupings shall occur that:~~

~~6.7.a.1. Serve the needs of all consumers, including those experiencing a crisis who need an environment that is orderly, peaceful and respectful of a consumer=s privacy; and~~

~~6.7.a.2. Provide staff to consumer ratios for adequate protection and supervision.~~

~~6.8. Consumer Records.~~

~~6.8.a. The Center shall establish a process for maintaining current, easily accessible consumer records from intake through discharge.~~

~~6.8.b. The consumer records shall contain information essential to the services or treatment and including, but not limited to:~~

~~6.8.b.1. Identification data;~~

~~6.8.b.2. Applicable social and medical information;~~

~~6.8.b.3. A summary of the assessment process;~~

~~6.8.b.4. A record of all evaluations;~~

~~6.8.b.5. Treatment plans and special treatment procedures;~~

~~6.8.b.6. Documentation of ongoing services provided;~~

~~6.8.b.7. Legal representative documents;~~

~~6.8.b.8. Court orders; and~~

~~6.8.b.9. A record of any signed and dated physician's orders prescribed by the Center=s physician.~~

~~6.9. Records Management.~~

~~6.9.a. The Center shall ensure rapid access to consumer records at all times.~~

~~6.9.b. Consumer records shall be retained for a minimum of five (5) years following discharge. In~~

~~the case of minors, records shall be retained until five (5) years after the consumer's eighteenth birthday.~~

~~6.9.c. Consumer records shall be released without written consent as follows:~~

~~6.9.c.1. In a proceeding under W. Va. Code §27-5-4 to disclose the results of an involuntary civil commitment;~~

~~6.9.c.2. In a proceeding under W. Va. Code §27-6A-1 et seq. to disclose the results of an involuntary examination;~~

~~6.9.c.3. Pursuant to a court order based upon a finding that said information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this rule.~~

~~6.9.c.4. To protect against a clear and substantial danger of imminent injury by a consumer to self or to another; and~~

~~6.9.c.5. To staff of the Center for treatment or internal review purposes.~~

~~6.9.d. A consumer's records shall be released only with the written consent of the consumer or his or her legal representative and only to the persons and to the extent necessary to satisfy the purpose of the release.~~

~~6.9.e. The Secretary shall have full access to a consumer=s records as needed in administering state and federal requirements.~~

6.8. Quality Assurance.

6.8.1. The provider shall have and implement a systems review of the appropriateness and effectiveness of consumer services which includes an analysis of the results of treatment plan reviews and of reports by the human rights committee.

6.8.2. The protection of civil rights for consumers with disabilities is of extreme importance. Special attention and efforts are essential to ensure that a consumer's human and civil rights are promoted, exercised, and protected.

§64-11-7. ~~Consumer Services~~. Legal Compliance.

7.1. ~~Program Description.~~ The provider shall comply with all applicable federal, state, and local laws, rules and regulations associated with all aspects of service delivery and operations and shall possess all necessary licenses.

~~7.1.a. Each program shall have a written description that accurately describes its services.~~

~~7.1.b. When multiple service providers are involved in a consumer=s treatment plan, clear, written procedures outlining each provider=s responsibility will be established and made available to staff.~~

~~7.1.c. Unless excepted elsewhere in this rule, treatment of or services to consumers shall be by~~

~~or under the supervision of a staff member with a master=s degree in a human services or health field except that skill training may be by or under the supervision of a registered nurse or an individual with a bachelor=s degree in a human service, education, or health field.~~

7.2. ~~Assessment and Planning~~. Current licenses or certificates shall be prominently displayed in an area visible to the public.

~~7.2.a. The Center shall have a formal intake process that assesses a consumer using the criteria for admission and only admits a consumer who meets the criteria.~~

~~7.2.b. Intake documentation shall include all relevant preliminary diagnostic, social, medical and legal information, and shall be signed and dated.~~

~~7.2.c. Sufficient information shall be collected during the intake process to develop a written treatment plan within seven (7) days of intake.~~

~~7.2.d. The initial assessment shall be entered in a consumer's record within five (5) days of intake interview.~~

~~7.2.e. A consumer, or his or her legal representative, shall sign a written consent prior to treatment.~~

~~7.2.f. The initial assessment shall include recommendations for further evaluation to identify a consumer=s physical, emotional and behavioral needs, social strengths and preferences prior to finalization of the treatment plan; and~~

~~7.2.g. Psychiatric or psychological assessments, if needed, shall be conducted by an appropriate professional such as a physician, licensed psychologist or clinician under the supervision of a physician or licensed psychologist.~~

~~7.2.h. Diagnoses shall be:~~

~~7.2.h.1. Written in standard language as provided in: the American Psychiatric Association=s latest edition of the Diagnostic and Statistical Manual of Mental Disorders; the latest edition of the International Classification of Diseases; or the latest edition of the Classification for Mental Retardation of the American Association for Mental Deficiency; and~~

~~7.2.h.2. Based upon accepted professional standards of examinations and factual description of a consumer=s symptoms and problems.~~

~~7.2.i. When additional evaluations and assessments are completed, recommendations for treatment and training shall be entered in a consumer's record.~~

7.3. ~~Treatment Plan.~~ The provider shall maintain in the administrative file reports and certifications as applicable regarding:

7.3.1. ~~A consumer shall have a written treatment plan that considers a consumer=s needs and preferences.~~ Certification of occupancy requirements;

7.3.2. ~~The treatment plan shall be developed within seven (7) days and completed within thirty (30) days of intake. When a service is less than thirty (30) days, the initial assessment and treatment plan shall be developed within a shorter time frame in accordance with a consumer's needs.~~ Delineation of zoning and building codes;

7.3.3. ~~The methods implemented shall be appropriate to a consumer's identified needs.~~ Compliance with occupational safety and health administration codes;

7.3.4. ~~When warranted the treatment plan shall address behavior management specific to a consumer's needs.~~ Records of maintenance and safety inspections performed internally (e.g., by the Safety Committee, Officer, or other); and

7.3.5. ~~The treatment plan shall include:~~ Any and all plans of correction or citations for the previous five years.

~~7.3.e.1. Identification of the treatment plan participants, which include a consumer, his or her legal representative, provider and service plan participants, and documentation of the extent of their involvement.~~

~~7.3.e.2. Goals and Objectives;~~

~~7.3.e.2.A. Specific goals shall improve or maintain the mental health and optimal adaptive functioning of the individual and be based on assessments; and~~

~~7.3.e.2.B. Measurable objectives shall be related to the goals, have an expected achievement date and, when appropriate, outcomes for discharge.~~

~~7.3.e.3. A description of the services, including outside services, provided to a consumer and directed primarily toward achievement of the expected outcomes, and with what frequency the services shall be provided.~~

~~7.3.f. Treatment plans for a consumer with complex needs, or for one who has experienced a significant change in functional abilities, shall be developed and reviewed by an interdisciplinary team.~~

~~7.3.g. The Center shall ensure that:~~

~~7.3.g.1. A consumer is involved in treatment planning and service delivery to the extent possible;~~

~~7.3.g.2. Minors in residential programs shall be promptly referred to Board of Education programs and services;~~

~~7.3.g.3. If a consumer attends a school or day program, staff participate with the appropriate personnel in the development of the education component of the treatment plan; and~~

~~7.3.g.4. A treatment plan provides for the review of drug dosages and types and explains the rationale for changes or continuation of psychotropic drug regimens; and~~

~~7.3.g.5. Signed and dated progress notes or other documentation regarding services provided and outcomes.~~

~~7.4. Treatment Plan Review.~~

~~7.4.a. Treatment plans shall be reviewed at least every ninety (90) days by the interdisciplinary team unless otherwise specified in the plan but shall not exceed one hundred eighty (180) days. The review summarizes the amount of treatment or training provided, documents progress towards the objectives, indicates problems that impeded progress, and provides a decision to continue the same plan or to modify it.~~

~~7.4.b. A review or revision shall occur at significant times, including, but not limited to:~~

~~7.4.b.1. Admission, transfer, and discharge;~~

~~7.4.b.2. Major changes in a consumer's condition; and~~

~~7.4.b.3. Crisis points.~~

~~7.4.c. Written consent by a consumer, or his or her legal representative shall be obtained and recorded in the treatment plan. If written consent is not obtained, the record shall indicate why the written consent was not obtained.~~

7.4. Security of Information and Consumer Records.

7.4.1. The provider shall have policies and procedures regulating access to records of staff and consumers that are in compliance with all federal and state requirements. Regulatory agencies shall be allowed access to relevant service and employment information, clinical records, incident reports, and other documents to fulfill their statutory duties.

7.4.2. The provider shall ensure that service and employment records, whether paper or electronic, are made available for inspection within normal business hours.

7.4.3. The provider shall have procedures to protect service and employment records, whether in electronic or paper form, from destruction by fire, water, loss or other damage and from unauthorized access.

7.4.4. Written procedures shall govern the retention, maintenance and destruction of consumer records.

7.4.5. At a minimum, the provider shall retain consumer records for a minimum of five years from date of last service and for five years following a child's 18th birthday if service ends prior to that time. Conversion of paper records to an electronic copy and destruction of paper is acceptable.

7.4.6. The provider shall have a policy regarding disposal of records which respects confidentiality and security of consumer information.

7.4.7. The provider shall have a policy that all computer and data systems owned by the provider will have up to date anti-virus protection and provide protections which safeguard consumer data and privacy. Systems will be consistent with federal and state privacy laws and regulations.

7.4.8. The format of electronically transmitted data shall comply with legal standards and requirements.

~~7.5. Consumer Discharge~~.

~~7.5.a. Discharge planning shall follow the treatment plan.~~

~~7.5.b. A written discharge summary shall be entered in a consumer's record within thirty (30) days of discharge and include:~~

~~7.5.b.1. The reasons for discharge;~~

~~7.5.b.2. A consumer's status and condition at discharge;~~

~~7.5.b.3. A final evaluation summary of a consumer's progress toward the goals set in the treatment plan;~~

~~7.5.b.4. A plan developed in conjunction with the consumer, when available, for care after discharge and for follow-up; and~~

~~7.5.b.5. The signature of the staff completing the summary.~~

7.5. Contractual relationships.

7.5.1. If the provider arranges externally or contractually for the provision of consumer services, the provider shall have a written agreement which specifies:

7.5.1.a. Roles and responsibilities of the provider and the subordinate service provider;

7.5.1.b. A guarantee that the subcontracting provider shall obtain and provide copies of information regarding employees to demonstrate that the employees are in compliance with the regulatory and risk management needs of the provider.

7.5.1.c. Clinical documentation required of the subordinate service provider(s) with time lines for provision of the documentation;

7.5.1.d. Services to be provided;

7.5.1.e. Provision of appropriate liability or malpractice insurance either by the contractor or subordinate provider;

7.5.1.f. A general definition of the consumers to be served; and

7.5.1.g. That the subordinate provider shall adhere to state and federal requirements of confidentiality.

7.5.2. The provider shall maintain a file on each contracted subordinate provider, including:

7.5.2.a. Evidence of appropriate training, licensure or certification; and

7.5.2.b. Evidence of malpractice or liability insurance as specified in the contract.

~~7.6. Behavior Intervention.~~

~~7.6.a. Program and direct care staff shall be trained in behavior management, including methods of de-escalating volatile situations and of using nonphysical techniques in such situations, to deal appropriately with aggressive or out of control behavior.~~

~~7.6.b. The Center shall develop and implement policies and procedures, such as time out, seclusion and restraints, for interventions in working with behaviors that are interfering with the consumer=s ability to function socially or personally. All behavior intervention plans shall:~~

~~7.6.b.1. Be based on a functional analysis of the behavior;~~

~~7.6.b.2. Include positive programming to teach a consumer adaptive, more effective behavior;~~

~~7.6.b.3. Ensure that a consumer does not discipline another consumer; and~~

~~7.6.b.4. Ensure that seclusion and physical restraints are used only as a last resort and used only as long as necessary to manage behavior.~~

~~7.6.c. For a consumer for whom a behavior intervention plan is appropriate, the treatment plan shall specify the rationale, the behavioral objective and the methods to be used in treatment, and the data to be collected to assess progress towards objectives.~~

~~7.6.d. The Center shall ensure that the environment in which the program operates is free from:~~

~~7.6.d.1. Conditions that promote maladaptive behavior;~~

~~7.6.d.2. Aversive stimuli such as corporal punishment or use of electric shock devices; and~~

~~7.6.d.3. Behavior interventions that involve withholding nutrition or hydration, or that inflict physical or psychological pain.~~

~~7.6.e. Protective devices may be ordered by a physician to treat a medical symptom or condition for a specified and limited period of time;~~

~~7.6.f. When a psychiatric emergency exists and less restrictive measures are not effective, the Center may utilize intrusive measures such as the administration of medication, seclusion or mechanical restraints until the crisis is resolved or the consumer can be transported to an inpatient facility.~~

~~7.6.g. A consumer shall not be placed in seclusion or a mechanical device used as a physical restraint until he or she is either: examined by an attending physician or other licensed professional, and a discussion is held between a member of the professional staff and available interdisciplinary team members; or a physician or other licensed professional has ordered by telephone these interventions after a member of the professional staff has discussed the situation with the available interdisciplinary team members.~~

~~7.6.h. No seclusion or restraint order shall be valid for more than three (3) hours; but if ordered for longer, the interdisciplinary team shall review a consumer=s status and develop a written plan for responding to a consumer's needs.~~

~~7.6.i. PRN (as needed) orders for seclusion shall not be permissible.~~

~~7.6.j. A consumer in seclusion shall be observed at least once every five (5) minutes and assessed for continued need.~~

~~7.6.k. A consumer shall have access to fluids and to the toilet hourly.~~

~~7.6.l. Seclusion shall not be used for the treatment of mentally retarded or developmentally disabled consumers.~~

~~7.6.m. The Center shall ensure that the application of physical restraints does not cause physical pain or damage to a consumer.~~

~~7.6.n. When emergency control measures are used, a detailed report shall be written, describing the incident and the rationale for the emergency measures.~~

~~7.6.o. Behavior intervention shall be monitored and altered if side effects such as illness, severe physical or emotional stress, or damage occurs or is likely to occur.~~

~~7.7. Critical Incidents and Crisis Management.~~

~~7.7.a. The Center shall maintain a system for critical incident reporting and demonstrate that it uses the system to improve treatment planning and services.~~

~~7.7.b. Personnel shall immediately notify a supervisor of any critical incident and clear other consumers from the area.~~

~~7.7.c. Unless a consumer is in immediate danger to self or others, staff shall implement the least restrictive methods of crisis management. If less restrictive methods do not work, staff may use progressively more restrictive methods of crisis management until the crisis is resolved or other alternatives are established.~~

~~7.8. Medical and Psychiatric Emergency Services.~~

~~7.8.a. The Center shall have policies and procedures for handling medical and psychiatric emergencies that ensures:~~

7.8.a.1. Communication with the nearest medical emergency service, hospital and police;

7.8.a.2. A twenty-four (24) hour telephone response system, toll-free to a consumer; and

7.8.a.3. An investigation of any incident that results in serious injury or death, a reporting by the Center to appropriate authorities and to the Secretary, and a written report on it.

7.9. Emergency Medical and Psychiatric Services in Residential Treatment Facilities.

7.9.a. The Center shall respond to a consumer=s needs twenty-four (24) hours a day, seven (7) days a week, including providing appropriate triage for a consumer who poses a danger to self or others.

7.9.b. The Center shall provide the onsite staff with immediate access to relevant information in a consumer=s records in the case of an emergency.

7.9.c. Written policy shall be developed and implemented for the treatment, referral and follow-up of a consumer who attempts or threatens suicide or homicide, or commits or threatens assault.

7.10. Medication Services.

7.10.a. The Center shall develop a process for the administration, storage and accountability of all medication, that includes provisions for a medication administration record procedure and is in compliance with state and federal requirements.

7.10.b. The process for prescribing and administering medications shall ensure:

7.10.b.1. That all orders for medications are reviewed at least every ninety (90) days by the physician;

7.10.b.2. That psychotropic drugs are ordered only as part of the treatment plan and with documentation of the diagnosis and the specific behaviors that indicate a need for the medication and the rationale for its choice;

7.10.b.3. That all medications are administered in compliance with the physician=s order and State law; and

7.10.b.4. That medication errors, as defined by this rule, and adverse drug reactions are reported immediately in accordance with written procedures, including properly recording it in a consumer's record and notifying the physician who prescribed the drug.

7.11. Medication Management.

7.11.a. The Center shall note changes in a consumer's condition, including adverse reactions, as a result of receiving a medication.

7.11.b. A consumer to the extent capable shall administer his or her own medication.

7.11.c. The Center shall provide locked storage for the medication that is not administered by consumers.

7.11.d. The Center shall inform a consumer, or his or her legal representative, about the medication prescribed: the dosage, purpose, possible side effects, effects of not taking the medication; and about alternate treatments and their effects;

7.12. Group Homes and Residential Treatment Services (Adult and Minors).

7.12.a. The service shall have rules of conduct for consumers to follow while in residence.

7.12.b. The residents shall be provided foods that promote healthful living.

7.12.c. Onsite staff shall ensure that each resident receive training and practice good habits in personal care, hygiene and grooming.

7.12.d. Residents who require twenty four (24) hour staffing shall not be left unattended during normal sleeping hours.

7.12.e. Residents shall be referred for ongoing mental health service and assisted in keeping appointments and participating in treatment programs. Documentation of referrals shall be kept in a consumer's record.

7.13. Residential Treatment Services for Minors (24 Hours).

7.13.a. Centers shall provide programs and services for minors that are child centered and family focused with integrated therapeutic and educational interventions that respect the child's developmental process.

7.13.b. Centers shall ensure that programs and services for minors involve, to the extent possible, parents or caretakers in the intake and treatment planning process, implementation and evaluation.

7.13.c. Services shall have policies and procedures that describe:

7.13.c.1. Type of service or program;

7.13.c.2. Treatment modalities available; and

7.13.c.3. The level of family/guardian or legal representative involvement expected.

7.13.d. The discharge process shall include: child and family/guardian or legal representative involvement, personnel responsible for discharge decision and provisions for aftercare.

7.14. Shelter Services for Minors.

7.14.a. The shelter shall meet basic emergency residential needs of a child in a community based, open facility that ensures a safe living environment and provides an organized program of activities and counseling based on the intake assessment of the child=s needs, interests and skills.

7.15. Partial Hospitalization Programs.

7.15.a. Within the confidentiality provisions of this rule, and unless it is documented in a consumer=s record that it is clinically inappropriate, a partial hospitalization program shall provide general information related to mental illness, treatment, diagnosis and prognosis, and shall involve family members or significant others.

7.15.b. The clinical supervisor of a partial hospitalization program shall be onsite at least twice weekly and shall monitor the program sufficiently to ensure familiarity with the services, the consumers and their needs and capabilities and with the roles and abilities of the staff.

7.15.c. The Center shall ensure on-call availability of a supervisor when one is not onsite.

7.15.d. The goal of treatment programs for minors shall be the return of students to school and shall be supported by transitional activities such as visits to the local school and classroom experiences that encourage students gradual integration.

7.15.e. Treatment plans shall be current and have evidence of daily attention by clear, legible, behavior related notes on a consumer who attends the partial hospitalization program for that day. The notes shall be related to a consumer's objectives and provide the basis for the treatment plan review.

7.16. Staffing for Partial Hospitalization Programs.

7.16.a. The partial hospitalization program shall comply with the following staffing requirements:

7.16.a.1. Minors: One (1) staff member for every five (5) children and at least one (1) mental health staff member who is qualified to provide psychotherapy services and who does not have a caseload larger than twelve (12) consumers, shall be provided.

7.16.a.2. School Based Minors: The staff shall include teachers, teacher's aides and treatment staff in school based programs in which the treatment and educational needs of the children are met together in a school room.

7.16.a.3. Adults: One (1) staff member for every six (6) adults shall be provided.

7.17. Educational Programs.

7.17.a. If the Center provides an educational component to its programs onsite, it shall provide:

7.17.a.1. An education director, staff, and staff ratios that meet the state requirements of the department of education; and

7.17.a.2. Educational services designed to maintain the educational and intellectual development of a consumer.

7.17.b. Clinicians shall confer periodically with teachers or principals on the progress of a consumer.

~~7.17.c. There shall be documentation in a consumer=s record of periodic evaluations of educational achievement in relation to medications and psychotherapeutic needs.~~

~~7.17.d. An appropriate teacher to consumer ratio shall be provided so that teachers can give special attention to consumers at different stages of treatment and education.~~

~~7.17.e. The educational facility shall have space, an adequate number of classrooms and materials commensurate with the scope of its activities.~~

§64-11-8. ~~Consumer Rights~~. Financial Management.

~~The protection of civil rights for consumers with disabilities is of extreme importance. Special attention and efforts are essential to ensure that a consumer=s human and civil rights are promoted, exercised and protected.~~

~~8.1. Basic Rights.~~

~~8.1.a. A consumer shall have rights including, but not limited to:~~

~~8.1.a.1. The right to treatment and services that support a consumer=s liberty and result in positive outcomes to the maximum extent possible;~~

~~8.1.a.2. The right to an individualized, written treatment plan to be developed promptly after admission; treatment based on the plan; periodic review and reassessment of needs, and appropriate revisions of the plan including a description of the services that may be needed for follow-up.~~

~~8.1.a.3. The right to treatment and services in the least restrictive, most appropriate and potentially most effective setting;~~

~~8.1.a.4. The right to an individualized treatment plan as defined under this rule;~~

~~8.1.a.5. The right to ongoing informed participation in the treatment plan process;~~

~~8.1.a.6. The right to refuse treatment at any time;~~

~~8.1.a.7. The right to a legal representative when unable to act on his or her own behalf;~~

~~8.1.a.8. The right to be free from involuntary experimentation;~~

~~8.1.a.9. The right to freedom from restraint or seclusion. Restraint and seclusion shall only be used in situations where there is imminent danger to the consumer or others and all less restrictive methods of control have been used;~~

~~8.1.a.10. The right to a humane treatment environment in which personal dignity and self-esteem are promoted;~~

~~8.1.a.11. The right to confidentiality of records, as provided in this rule;~~

8.1.a.12. The right to access his or her own consumer records in accordance with state law;

8.1.a.13. The right to assert grievances, orally or in writing, with respect to the infringement of all rights, including the right to have all grievances considered in a fair, timely and impartial procedure;

8.1.a.14. The right of access to an available advocate in order to understand, exercise and protect his or her rights;

8.1.a.15. The right to be informed in advance of any charges for services;

8.1.a.16. The right to all available services without discrimination because of race, religion, color, sex, sexual orientation, disability, age, national origin, or marital status;

8.1.a.17. The right to exercise his or her civil rights;

8.1.a.18. The right to referral, as appropriate, to other providers of behavioral health services;

8.1.a.19. The right to be free from physical, verbal, sexual or psychological abuse or punishment;

8.1.a.20. The right to be free from unnecessary or excessive medication;

8.1.a.21. The right to medication that is not used as punishment, for the convenience of staff, as a substitute for programming, or in quantities that interfere with the treatment program;

8.1.a.22. The right to be free from uncompensated labor, except for consumers in residential facilities who perform housekeeping tasks; and

8.1.a.23. The right to be informed orally, in writing and in appropriate language and terms, of the rights described in this section;

8.1.a.24. A residential consumer shall have:

8.1.a.24.A. The right to be housed with consumers of the same approximate ages, developmental levels and social needs;

8.1.a.24.B. The right to unimpeded access to his or her attorney or religious advisor;

8.1.a.24.C. The right to constant access to his or her personal possessions unless contraindicated by treatment needs; and

8.1.a.24.D. The right to private communication with others by mail, in person and by telephone.

8.1.b. Rights and personal liberties may be limited by established policies and procedures when the limitation of the right is clinically appropriate and clearly justified in writing.

~~8.1.c. A consumer=s rights and responsibilities shall devolve only to a legal representative as defined in this rule and to the extent that the legal representative=s acts are not hostile or adverse to the best interests of a consumer. This provision does not relieve the Center of the responsibility of informing a consumer as required by this rule, to the extent that a consumer is capable of understanding the matter, nor does it in any way deprive a consumer of his or her legal rights granted under State or federal law;~~

~~8.2. Violation of Consumer Rights.~~

~~8.2.a. A consumer, an employee, or any other individual may make a complaint to the Center. A supervisor shall report to the administrator within twenty four (24) hours regarding all violations, or suspected violations, of a consumer's rights, except in the case of physical abuse for which immediate notification shall be made.~~

~~8.2.b. The Center must have evidence that all violations, or suspected violations, of a consumer=s rights are thoroughly investigated within a reasonable time period. The administrator shall provide a written report to the human rights committee of his findings and of the actions taken to prevent further occurrences. A consumer or consumers shall be identified by case number only.~~

~~8.2.c. The Center shall make a notation of the incident and the effect of the incident on a consumer's illness or treatment in a consumer's record.~~

~~8.2.d. If the administrator=s findings and actions on behalf of a consumer regarding a violation of the consumer's rights is unfavorable, insufficient or not forthcoming within a reasonable time, the consumer, or his or her legal representative, may appeal to the governing body of the Center, the State licensure body, the West Virginia advocate or other appropriate resource.~~

8.1. The provider shall have a written budget, approved by the governing body, that shall serve as a plan for managing its financial resources for the fiscal year.

8.2. The provider shall have established financial management policies and procedures that follow generally accepted accounting principles (GAAP).

8.3. Financial accountability for consumer funds. -- A provider that assumes fiduciary responsibility for consumer funds shall have written operational procedures that ensure:

8.3.1. Separate individual accounting of funds with monthly statements to the consumer and his or her DLR, if any. Funds managed on behalf of consumers shall not be commingled with provider funds; and

8.3.2. Compliance with applicable legislative, judicial, and governmental requirements, including those applying to payment of benefits allotted by the state or federal government.

8.4. The chief executive officer or governing body, or both, shall ensure adequate resources to support the provider's services. Sufficient operating funds shall consist of cash or liquid capital or an irrevocable letter of credit.

8.5. All money earned by a consumer shall be used for the sole benefit of that consumer.

8.6. Providers shall allow a consumer or his or her DLR to use his or her personal funds.

§64-11-9. ~~Substance Abuse Services.~~ Management of Human Resources.

~~9.1. Public Inebriate Shelter Services.~~

~~9.1.a. Trained personnel shall screen a consumer to determine his or her need for medically monitored detoxification or for referral to acute medical care.~~

~~9.1.b. The shelter shall monitor a consumer at not less than fifteen (15) minute intervals for the first four (4) hours following admission, and each hour thereafter, and provide:~~

~~9.1.b.1. A documented evaluation of a consumer;~~

~~9.1.b.2. Documentation of vital signs taken every four (4) hours; and~~

~~9.1.b.3. Documentation of any changes in withdrawal symptoms.~~

~~9.1.c. A shelter shall not discharge a consumer to a responsible adult until after an evaluation is complete, unless there are unusual circumstances, e.g., transfer for medical or security reasons.~~

~~9.1.d. A shelter shall not discharge a consumer unless the committing authority has approved the release or until a consumer=s blood alcohol count is below .05, and there is no observable indication of intoxication.~~

~~9.1.e. If a consumer leaves the shelter prior to being discharged, the referring court and the sheriff's office shall be notified.~~

~~9.1.f. The shelter shall inform a consumer of alternative services and, upon a consumer=s request, assist in arranging follow-up appointments.~~

~~9.1.g. The shelter shall submit recommendations to the court as required for the disposition of publicly inebriated individuals.~~

9.1. Deployment and Supervision of Staff.

9.1.1. The provider shall retain qualified individuals to deliver the services to which it commits via consumer treatment plans based on the consumer's functional level and physical disability. The provider shall have a system of staff supervision that is tailored to the provider's model of service delivery and uses individual or group supervision, or both, on a regularly scheduled basis.

9.1.2. The provider shall identify an individual responsible for overall administration of the program for each site. This individual shall ensure that decisions related to care of the consumer are based on the assessment and treatment needs of the consumer.

9.1.3. The provider shall develop a process that ensures appropriate supervision of direct service staff. Each staff person on duty shall have access to a supervisory staff person by telephone or face-to-face contact within 15 minutes of an initial attempt at supervisory contact.

9.2. ~~Detoxification Services.~~ Personnel practices.

~~9.2.a. The Center shall perform a physical examination and screening at a consumer=s intake to determine the need for medical services.~~

~~9.2.b. A physician shall be available for medical consultation twenty four (24) hours per day, seven (7) days per week.~~

~~9.2.c. During the withdrawal process, qualified personnel shall maintain contact with a consumer regarding the consumer's detoxification protocol.~~

~~9.2.d. The Center shall provide counseling designed to motivate a consumer in the treatment process and give emotional support during withdrawal from substances.~~

~~9.2.e. The Center shall refer a consumer to a more intensive level of medical care if screening and medical examination indicate that more intensive medical monitoring or management is required.~~

9.2.1. Upon employment, the provider shall train employees regarding written policies and procedures pertaining to their employment and job responsibilities.

9.2.2. The provider shall have policies that comply with federal and state statutes, rules, and regulations regarding employment practices.

9.2.3. The provider shall review with the applicant a written job description at the time of the interview and provide a copy of a written job description upon employment and, upon significant changes in job assignment or responsibilities, provide a modified job description.

9.2.4. All employees, volunteers, and students who will provide direct care shall be subject to the provisions of the West Virginia Clearance for Access: Registry and Employment Screening Act, W. Va. Code §§16-49-1, *et seq.*, and W. Va. Code R. §§ 69-10-1, *et seq*.

9.2.5. The provider shall have a policy and required training process for all employees regarding mandatory reporting of allegations of consumer abuse or neglect.

9.2.6. The provider shall have a written job description and selection criteria for each position or group of similar positions that includes the position's qualifications and responsibilities, and the title of the position's supervisor.

9.2.7. The provider shall designate a supervisor for each separate service or program. A supervisor may be responsible for more than one program.

9.2.8. The provider shall employ persons who are qualified according to the job description and selection criteria for the positions they occupy. A provider employing any person who does not possess the qualifications noted in the position's job description shall have a written statement justifying the individual's employment.

9.2.9. The provider shall verify the credentials of all employees and contractors providing consumer care, including:

9.2.9.a. Education and training;

9.2.9.b. Relevant experience; and

9.2.9.c. State licensing or certification for their respective disciplines, if any.

9.2.10. If the job description requires professional licensure or certification, but an employee under supervision for licensure or certification is employed in the position, the provider shall demonstrate that:

9.2.10.a. A person with requisite credentials provides supervision to the staff; and

9.2.10.b. The staff is actively working toward licensure or certification.

9.2.10.c. This requirement will not be construed to apply to individuals performing job duties that would not normally require licensure or certification.

9.3. ~~Residential Substance Abuse Services.~~ Volunteers.

~~9.3.a. The Center shall ensure the availability of a physician for medical consultation twenty four (24) hours per day, seven (7) days per week.~~

~~9.3.b. The Center shall ensure the availability of onsite nursing staff sufficient to address the assessed medical needs of a consumer.~~

~~9.3.c. The Center shall maintain policies and procedures to handle contraband substances brought into the residential facility.~~

9.3.1. The provider shall have a policy which specifies the roles and responsibilities that volunteers shall assume.

9.3.2. The provider shall ensure that volunteers receive regular supervision to provide assistance, directions for activity and support.

9.3.3. Any documentation provided by volunteers to be placed in a clinical record shall include the date and signature of the volunteer's onsite supervisor prior to being placed in the record.

9.3.4. The provider shall train volunteers concerning the responsibilities of the position and the time
commitments required prior to formal assignment.

9.3.5. The provider shall formally train volunteers in confidentiality prior to beginning their duties and shall maintain documentation of the training.

9.4. Students.

9.4.1. Students serving fewer than 30 hours per quarter shall be continually supervised by staff and shall not work alone with consumers. The provider shall have a policy which specifies the roles and responsibilities that students may assume.

9.4.2. Students serving an academic placement of more than 30 hours onsite per three-month quarter may work with consumers independently as defined by provider policy. However, the provider shall ensure that students receive regular documented supervision in order to provide assistance, directions for activity, and support.

9.4.3. Students of this type shall receive training in abuse, neglect, and mandatory reporting.

9.4.4. Any documentation provided by students to be placed in a clinical record shall include the date and signature of the student's onsite supervisor prior to being placed in the record.

9.4.5. The provider shall formally train all students in confidentiality prior to beginning their duties and shall maintain documentation of the training.

9.5. Employee, Volunteer, and Student Records.

9.5.1. The provider shall maintain current records for all employees and for students and volunteers working directly with consumers and spending regularly scheduled time in the provider's or consumer's locations. These records shall contain:

9.5.1.a. Identifying information and emergency contacts;

9.5.1.b. An application for employment or resume (for employees only);

9.5.1.c. A job description or contract;

9.5.1.d. Reference verification (for employees);

9.5.1.e. Evaluation of employee performance as detailed in the provider policy;

9.5.1.f. Documentation of education, licensure, or certification (for employees);

9.5.1.g. Documentation of relevant education or experience as required by job description;

9.5.1.h. Documentation of orientation and required training;

9.5.1.i. Documentation of criminal and protective services background checks for employees, volunteers and students as required by the Secretary; and

9.5.1.j. Documentation relating to performance, including disciplinary actions and termination summaries.

9.5.2. Each employee shall have a record, stored separately, containing the employee's results of random drug screens if required by provider policy.

9.5.3. The files shall be secured in a confidential manner with limited access.

9.5.4. Students touring, observing, or onsite fewer than 30 hours per three-month quarter are not included in the requirements of this section.

9.6. Disciplinary reviews and termination. -- The provider shall have a policy which delineates procedures governing disciplinary actions and non-voluntary termination of staff.

9.7. Orientation of New Staff.

9.7.1. The provider shall ensure that all new staff receive an orientation within the first 10 days of employment and shall document that orientation in each individual's personnel record. The orientation shall include an introduction to the staff person's primary job responsibilities and requirements.

9.7.2. Within the first 30 days of employment or initiation, the provider shall also train all new staff in:

9.7.2.a. Its mission, philosophy, and goals;

9.7.2.b. Its services, policies, and procedures pertaining to the employee, contract clinician, student, or volunteer's job responsibilities;

9.7.2.c. An organizational chart that delineates lines of accountability and authority pertaining to the employee, contract clinician, student, or volunteer's job responsibilities;

9.7.2.d. The provider's policies and procedures on consumer confidentiality and disclosure of information, including penalties for violation of the following policies and procedures and an orientation to federal confidentiality requirements as they apply to the provider:

9.7.2.d.1. Consumer rights;

9.7.2.d.2. Universal precautions;

9.7.2.d.3. Training on identification of abuse and neglect and mandatory reporting procedures;

9.7.2.d.4. Appropriate identification and documentation of incidents;

9.7.2.d.5. Sensitivity to differences in cultural norms and values;

9.7.2.d.6. Proper documentation procedures;

9.7.2.d.7. Fire drills and evacuation procedures (if applicable); and

9.7.2.d.8. Procedures regarding medical or other emergencies.

9.7.3. Employees providing direct care to consumers shall be trained in the specific care required for the consumers for which they are assigned. This training will be based on the program plan of the consumer and must include cardiopulmonary resuscitation and first aid.

9.7.4. Additionally, except for outpatient clinical staff providing only behavioral health services, program staff with direct care responsibilities in home- or site-based programs shall be trained within 30 days upon:

9.7.4.a. Psychiatric emergency procedures and management including systematic de-escalation;

9.7.4.b. Blood borne pathogens; and

9.7.4.c. Infection control.

9.7.5. Until the training is completed, the staff person shall not work unless accompanied at all times by a staff member who is experienced and knowledgeable in these areas.

9.7.6. The provider shall document all training provided to staff.

§64-11-10. ~~Penalties.~~ Service Environment.

~~10.1. The Secretary may deny the Center's application for licensure or licensure renewal; revoke or suspend a license; order an admissions ban, a reduction in consumer census or in licensed bed capacity of a residential program for one (1) or more of the following reasons:~~

~~10.1.a. The Secretary makes a determination that fraud or other illegal action has been committed;~~

~~10.1.b. The Center has violated federal, state or local law relating to building, health, fire protection, safety, sanitation or zoning;~~

~~10.1.c. The Center conducts practices that jeopardize the health, safety, welfare or clinical treatment of a consumer;~~

~~10.1.d. The Center has failed or refused to submit reports or make records available as requested by the Secretary; or~~

~~10.1.e. A facility has refused to provide access to its location or records as requested by the Secretary.~~

10.1. Physical Environment:

10.1.1. Water supply:

10.1.1.a. All water systems shall comply with the applicable rules of the Department of Health and Human Resources.

10.1.1.b. All drinking water fountains shall be sanitary and accessible.

10.1.2. Sewage disposal. -- All facilities shall be served by an approved public sewage system or by a sewage disposal system that has been approved by the Secretary according to the design standards and rules of the Department of Health and Human Resources.

10.1.3. Lighting, Ventilation, Heating.

10.1.3.a. By natural or mechanical means, all rooms shall provide adequate heating, illumination, and ventilation.

10.1.3.b. The following shall be prohibited:

10.1.3.b.1. Unvented, fume-producing heating devices; and

10.1.3.b.2. Unprotected open heaters.

10.1.4. Requirements for Group Homes and Residential Treatment Facilities (24 Hour).

10.1.4.a. Bedrooms shall be adequately furnished and provide a minimum of 80 square feet of floor space per person for one-person occupancy and a minimum of 60 square feet of floor space per person for two-or-more person occupancy. For infants delivered to a mother participating in a mother/baby program, a variance may be granted to the square footage requirement.

10.1.4.b. Each occupant of a facility shall be provided a permanent, separate bed with a clean, comfortable, covered mattress, clean bedding, clean towels and other furnishings appropriate to the length of stay and needs of the occupant.

10.1.4.c. Each room shall be arranged in consideration of the occupants' clinical needs.

10.1.4.d. Each bedroom window shall have covering for privacy.

10.1.4.e. Furnishings shall be homelike and personalized.

10.1.4.f. Facilities shall have appropriate storage areas for items such as: foodstuffs, utensils, work materials, cleaning supplies, clothing, linens, medicines and toxic materials.

10.1.4.g. Poisons and other potentially hazardous items shall be kept in a locked place but may be used by consumers who have documented training to use them.

10.2. ~~If a license has been revoked, the Secretary may stay the effective date of revocation by no more than ninety (90) days if the Center can show that the stay is necessary to ensure appropriate placement of consumers.~~ Safety and Environmental Quality.

10.2.1. The provider shall provide services in an environment (buildings, grounds, and equipment) that meets all applicable federal, state, and local health, building, safety, and fire codes unless the location for provision of service is the consumer's natural family home.

10.2.2. All structures and equipment owned or leased by the provider shall be maintained in good repair and free from danger to health and safety.

10.2.3. Facilities and buildings owned, leased, or rented by the provider for use with consumers shall be clean, safe, accessible, and appropriate for the needs of the consumer.

10.2.4. The provider shall post by the telephone in all provider- owned or leased direct care and residential service locations emergency telephone numbers for the fire department, poison control hotline, and local police.

10.2.5. Buildings owned or leased by the provider shall be in compliance with Title III of the Americans with Disabilities Act unless otherwise exempted.

10.2.6. All buildings owned, leased, or rented by the provider for consumer use shall conform to the current Life Safety Code of the National Fire Protection Association, unless exempted by the State Fire Marshal.

10.2.7. The provider shall have documentation that the facilities owned or leased by the provider and used for services are in substantial compliance with the State Fire Code. That evidence shall be renewed as required by the State Fire Marshal.

10.2.8. The provider shall check fire extinguishers monthly to ensure they have adequate pounds per square inch, and have fire suppression systems reviewed by a qualified professional annually.

10.2.9. The provider shall not maintain any firearm or chemical weapon within the structures of the facility or in a vehicle when the vehicle is used to transport a consumer.

10.2.10. All power-driven equipment used by a facility shall be kept in safe and good repair. The equipment shall be used by consumers only under the supervision of a trained staff member.

10.3. Food Services.

10.3.1. If food services are provided or if food is managed by the provider in a consumer residence, food shall be stored, prepared, and served in a sanitary manner.

10.3.2. The provider shall conform to the requirements for food service as specified by the Department's rule, "Food Establishments," W. Va. Code R. §§64-17-1, *et seq.*

10.3.3. Food services, when provided, shall:

10.3.3.a. Meet or exceed national nutrition standards;

10.3.3.b. Be planned with regularly documented assistance;

10.3.3.c. Provide well balanced meals and snacks; and

10.3.3.d. Be provided in accordance with the consumer's development level, including all modified and special diets.

§64-11-11. ~~Administrative Due Process~~ Compliance with Legal, Health, and Regulatory Requirements.

11.1. ~~Any person aggrieved by an order or other action by the Secretary based on this rule, or W. Va. Code §§27-9-1 or 27-17-1 et. seq., may request in writing a hearing by the Secretary in accordance with the Division of Health rule, "Rules of Procedure for Contested Case Hearings and Declaratory Rulings," 64CSR1, a copy of which may be obtained from the Secretary of State.~~ Emergency Planning and Response.

11.1.1. The provider shall have procedures in place for responding to accidents, serious illness, fire, medical emergencies, floods, natural disasters, and other life-threatening situations that:

11.1.1.a. Address the needs of any special population served by the provider;

11.1.1.b. Provide staff-to-consumer ratios for the adequate protection and supervision based on the consumer's assessed needs, functional level, identified behaviors, and physical limitations.

11.1.1.c. Specify evacuation procedures including an evacuation site, parties to notify, and emergency items to take when evacuating;

11.1.1.d. Describe relocation plans for the service or program, or both, if it becomes necessary; and

11.1.1.e. Specify appropriate responses to medical emergencies.

11.1.2. The provider shall have procedures in place for dealing with consumers or other individuals who threaten violence or harm to themselves or others including staff and other consumers.

11.2. Medication Control and Administration.

11.2.1. Medication shall be prescribed and monitored by a licensed physician, dentist, or physician extender according to their scope of practice and state law. Contracted medical staff functioning on the provider's premises are responsible for complying with provider policies and procedures. The physicians and other staff shall have files containing the materials or information specified in this rule.

11.2.2. Providers who administer medication using approved medication assistive personnel shall comply with the Department's rule, "Medication Administration by Unlicensed Personnel," W. Va. Code R. §§64-60-1, *et seq.*

11.2.3. When medication is administered by the provider, the organization shall ensure that there is an individual medication administration record for those consumers who receive medications to include:

11.2.3.a. Medications administered;

11.2.3.b. The date medications were administered;

11.2.3.c. The time of administration (medications are to be administered within one hour of the prescribed time unless otherwise allowed by physician's or physician extender's order);

11.2.3.d. The initials and signature of the individual administering the medication; ~~and~~

11.2.3.e. A record of missed medications and the reason; and

11.2.3.f. Any special instruction as directed by prescriber.

11.2.4. Prescription medications administered by the provider shall be properly labeled and packaged and remain in the original packaging until administration, and include:

11.2.4.a. The name of the person served;

11.2.4.b. The route of administration;

11.2.4.c. The dosage and the name of the medication;

11.2.4.d. The name of the prescriber; and

11.2.4.e. The expiration date.

11.2.5. The provider shall have written procedures that govern:

11.2.5.a. The safe disposal of discontinued, out-of-date, or unused medications, syringes, medical waste, or medication; and

11.2.5.b. Provision for locked, supervised storage of medications with access limited to authorized staff. Authorized staff must have the authority to administer medications.

11.2.6. Medication samples are considered to be the property of the provider. Samples shall be stored in a systematic fashion in a locked area with limited access to unauthorized staff or consumers. The provider shall document distribution of sample medications in the consumer medical record.

11.2.7. If a provider both prescribes and administers medications, only licensed nursing staff shall accept verbal orders for changes in medication regimens. These shall be signed by the prescriber within one week.

11.2.8. A registered nurse, or a licensed practical nurse working within his or her scope of practice, shall be responsible for:

11.2.8.a. Generating and reviewing monthly medication administration records (MARs) or reconciling them to MARs provided by a duly authorized and qualified pharmacist or pharmacy;

11.2.8.b. Matching physician's or physician extender's orders or prescriptions to the medication administration records;

11.2.8.c. Assisting interdisciplinary teams to develop educational goals for consumers taking regularly prescribed medications and participating in a supervised self-administration protocol as identified in the consumer's plan for services;

11.2.8.d. Instructing staff in dietary or medication administration issues as necessary; and

11.2.8.e. Responding to emergency calls from staff on medical issues.

11.2.9. Medications shall be self-administered under supervision of trained staff under the following conditions:

11.2.9.a. As part of the consumer's plan of care, he or she is taught to identify his or her medications, recognize possible side effects, describe the purpose of the medication, and indicate the time of day and frequency with which he or she is to take the medications;

11.2.9.b. The consumer is assessed by a registered nurse, physician, physician extender, or licensed or supervised psychologist as being cognitively capable of learning these skills;

11.2.9.c. Medication is kept in a secure location with access limited only to staff with capability of medication administration;

11.2.9.d. Staff is fully trained as to the purpose, most common side effects, and dangers of each medication prescribed for consumers in the facility or home; and

11.2.9.e. Staff is trained in emergency procedures for overdose or adverse reactions.

11.2.10. Delivering and monitoring medications in a consumer's place of residence:

11.2.10.a. If a provider delivers medications to a consumer on a regular basis, the provider must:

11.2.10.a.1. Document delivery date, time, person receiving medication, and name and amount of medication delivered;

11.2.10.a.2. Ensure that if there are children or other incapacitated adults in the home, medications are at least initially stored properly in secured containers;

11.2.10.a.3. Provide medications in properly packaged format as required by W. Va. Code §§30-5-1, *et seq.*; and

11.2.10.a.4. Develop a system of monitoring the consumer's compliance with consumption of medications that is created with the agreement and participation of the consumer. This system may consist of the consumer logging consumption of his or her own medications. The consumer has the right to refuse participation in a monitoring system. However, the provider may then refuse to deliver medications to the consumer's residence and make alternative arrangements for the provision of medications.

§64-11-12. Services.

12.1. Service Descriptions.

12.1.1. The provider shall develop a written description of each service that is available to the public and potential consumers. The description shall be updated to reflect significant changes in the program, and shall include:

12.1.1.a. The goals of the service;

12.1.1.b. The expected outcomes of the service;

12.1.1.c. The nature of the services provided;

12.1.1.d. The usual staffing of the service including general description of credentialing;

12.1.1.e. Eligibility criteria for consumers served by the service;

12.1.1.f. Information on how to access the service, and

12.1.1.g. Restrictions in access to the service, if any.

12.2. Admission.

12.2.1. Admission to a program must be based on the assessment conducted in compliance with section 12.3. of this rule.

12.2.2. The assessment must indicate the consumer's need for the program.

12.2.3. The program must be appropriate for the needs of the consumer.

12.2.4. If, after the consumer is admitted, the program is unable to meet his or her needs, the provider shall discharge the consumer and is responsible for referral and placement assistance of the consumer to an alternative level of care or provider.

12.2.5. All consumers being discharged shall have a written discharge summary entered in the consumer record within 30 days to include the reason for discharge.

12.3. Assessments and Intake Procedures.

12.3.1. Each consumer entering or re-entering a provider program shall have an assessment by an appropriately qualified staff person (as identified by the provider credentialing committee or officer) prior to or within 48 hours of admission.

12.3.2. Assessments from other providers may be acceptable at the provider's discretion, if comprehensive and performed within the past 45 days.

12.3.3. A consumer re-entering a program within a 12-month period may receive an abbreviated assessment. These assessments and updates must be available in the consumer record.

12.3.4. The initial assessment shall review the consumer's psychiatric and psychosocial history, history of medical and psychiatric treatment, current mental status, current medical and psychiatric status with regard to health and medications prescribed, evaluation of suicidal or homicidal ideation, universal screening for trauma, presenting problems as identified objectively and subjectively, and summarize the consumer's needs and preferences.

12.3.5. An abbreviated assessment shall review the current mental status, presenting problems identified objectively and subjectively, current medical and psychiatric status with regard to health and medications prescribed, and a summary of consumer needs and preferences.

12.3.6. The consumer's plan of services shall be based on the most recent assessment.

12.3.7. The consumer's assessment must record any medical conditions, allergies, or dietary restrictions. The plan for services must define the provider's responsibility in management of such conditions, if any, while the consumer is on the provider's site or under the provider's supervision. The notification must be posted in the record in a way that is accessible to all staff working with the consumer or there must be documentation that staff has been advised of such conditions.

12.4. Planning for Services.

12.4.1. The provider shall ensure each consumer has a plan of service in a format consistent with the type of service the consumer receives. The plan of service shall be reviewed at 90-day intervals unless other intervals are specified by provider policy and updated or modified as necessary but shall not exceed review dates more than 180 days.

12.4.2. The consumer shall be informed and have the right and the responsibility to participate in the development of the plan of services to the extent that the consumer is willing and medically and behaviorally able.

12.4.3. If the consumer has an advanced psychiatric directive, the provider shall honor the directions provided in the advanced directive.

12.5. Participation of the DLR in Planning for Services.

12.5.1. When a consumer has a DLR, the provider must obtain permission from the DLR prior to initiating treatment except in emergent conditions. If emergency treatment is rendered, the DLR must be notified as soon as possible.

12.5.2. If the consumer has a DLR whose scope of responsibility appropriately includes assisting in or directing planning for services for the consumer, the provider is responsible for documenting that the DLR has been informed of all meetings and activities regarding planning. The provider must document a good faith effort to involve the DLR in the planning and review processes. The DLR is entitled to participate in the manner he or she chooses, including by telephone.

12.5.3. If the provider has documented attempts to involve the DLR in the planning process without success, the provider may continue the current plan of service for up to 30 days past its expiration date while alternative plans are made to meet the needs of the consumer or to obtain DLR permission.

12.6. Initial Plan of Service.

12.6.1. When the consumer is admitted to a provider agency, he or she shall have an initial plan of service at the conclusion of the admission process, not to exceed seven days. At a minimum, this plan shall consist of the following if applicable:

12.6.1.a. Description of any further assessments or referrals that may need to be performed;

12.6.1.b. A listing of immediate interventions to be provided along with some basic objectives for the interventions;

12.6.1.c. A date for development of an expanded plan of services. The designated date must be appropriate for the planned length of service but at no time will that exceed 30 days from the date of the signing of the initial plan; and

12.6.1.d. The signature of the consumer or DLR, or both, the intake worker, and other persons participating in the development of the initial plan.

12.7. Plan of Care or Treatment Strategy.

12.7.1. The plan of care or treatment strategy is developed when a consumer is receiving a variety of services from a single provider provided that if all services are behavioral health services, no expanded plan is required.

12.7.2. The plan of care or treatment strategy shall relate directly to the consumer's initial or any subsequent assessments or information regarding the consumer, shall include all services provided to the consumer by the provider developing the plan, and shall consist of the following:

12.7.2.a. Date of development of the plan or strategy;

12.7.2.b. Participants in the development of the plan or strategy;

12.7.2.c. A statement or statements of the goal(s) of services in general terms;

12.7.2.d. A listing of specific objectives relating to each goal unless the services are supportive in nature;

12.7.2.e. The measures to be used in tracking progress toward achievement of an objective, unless the services to be provided are supportive services;

12.7.2.f. The techniques or services, or both, to be used in achieving the objective unless the services are supportive;

12.7.2.g. Identification of the individuals responsible for implementing the services relating to the statement(s) of objectives; and

12.7.2.h. A date for review of the plan or strategy.

12.7.3. The plan or strategy shall be reviewed at least every 90 days unless an alternative timeframe is specified in the plan or strategy with rationale explaining the alternate timeframe but shall not exceed 180 days.

12.7.4. Selected objectives may be reviewed earlier than the scheduled plan review as desired by the consumer or provider.

12.7.5. Plans for supportive services are incorporated into the plan of care or treatment strategy and shall include:

12.7.5.a. Services to be provided;

12.7.5.b. How often;

12.7.5.c. By whom; and

12.7.5.d. The objectives of the support.

12.7.6. Objectives of supportive services may be stated in simple terms and outcomes shall be stated in measurable terms. Maintenance of health, daily living skills, or functionality may be an objective for a supportive service.

12.8. Coordination of Service.

12.8.1. If a consumer is receiving a combination of behavioral health or supports services from a team of provider agencies, the consumer shall have a comprehensive plan of services.

12.8.2. All providers participating in the provision of service to the consumer shall be represented in the development of the comprehensive plan, as shall the consumer or DLR as appropriate. Representation shall be documented by signature of the parties involved in the development of the comprehensive plan.

12.8.3. The team must be made aware of any advanced directives made by the consumer or any instructions for care imposed by the DLR. These directives must be included as an addendum to the plan.

12.8.4. Comprehensive plans may be completed by a service coordination provider who is responsible for tracking the implementation of the plan and organizing the reviews of the plan and subsequent modifications. The service coordination provider must be identified in the plan.

12.8.5. The comprehensive plan must clarify which provider agency is responsible for each aspect of the plan. Objectives for behavioral health treatment services must be specific and measurable.

12.8.6. It is the responsibility of the service coordination provider to ensure that each member of the provider team including the consumer or DLR, or both, has a copy of the plan within seven working days of its completion.

12.8.7. The comprehensive planning process shall culminate in an agreed date for review of progress in reaching the objectives described in the plan.

12.9. Reviews of Plans of Service.

12.9.1. The review shall be documented and shall consist of examination by the team or provider of progress toward achievement of an objective using the measurements described in the plan or in the case of supportive services, an evaluation of achievement of maintenance objectives.

12.9.2. The consumer and DLR shall be present at the scheduled review. If the consumer or DLR, or both, are not present, the reason for holding the review in their absence shall be documented and for good cause.

12.9.3. The provider shall modify objectives and goals if the planned interventions have not produced evidence of improvement or maintenance, if such is the stated goal, within an amount of time to be identified in advance by the clinical team.

12.9.4. The goals or objectives of a plan may be modified if desired by the consumer or DLR.

12.9.5. At the conclusion of the review, a date shall be set for the next review. Revisions to the behavioral health service plan shall be made if necessary or a new plan may be developed.

12.10. Critical Treatment Junctures.

12.10.1. The provider and consumer shall meet to review and if necessary modify the consumer's treatment or supports services at a critical treatment juncture.

12.10.2. Critical treatment junctures occur when:

12.10.2.a. There is a proposed change in placement;

12.10.2.b. There is on-going non-compliance with treatment;

12.10.2.c. Significant new symptoms are experienced;

12.10.2.d. There is a significant change in the consumer's environment, functional ability, health status;

12.10.2.e. Funding for the consumer's service is significantly reduced or eliminated;

12.10.2.f. The consumer loses eligibility for the service;

12.10.2.g. There is an increase or decrease in service intensity or frequency;

12.10.2.h. An event occurs that will have a deleterious or other effect on services provided to the consumer or his or her response to services; or

12.10.2.i. The consumer or DLR requests an alteration in the services he or she is receiving.

12.10.3. When a critical treatment juncture occurs:

12.10.3.a. The provider shall identify and document the situation or event and assess the immediate consumer needs;

12.10.3.b. The provider, in conjunction with the consumer or DLR, or both, shall make a determination as to a course of action and shall document the course of action adopted;

12.10.3.c. The provider shall document reasons for delay or lack of need for a full meeting of the team but shall implement the agreed modification of services at the earliest opportunity;

12.10.3.d. If there is disagreement between the provider and consumer as to a course of action, the team will meet at the earliest mutually agreeable time; and

12.10.3.e. When necessary and appropriate, a team meeting will be held including the consumer or DLR, or both. The team will:

12.10.3.e.1. Assess the situation;

12.10.3.e.2. Identify any needed alteration to the treatment or services provided;

12.10.3.e.3. Obtain approval from the consumer or DLR, or both, for the modification of services; and

12.10.3.e.4. Set a date for the next review of the plan.

12.10.3.f. The team may decide to review all of the plan of services, or only a segment of the plan of services. Regardless of the extent of the review, it must be documented, and a date identified for the subsequent review of the plan in its entirety, not to exceed 90 days from the last review of the entirety of the plan unless other timeframe reviews are described in the plan, but not to exceed 180 days.

12.10.3.g. The consumer or the DLR, or both, should be provided with a copy of the plan for services and any review documents.

12.10.3.h. If a critical treatment juncture occurs for a consumer who has a comprehensive plan for services, the members of the team must be informed of the situation and participate in a decision regarding the need for the team to meet. Participation in this decision may be by telephone or other electronic or digital method.

12.11. Discharge Planning.

12.11.1. Each provider shall have a policy and procedure regarding discharge of the consumer from services.

12.11.2. Such policies shall promote an organized transition to another provider, level, or type of care or to full independence from treatment or support.

12.11.3. With permission from the consumer or DLR, or both, the provider is responsible for ensuring that sufficient information is provided to an alternative provider to enable a smooth transition of care.

12.11.4. The provider is responsible for offering transitional services. If the consumer is an incapacitated adult, the transitional services should be individualized and delivered in a manner that facilitates the individual's movement from one health care setting to another.

12.11.5. A written discharge summary shall be entered in the consumer record within 30 days of discharge including the reason for discharge.

12.12. Special Services and Populations.

12.12.1. If a provider provides specialized services to a unique population the provider shall ensure that:

12.12.1.a. The service and clinical model reflects knowledge and use of evidence-based and theory-guided practices;

12.12.1.b. Clinical and professional staff are appropriately trained, certified, or licensed in the area of service provided;

12.12.1.c. Direct care staff are trained to understand issues in clinical treatment of the population and are able to use suitable intervention techniques when necessary and appropriate;

12.12.1.d. The environment and milieu of the treatment location is clinically, structurally, and developmentally appropriate for the population served; and

12.12.1.e. The facility is suitably secure and staff ratios are consistent with the consumer's treatment plan. In cases in which a staff ratio is not specified in the consumer's plan of care, the provider shall assure that sufficient staff is present to enable consumer safety in case of emergency.

12.13. Abuse, Neglect and Critical Incidents.

12.13.1. The provider shall report, investigate, monitor and remediate consumer-related incidents in a manner consistent with minimum current guidelines, "Reporting and Investigation Guidelines for Incidents involving a Licensed Behavioral Health Services and Supports Provider," set forth by the Secretary and made available by the Secretary to providers and the public.

12.13.1.a. These guidelines shall be amended as necessary through a participative process including consultation with providers, consumers, and other stakeholders.

12.13.1.b. The provider's policy regarding abuse and neglect may allow the provider a range of remediation alternatives with the employee depending upon the severity of the incident and the possibility of successful remediation.

12.13.1.c. These guidelines represent a minimum standard of investigation and correction. Third party payers or providers may voluntarily require a more stringent level of correction.

12.13.2. Incidents shall be evaluated by the provider's designated representative and classified as one of the following:

12.13.2.a. An allegation of abuse or neglect, or both;

12.13.2.b. A critical incident; or

12.13.2.c. An incident requiring provider monitoring and correction.

12.14. Abuse and Neglect.

12.14.1. A provider shall immediately report to OHFLAC the neglect, abuse, or suspected neglect or abuse of any consumer who receives services from a provider licensed under the conditions of this rule. This requirement mandates self-reporting of neglect, abuse, or suspected neglect or abuse by the service provider.

12.14.2. The initial report shall be made by telephone followed by a written report by the complainant or the receiving agency within 24 hours.

12.14.3. All employees, contractors, and volunteers of a provider are considered to be mandatory reporters as defined in W. Va. Code §9-6-11.

12.14.4. A consumer has the right to report any suspicion of abuse or neglect to civil and criminal authorities in accordance with the Adult Protective Services Act, in addition to using the grievance procedure of the provider.

12.15. Critical Incident.

12.15.1. The provider must keep a central file of critical incidents for review by the Secretary upon request.

12.15.2. The file shall contain a description of the incident, actions taken by the provider to mitigate the incident and, at minimum, a description of systemic corrective action taken by the provider, if any, as a result of the provider investigation utilizing unique but confidential consumer identifiers.

12.15.3. In the case of a critical incident involving an incapacitated adult, the provider shall follow Department policy regarding reporting such events to the Secretary.

12.16. Non-critical incidents. -- Non-critical incidents must be documented, reviewed by a supervisory staff person, investigated if necessary, and filed in the central incident file.

12.17. Quality Assurance. -- The provider shall ensure that the central file of reports of abuse, neglect, critical and non-critical incidents is reviewed, collated by the Continuous Quality Improvement committee or staff person and reported to the governing body on an annual basis. The file should be representative of efforts by the provider to utilize information to improve provider policy, procedure, or performance.

12.18. Injuries of Unknown Source.

12.18.1. An injury should be considered an "injury of unknown source" when:

12.18.1.a. The source of the injury was not witnessed by any person and the source of the injury could not be explained by the consumer; and

12.18.1.b. The injury raises suspicions of possible abuse or neglect because of the extent of the injury or the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma) or the number of injuries observed at one particular point in time or the incidence of injuries over time.

12.18.2. Minor occurrences which are not of serious consequence to the individual and do not present as a suspicious or repetitive injury as discussed in subdivision 12.18.1.b. of this rule should be recorded by the facility staff once they are aware of them and follow-up should be conducted as indicated by provider policy.

12.18.3. If, however, the injury meets both criteria listed in subsection 12.18.1., the injury or injuries must be reported and investigated as required by this rule.

12.18.4. For injuries that do not rise to the level of reportable "injuries of unknown source," the provider should follow its policies and procedures for monitoring and trending such occurrences.

12.19. Management of Continued Inappropriate Behavior.

12.19.1. The provider shall have a policy for management of regularly occurring inappropriate behavior on the part of incapacitated or minor consumers.

12.19.2. When a responsible clinician or the service planning team becomes aware that an incapacitated or minor consumer in a residential service program is consistently displaying an inappropriate behavior, a functional assessment of the behavior shall be performed.

12.19.3. The functional assessment may result in informal environmental alterations in the development of a written plan for intervention.

12.19.4. Only trained staff may be responsible for performing functional assessments of behavior and developing and monitoring plans for intervention.

12.19.5. Implementing staff shall be oriented to and fully trained on all behavior management plans for consumers with whom they are working. Training shall include demonstration of the procedures to be utilized.

12.19.6. Behavioral interventions shall:

12.19.6.a. Be planned and approved by the service planning team;

12.19.6.b. Be individualized, consumer-centered, and applied consistently in all environments managed by the service team;

12.19.6.c. Be based on a functional assessment of the inappropriate behavior;

12.19.6.d. Utilize positive behavior techniques that focus on replacing inappropriate behaviors with more productive pro-social behaviors;

12.19.6.e. Be based on fundamental principles of behavior;

12.19.6.f. Be data-based and monitored on an on-going basis; and

12.19.6.g. Be amended in a timely fashion if necessary.

12.19.7. The following aversive consequences are not to be utilized by providers:

12.19.7.a. The application of painful stimuli to the body in an attempt to terminate behavior or as a penalty for behavior but not including aversive procedures.

12.19.7.b. Deprivation of basic human rights;

12.19.7.c. Treatment of a demeaning nature;

12.19.7.d. Noxious or painful stimuli; and

12.19.7.e. Deprivation of nutrition or hydration, excluding dietary or fluid restrictions ordered by a physician or physician extender.

12.19.8. Restraint techniques shall only be incorporated into a behavioral intervention if it is used as an intervention of last resort and only when the targeted behavior is immediately dangerous to the consumer or others in the environment. Detailed reasons for the use of restraint shall be documented, along with attempts at the use of the least restrictive intervention that will be effective to protect the consumer, a staff member, or others from harm.

12.20. Emergency Management of Potentially Dangerous Behavior.

12.20.1. The provider shall have in place policies and procedures regarding emergency management of potentially dangerous consumer behavior.

12.20.2. Seclusion is not an intervention permitted in any licensed community-based program.

12.20.3. Staff shall be trained and able to demonstrate competency in systematic de-escalation procedures as part of orientation. Training for direct care staff shall be renewed at intervals determined by provider policy but occur no less than yearly.

12.20.4. The provider must require staff to have education, training, and demonstrated knowledge in regard to the safe application and use of all types of restraints used, including training in how to recognize and respond to signs of physical and psychological distress.

12.20.5. Staff must have education, training, and demonstrated knowledge based upon the specific needs of consumers being served. Training will consist at minimum of the following:

12.20.5.a. Techniques to identify staff and consumer behaviors, events, and environmental factors that may trigger potentially dangerous behavior,

12.20.5.b. Use of nonphysical intervention skills,

12.20.5.c. Selection of least restrictive and least intrusive intervention based on individualized assessment, and

12.20.5.d. Safe application and monitoring of restraint as a last resort if provider policy allows restraint as an intervention.

12.20.6. Physical, mechanical, or chemical restraints may be used only as a last resort for the management of dangerous, violent, or self-destructive behavior that is an immediate threat to the consumer's physical safety or the safety of others in the immediate environment.

12.20.6.a. The use of restraints must be in accordance with a written modification to the consumer's treatment plan.

12.20.6.b. The use of restraint must be in accordance with the order of a physician or other licensed independent practitioner who is responsible for the care of the consumer and authorized to order restraint by provider policy in accordance with state law. Orders for use of restraint must never be written as a standing order or on an as-needed basis.

12.20.6.c. A restraint does not include devices used to treat a medical condition.

12.20.6.d. All supportive or protective devices should be assessed by the team for safety and appropriateness at annual intervals or more frequently as determined by provider policy.

12.20.6.e. Restraint may only be used when less intrusive interventions have been exercised and determined, through documentation pursuant to this rule, to be ineffective to protect the consumer or others from harm. No restraint may be utilized for more than a half hour without review of the consumer's condition by a licensed clinician to evaluate the consumer's immediate situation; the consumer's reaction to the intervention; and the consumer's medical and behavioral condition.

12.20.6.f. Before writing an order for the use of restraint for the management of violent or self-destructive behavior, a physician, physician extender, or other licensed independent practitioner who is responsible for the care of the consumer and authorized to order restraint by provider policy in accordance with state law must see and assess the consumer.

12.20.6.g. The use of restraint must be implemented in accordance with safe and appropriate techniques.

12.20.6.h. The restraint must be discontinued at the earliest possible time.

12.20.7. Documentation in the consumer's record must include the following:

12.20.7.a. A description of the consumer's behavior and the danger it posed to self or others;

12.20.7.b. A description of the alternatives or other less intrusive interventions that were attempted prior to the restraint;

12.20.7.c. A description of the intervention used, including the duration of the restraint if physical or mechanical or dosage if chemical; and

12.20.7.d. The consumer's response to all the intervention(s) used.

12.20.8. Provider policy regarding restraints must include a requirement of a debriefing of any restraint used.

12.20.9. If a consumer receiving extended services exhibits a behavior which is immediately dangerous to himself or herself or others at a rate of three or more times in a six-month period, the provider shall convene the clinical team to consider development of a written plan for behavioral intervention.

12.21. Medical and Dental Procedures for Incapacitated Adults and Children with Developmental Disabilities.

12.21.1. Whenever possible, a desensitization procedure should be developed in advance to prepare incapacitated adults and children with developmental disabilities for a medical or dental procedure;

12.21.2. If the desensitization procedure is not successful in easing the consumer's agitation, anxiety or fear, medicinal interventions are to be used in preference to mechanical restraints unless otherwise agreed by the clinical team;

12.21.3. All efforts to prepare and manage a consumer during a medical or dental procedure should be documented in the consumer's medical record.

12.22. Standards for Respite and Personal Attendant Services.

12.22.1. Staff providing respite and personal attendant services must receive the following training or orientation prior to assuming care of a consumer:

12.22.2.a. Specific information pertaining to the needs, preferences, and medical issues of the consumer for whom the staff is assuming care;

12.22.2.b. List of tasks for which the personal attendant or respite provider is responsible, including any unusual circumstances that could reasonably be predicted in advance;

12.22.2.c. List of emergency contacts including emergency contact number for primary caregiver and for staff supervisor;

12.22.2.d. Training in any specific protocols contained within the consumer's plan for services as appropriate;

12.22.2.e. Review of mandatory reporting obligations;

12.22.2.f. Any emergency procedures unique to the consumer and his or her medical or behavioral needs;

12.22.2.g. Orientation to the consumer's home or other service location; and

12.22.2.h. Boundary definition regarding the relationship of staff to primary caregiver, other family members, chain of supervisory responsibility, appropriate use of consumer resources such as food or equipment, and other issues as necessary and appropriate.

12.23. Supervision of the respite or personal attendant employee shall be the responsibility of the employing agency with regular input and consultation by the primary caregiver or consumer, or both. The agency shall provide onsite supervision of staff on a regular schedule as described by agency policy with the permission of the consumer or primary caregiver, or both. Supervision activities shall be documented by the agency.

12.24. If the respite or personal attendant service is provided at a location away from the consumer's primary residence, the location must be safe and free from immediate threat of harm to the consumer. The location must consider the needs and preferences of the consumer and his or her primary caregiver.

12.25. The respite or personal attendant provider is responsible for complying with applicable services or conditions outlined in the consumer's plan for services during the time in which the staff person is providing services for the consumer.

12.26. Documentation must include:

12.26.1. Any unusual incidents or events occurring during the period;

12.26.2. A summary of the activities of the consumer during the period;

12.26.3. Any health or behavioral issues which were of significance during the period; and

12.26.4. Any medications including dosages that were taken by the consumer during the period.

12.27. Standards for Residential Services.

12.27.1. The provider is responsible for ensuring that staff receives an orientation to the plan for services for all consumers in the home, to include:

12.27.1.a. Dietary issues as necessary and appropriate;

12.27.1.b. Unique health considerations;

12.27.1.c. Crisis plans or advance psychiatric directives, if any;

12.27.1.d. Training in any specific protocols contained within the consumer's plan for services as appropriate;

12.27.1.e. Common behavioral issues and management; and

12.27.1.f. A description of unique consumer preferences for those unable to express them directly.

12.27.2. In addition, staff shall be provided with a(n):

12.27.2.a. List of tasks for which the staff member is responsible,

12.27.2.b. List of emergency contacts including emergency contact number for staff supervisor;

12.27.2.c. Review of mandatory reporting obligations;

12.27.2.d. Orientation to the consumer's home or other service location; and

12.27.2.e. Review of boundary definition regarding staff use of consumer resources such as food or equipment.

12.27.3. The provider must ensure that in-home staff has access to 24-hour emergency telephone contacts for supervisory staff and for parents or guardians.

12.27.4. The provider shall ensure that in-home staff has knowledge of mandatory reporting procedures and the reporting number must be easily available in the home.

12.27.5. Staff must be trained in emergency evacuation procedures.

12.27.6. The provider shall ensure availability in the home of commonly needed company policies and procedures for staff reference. The provider shall have a policy which identifies those sections of the provider staff manual that will be available in the homes.

12.27.7. The provider is responsible for training staff to be supportive of the consumer's:

12.27.7.a. Needs and preferences;

12.27.7.b. Behavioral and health management issues; and

12.27.7.c. Privacy.

12.27.8. The provider shall have a process in place to address consideration of appropriate blending of consumer populations regarding gender, developmental age, activity level, and consumer preferences in congregate living situations.

12.27.9. The service environment shall be appropriate to the physical and health needs of consumers and shall be safe from threat of immediate harm for consumers and staff.

12.27.10. The provider is responsible for monitoring and facilitating the consumer's health.

12.27.11. The provider is responsible for linkage and referral to address the consumer's acute medical and psychiatric health concerns.

12.27.12. A referral must be made for basic primary care at least once per year.

12.27.13. Health considerations shall be incorporated into a residential consumer's plan of services and providers shall be responsible for advocating that unmet needs be addressed. The service coordination agency shall be responsible for advocacy if the consumer has a service coordinator.

12.27.14. The provider shall assist the consumers in the service environment to develop a homelike atmosphere that addresses the preferences of the individuals residing in the environment, taking into consideration the financial resources of the residents.

12.27.15. The provider shall have a process in place for facilitating choices of activity and home management that respects the needs and preferences of the residents. The provider shall promote consumer choices and control within the household to the degree possible and clinically appropriate.

12.27.16. The provider shall develop and maintain a process for communication from one shift of staff to the next that conveys information necessary to conduct business in the home. Additionally, the provider shall supply a method of communicating information regarding consumers from one shift to the next in a confidential manner. Such communication shall include:

12.27.16.a. Any unusual incidents or events occurring during the shift;

12.27.16.b. Any health or behavioral issues which were of significance during the shift; and

12.27.16.c. Any medications that were taken by the consumer(s) during the shift.

12.27.17. If the home is owned or leased by a provider, it must have:

12.27.17.a. Adequate bedroom and living space for the number of consumers living within the home;

12.27.17.b. Private space for storing personal items for each consumer;

12.27.17.c. Adequate heating and cooling;

12.27.17.d. External windows in consumer bedrooms;

12.27.17.e. Adequate number of bathrooms and bathing facilities for the number of consumers residing within the home;

12.27.17.f. Hinged doors in bedroom doorways; and

12.27.17.g. Appropriate access for physically disabled or challenged consumers.

12.27.18. If the home is owned or leased by the consumer or DLR, the provider will respect the consumer's choice of living environment and resources while advocating for adequate housing and living conditions: *Provided,* That nothing obligates the provider to supply services in an unsafe environment. If the provider suspects that an incapacitated consumer is living in unsafe conditions, the provider is obligated to conform to statutes regarding mandatory reporting.

12.28. Standards for 24-hour Programs Requiring Medical Monitoring.

12.28.1. The provider must supply adequate staff monitoring of individuals in the program either through "eyes on" or technological methods, which do not violate the consumer's right to privacy and confidentiality. The initial plan of services will detail the necessary monitoring which may be modified on an ongoing basis as treatment moves forward and the plan of services is revised.

12.28.2. A medical staff person such as a physician, physician extender, registered nurse, or licensed practical nurse functioning within his or her scope of practice must evaluate each patient in the program each shift unless the physician documents no further need for medical monitoring, provided that no such order can occur until the consumer has been in the program for 24 hours.

12.28.3. The provider must have a policy regarding the face-to-face or telemedicine availability of medical staff to directly observe the patient after hours within 30 minutes as necessary and appropriate unless an arrangement is made for alternative medical care.

12.28.4. Programs providing medical stabilization must provide or arrange to obtain prescribed psychotropic and general medical medications after initial review by admitting medical staff, which shall be a physician or physician extender.

12.28.5. Programs providing medical stabilization must assist consumers in obtaining needed medications as part of discharge planning. The provider shall have a policy with associated procedures regarding the ability of consumers to retain personal medications if discharged against medical advice.

§64-11-13. Administrative Due Process; Administrative Appeals and Judicial Review.

13.1. The Secretary may deny the provider's application for licensure or licensure renewal; modify or revoke a license; or order any admissions ban or reduction in consumer census for one or more of the following reasons:

13.1.1. The provider fails to submit an adequate plan of correction without formally notifying the Secretary that the agency intends to exercise due process rights of appeal;

13.1.2. The Secretary makes a determination that fraud or other illegal action has been committed;

13.1.3. The provider violates federal, state, or local law relating to building, health, fire protection, safety, sanitation, or zoning, or payment of workers' compensation or employment security taxes, and fails to remedy such violation given sufficient notice;

13.1.4. The provider conducts practices which jeopardize the health, safety, welfare, or clinical treatment of consumers;

13.1.5. The provider fails or refuses to make records related to compliance with this rule available within a reasonable period of time as requested by the Secretary; or

13.1.6. The provider refuses to provide access to its service locations within a reasonable period of time as requested by the Secretary

13.2. Where the operation of a behavioral health or supportive service clearly constitutes an immediate danger of serious harm to consumers served by the program, the Secretary may issue an order of closure terminating operation of the specific segment of the provider's program array clearly giving rise to the immediate danger of serious harm. A provider appealing such a closure order may continue to operate the specified service or services pending exhaustion of administrative or judicial appeals, or both.

13.3. Notwithstanding the existence or pursuit of any other remedy, the Secretary may, in the manner provided by law, maintain an action in the name of the State for an injunction against any person, partnership, association, or corporation to restrain or prevent the establishment, conduct, management, or operation of any behavioral health center or violation of any provision of this rule without first obtaining a license therefore in the manner hereinbefore provided.

13.3.1. The Secretary may also seek injunctive relief if the establishment, conduct, management, or operation of any behavioral health center, whether licensed or not, jeopardizes the health, safety, or welfare of any or all of its consumers.

13.3.2. In determining whether a penalty is to be imposed, the Secretary will consider the following factors:

13.3.2.a. The gravity of the violation, including the probability that death or serious physical or emotional harm to a consumer has resulted, or could have resulted, from the program's actions or the actions of the owner or any staff employed by or associated with the program, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated;

13.3.2.b. What actions, if any, the owner or staff took to correct the violations;

13.3.2.c. Whether there were any previous violations at the behavioral health center; and

13.3.2.d. The financial benefits that the behavioral health center derived from committing or continuing to commit the violation.

13.4. Upon finding that a registered or licensed professional has violated the provisions of this rule, the Secretary will provide notice of the violation to the applicable professional licensing board.

13.5. Before any behavioral health center license is denied, suspended, or revoked, written notice will be given to the owner or owners of the program, stating the grounds of the denial, suspension, revocation, or penalty and the date set for any enforcement action.

13.5.1. The notice will be sent by certified mail to the owner or owners at the address where the program concerned is located.

13.5.2. Within 10 days of receipt of the notice, the owner or owners may submit a request for an administrative hearing or an informal meeting to address and resolve the findings.

13.5.3. The behavioral health center and its owner or owners will be entitled to be represented by legal counsel at the informal meeting or at the hearing at their own expense.

13.5.4. All of the pertinent provisions of W. Va. Code §§29A-14-1, *et seq.*, and W. Va. Code R.

§§69-1-1, *et seq.*, shall apply to and govern any hearing authorized by this rule.

13.5.5. If an owner fails to request a hearing within the time frame specified, he or she shall be subject to the full penalty imposed.

13.6. Informal dispute resolution. -- A provider or licensee adversely affected by an order or citation of a deficient practice issued pursuant to this article or by a citation issued for a deficient practice pursuant to federal law may request the informal dispute resolution process. A provider may contest a cited deficiency as contrary to law or unwarranted by the facts or both. A provider may choose to have the review completed by an independent review organization.

13.6.1. The Secretary will contract with independent review organizations to conduct an independent informal dispute resolution process. The independent review organizations will be accredited by the Utilization Review Accreditation Commission.

13.6.2. The informal dispute resolution process is not a formal evidentiary proceeding and utilizing the informal dispute resolution process does not waive the provider's right to a formal hearing.

13.6.3. The informal dispute resolution process consists of the following:

13.6.3.a. No later than 10 working days following the last day of the survey or inspection, or no later than 20 working days following the last day of a complaint investigation, the Secretary will transmit to the provider a statement of deficiencies committed by the provider. Notification of the availability of the informal dispute resolution process, including the option of an independent review organization, and an explanation of the informal dispute resolution process will be included in the transmittal.

13.6.3.b. Within 10 working days of receipt of the statement of deficiencies, the provider will return its plan to correct the cited deficiencies to the Secretary and may request in writing the informal dispute resolution process to refute the cited deficiencies. The provider must submit its supporting documentation and indicate its request for the informal process at the time of submission. No plan of correction is required for citations under appeal and not involving harm. The Secretary may not release the report until appealed citations are resolved.

13.6.3.c. Within five working days of receipt of the written request for the informal dispute resolution process made by a provider, the Secretary, dependent upon the provider's request, will refer the request to an internal team not associated with the survey event or to an independent review organization from the list of certified independent review providers approved by the state. The Secretary will vary the selection of the independent review organization on a rotating basis.

13.6.3.d. Within 10 working days of receipt of the written request for the informal dispute resolution process made by a provider, the informal dispute resolution conference will be scheduled unless additional time is requested by the provider. Before the informal dispute resolution conference, the provider may submit additional information.

13.6.3.e. Neither the Secretary nor the provider will be accompanied by counsel during the informal dispute resolution conference. The manner in which the informal dispute resolution conference is held is at the discretion of the independent review organization, but is limited to:

13.6.3.e.1. A desk review of written information submitted by the provider;

13.6.3.e.2. A telephonic conference; or

13.6.3.e.3. A face-to-face conference held at the provider's location or a mutually agreed upon location.

13.6.3.f. If the independent committee determines the need for additional information, clarification, or discussion after conclusion of the informal dispute resolution conference, the Secretary or the provider, or both, will present the requested information.

13.6.3.g. Within 10 working days of the informal dispute resolution conference, the review committee shall make a determination based upon the facts and findings presented and shall transmit a written decision containing the rationale for its determination to the Secretary.

13.6.3.h. If the Secretary disagrees with the determination, the Secretary may reject it and will issue an order setting forth the rationale for the reversal of the independent review committee's decision to the provider within 10 working days of receiving the determination. The Secretary may not assign review of the rejection to a designee.

13.6.3.i. If the Secretary accepts the determination, the Secretary will issue an order affirming the determination within 10 working days of receiving the independent reviewer's determination.

13.6.3.j. If the independent review committee determines that the original statement of deficiencies should be changed as a result of the informal dispute resolution process and the Secretary accepts the determination, the Secretary will transmit a revised statement of deficiencies to the provider within 10 working days of receipt of the determination.

13.6.3.k. Within 10 working days of receipt of the Secretary's order and the revised statement of deficiencies, the provider shall submit a revised plan to correct any remaining deficiencies to the Secretary.

13.6.4. Under the following circumstances, the provider is responsible for certain costs of the independent informal dispute resolution review, which shall be remitted to the Secretary within 60 days of the informal hearing order:

13.6.4.a. If the provider requests a face-to-face conference, the provider shall pay any costs incurred by the independent review that exceed the cost of a telephonic conference, regardless of which party ultimately prevails.

13.6.4.b. If the independent decision supports the entirety of the originally written contested deficiency or adverse action taken by the Secretary, the provider shall reimburse the Secretary for the cost charged by the independent review organization. If the independent decision supports some of the originally written contested deficiencies, but not all of them, the independent reviewer will rule as to approximate portions of the expense of the hearing to be paid by each party.

13.7. Administrative Appeals and Judicial Review.

13.7.1. Any owner of a behavioral health center who disagrees with the final administrative decision as a result of the hearing may, within 30 days after receiving notice of the decision, appeal the decision of the Circuit Court of Kanawha County, or in the county where the petitioner resides or does business.

13.7.1.a. The filing of a petition for appeal does not stay or supersede enforcement of the final decision or order of the Secretary. An appellant may apply to the circuit court for a stay of or to supersede the final decision or order.

13.7.1.b. The circuit court may affirm, modify, or reverse the final administrative decision. The owner or owners, or the Secretary may appeal the court's decision to the Supreme Court of Appeals.

13.8. Any person aggrieved by an order or other action by the Secretary based on this rule may request in writing a hearing by the Secretary in accordance with "Rules of Procedure for Contested Case Hearings and Declaratory Rulings," W. Va. Code R. §§69-1-1, *et seq.*, a copy of which may be obtained from the Secretary of State.