

Title 64 Series 11
Department of Health and Human Resources
Office of Inspector General
Office of Health Facility Licensure and Certification
BEHAVIORAL HEALTH CENTERS LICENSURE

Summary of Public Comments

Comment

§64-11-3. We may want to consider adding definitions for treatment strategy and treatment plans that clearly explain the difference between the two.

Response

The Department has reviewed this comment. Existing provisions in the rule address this issue and, therefore, no changes were made.

Comment

§64-11-3.22. Volunteer has been removed.

Response

The Department has reviewed this comment. This comment is general in nature and offers no specific areas for amendment.

Comment

§64-11-5.1.25. and 5.2.1. Please add or Designee. Sometimes it not efficient to have the CEO involved. They may assign someone for this specific duty.

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-5.4.1. BH Providers are experts. We don't see where "respect" for a consumer's decision is appropriate in a licensure rule.

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-5.4.3. As we have reported, the decisions should be vbased [sic] on the treatment plan. Basing services on the assessment leads to an unfunded mandate for providers.

Response

The Department has reviewed this comment. Existing provisions in the rule address this issue and, therefore, no changes were made.

Comment

§64-11-6.2.2. This is overly burdensome and very expensive to manage. In order to meet this requirement, the provider has to get documentation for insurance, state inspection, and registration from every staff. The provider has to notify the staff when each requirement is due, making arrangements to get the info, filing the info, tracking the info. Staff time and postage necessary to meet this requirement is very expensive. Allow staff to attest that they will follow all laws and regulations as required by the WV Department of Motor Vehicles. The requirement to produce evidence of insurance is unrealistic anyway. Staff may produce an insurance card that shows effective dates for a year, but if they miss a monthly insurance payment, it is invalid. Staff can take a picture of an inspection sticker on any random care.

Response

The Department has reviewed this comment. Existing provisions in the rule address this issue and, therefore, no changes were made.

Comment

§64-11-7.4. Boards of Directors have the following roles: Hiring and Firing of the CEO, Financial monitoring, and strategic planning for the organization. Policies and procedures belong to the administration. Suggest deleting 7.4.1. and 7.4.2. and 7.4.3.

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-7.4. Language is written to infer that providers significantly alter the way subsidiary mtgs are conducted and to reorganize their current boards. What is the intent behind the particular proposal and is the state wanting the governing body members to be 100 percent independent from the organization?

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-7.4.3. This language prohibits conflict of interest without fully defining it, or considering magnitude. For example, if a board member's child worked as a direct care employee in the company it would violate this rule. Can instead reference the IRS's rule re: conflict of interest for nonprofits? These rules require board members to disclose potential conflicts, and recuse themselves from decisions related to a conflict.

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-7.4.3. Conflicts of Interest are inherent in all types of business, especially in a small state like WV. Please delete this section. We don't believe [sic] that state licensing should be attempting to dictate [sic], who should serve on Boards of Directors. This is an example of governmental [sic] overreach. Many individuals serve on multiple boards of directors. The issue should be disclosure of conflicts of interest.

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-7.5.9. This is read to impose requirements for client authorizations that go above HIPAA. For example, HIPAA allows disclosure without written authorization for purposes of treatment (providing, coordinating, or managing an individual's care by one or more healthcare providers), payment, and health care operations. As currently drafted, this seems to require that providers obtain written authorization in those instances. Is that the intent here?

Response

The Department has reviewed this comment. Existing provisions in the rule address this issue and, therefore, no changes were made.

Comment

§64-11-7.5.10.b.5. This appears to require all consumer records contain a treatment plan. Consumers who receive only outpatient services will not have a treatment plan, but rather a treatment strategy. Recommend changing the language to read “treatment plans, treatment strategy, or special treatment procedures.”

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-9.2.4. Allows Support Specialist to be 16, but doesn't redirect [sic] population. Should a 16 yo [sic] work with a 30 yo[sic]?

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-9.2.4. What will be the scope of reference for “duties assigned” and creates a concern of interpretation of purposes of citations. Additionally, we would recommend changing the word “capable” to perhaps “trained”.

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-9.2.12. What and whom will form the basis of determining [sic] the “adequate number of qualified personnel [sic]?”

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-9.2.12. This an arbitrary rule with only the opinion of the reviewer to determine whether there were or were not enough staff present. Suggest: Modification of the language in the rule to clarify the determination of adequate.

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-9.5.1. Volunteer is included, contradicts 3.22.

Response

The Department has reviewed this comment. Existing provisions in the rule address this issue and, therefore, no changes were made.

Comment

§64-11-9.7.6. How will compliance be assessed for the new requirements in this section?

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes are made.

Comment

§64-11-10.1.4. Recommend adding a definition to clarify the meaning of 24-Hour Residential Treatment Facilities. Specifically, does this include community-based residential programs not owned by the provider?

Response

The Department has reviewed this comment. Existing provisions in the rule address this issue and, therefore, no changes were made.

Comment

§64-11-10.1.4.k. It is hard to argue with ensuring trash removal weekly. However, the next request is likely to be “verification” that the trash is collected weekly which leads to unnecessary administration. Recommend simply indicating “solid waste, including [sic] garbage and refuse, shall be removed to maintain the residence in sanitary condition.” The surveyor can then cite the provider if it is unsanitary – regardless of how frequently the trash is/is not removed.

Response

The Department has reviewed this comment. Existing provisions in the rule address this issue and, therefore, no changes were made.

Comment

§64-11-10.1.4.m. It is impossible and not appropriate to rid the grounds of insects [sic]. Suggest deleting.

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-10.1.4.n. This requirement is reasonable for properties owned and operated by the licensed provider. However, it is unreasonable to provide in community-based residential programs not owned by the provider.

Response

The Department has reviewed this comment. Existing provisions in the rule address this issue and, therefore, no changes were made.

Comment

§64-11-10.2.4. In some cases we do not want consumers to have access to staff phone numbers, which can include personal cell phone numbers. For example, as written this would require psychologist and manager numbers to be left out for access by consumers on a CSU. Recommend this be restricted to group homes, and eliminate the requirement for on-call staff numbers to be posted unless the client is left alone in the residence for periods of time.

Response

The Department has reviewed this comment. Existing provisions in the rule address this issue and, therefore, no changes were made.

Comment

§64-11-10.2.12. Mechanical ventilation of soiled areas and venting electric dryers to the outside can be very problematic in crisis stabilization facilities and some group homes where the structures are older. Can we grandfather existing programs and establish this on a go-forward basis?

Response

The Department has reviewed this comment. Existing provisions in the rule address this issue and, therefore, no changes were made.

Comment

§64-11-10.2.12. This added sections seems extremely [sic] specific and would require extensive and impractical renovations to comply.

Response

The Department has reviewed this comment. Existing provisions in the rule address this issue and, therefore, no changes were made.

Comment

§64-11-10.2.13. This new section suggests that eliminating health and safety risks. Risk is a part of life, as we see today with COVID-19. It is impossible to comply with this section.

Response

The Department has reviewed this comment. Existing provisions in the rule address this issue and, therefore, no changes were made.

Comment

§64-11-12.2.2. This section should be eliminated as the consumer may require one service that is not offered. This rule would prevent the client from receiving other needed services.

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-12.3.4. Recommend changing in read “The initial assessment shall also include recommendations for further evaluation as needed to identify a consumer’s physical, emotional, and behavioral needs; social strengths; and preferences prior to the finalization of the treatment plan or treatment strategy.”

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-12.7.2. It is important to clearly define treatment plan and treatment strategy, as well as the circumstances in which each is required. This should closely be closely aligned with the Medicaid regulations to avoid treatment planning requirements not funded under Medicaid. For example, a treatment strategy does not contain all the items listed in 12.7.2.a. through 12.7.2.j. Recommend convening a small group of OHFLAC and provider personnel to craft this section of the code.

Response

The Department has reviewed this comment. Existing provisions in the rule address this issue and, therefore, no changes were made.

Comment

§64-11-12.9. Recommend making terminology consistent with respect to “treatment plan” and “plan of service.” Also recommend clarifying treatment strategies do not require formal reviews under this section.

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-12.10.3.c. Recommend making it clear this does not apply to in cases with treatment strategy (and no treatment plan).

Response

The Department has reviewed this comment. Existing provisions in the rule address this issue and, therefore, no changes were made.

Comment

§64-11-12.10.3.d. Recommend making it clear this does not apply to in cases with treatment strategy (and no treatment plan).

Response

The Department has reviewed this comment. Existing provisions in the rule address this issue and, therefore, no changes were made.

Comment

§64-11-12.10.3.e. Recommend making it clear this does not apply to in cases with treatment strategy (and no treatment plan).

Response

The Department has reviewed this comment. Existing provisions in the rule address this issue and, therefore, no changes were made.

Comment

§64-11-12.10.3.e.4. Recommend making it clear this does not apply to in cases with treatment strategy (and no treatment plan).

Response

The Department has reviewed this comment. Existing provisions of the rule address this issue and, therefore, no changes were made.

Comment

§64-11-12.10.3.f. Recommend making it clear this does not apply to in cases with treatment strategy (and no treatment plan)

Response

The Department has reviewed this comment. Existing provisions of the rule address this issue and, therefore, no changes were made.

Comment

§64-11-12.11.2. New language prohibits discharging [sic] patients without appropriate appointments and services in place. This may be an issue of terminology, but if a client leaves the crisis unit and cannot be reached, or if they have abandoned services, we may “discharge” the client without appointments or other services in place. Maybe we could change the wording to stipulate “Other than for noncompliance, consumers may not be...”?

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-12.12.3.d. This language requires any medication error, including a mistake in documentation, be reported immediately to the prescribing physician. Recommend changing it to read “Medication errors, as defined in this rule, must be addressed according to written procedures. This includes properly recording it in a consumer’s record, and immediately notifying the prescribing physician of any adverse drug reactions.”

Response

The Department has reviewed this comment. Existing provisions in the rule address this issue and, therefore, no changes were made.

Comment

§64-11-12.13.2.b. Recommend changing the language to “Provide staff to consumer ratios as defined in the consumer’s treatment plan.”

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-12.28.10. What and whom will form the basis of determining the “adequate staff coverage?”

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-12.28.10. Recommend changing the language to “providing staff in accordance with staff to client ratios defined in the consumer’s treatment plan.”

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-13.3. The last line mentioning each day of continuing violations equating to separate violations indicates no opportunity for the provider to correct the action. This line should be clarified to account for providers working to address the violation in a timely manner.

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§64-11-13.3.1. Allowing a license to be limited, revoked, or suspended for any violation of any provision of the rule is extremely broad. We would suggest that this Section be narrowed and at a minimum, provide behavioral health center with a process to correct such violation.

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Comment

§§64-11-13.3., 13.3.1., 13.6.6, and 13.7. Together these provisions permit DHHR to fine, limit, suspend, or revoke a behavioral health center’s license and ability to operate based on a single “violation of any provision of this rule”. Section 13.6.6. then specifies the above actions cannot be delayed by due process actions (i.e., administrative hearings, etc.). 13.7. then states there is no informal dispute resolution in these cases. It appears DHHR can close [sic] a center immediately for a single violation of the rule, and the center has no due process rights to address issues of fairness prior to the closure. This seems heavy-handed [sic]. There should at least be some level of expedited, independent due process before DHHR can close a center.

Response

The Department has reviewed this comment and finds clarification is needed; therefore, some changes were made.

Section / Page	Title	Comments
64-11-3	Definitions	We may want to consider adding definitions for treatment strategy and treatment plans that clearly explain the difference between the two.
7.4.3	Governing Body	This language prohibits conflict of interest without fully defining it, or considering magnitude. For example, if a board member's child worked as a direct care employee in the company it would violate this rule. Can we instead reference the IRS's rule re: conflict of interest for nonprofits? These rules require board members to disclose potential conflicts, and recuse themselves from decisions related to a conflict.
7.5.10.b.5	Consumer Record Maintenance	This appears to require all consumer records contain a treatment plan. Consumers who receive only outpatient services will not have a treatment plan, but rather a treatment strategy. Recommend changing the language to read "treatment plans, treatment strategy, or special treatment procedures".
10.1.4	Requirements for Group Homes and 24-Hour Residential Treatment Facilities	Recommend adding a definition to clarify the meaning of 24-Hour Residential Treatment Facilities. Specifically, does this include community-based residential programs not owned by the provider?
10.1.4.h	Requirements for Group Homes and 24-Hour Residential Treatment Facilities	This requirement is reasonable for properties owned and operated by the licensed provider. However, it is unreasonable to provide in community-based residential programs not owned by the provider.
10.1.4.k	Requirements for Group Homes and 24-Hour Residential Treatment Facilities	It is hard to argue with ensuring trash removal weekly. However, the next request is likely to be "verification" that the trash is collected weekly which leads to unnecessary administration. Recommend simply indicating "solid waste, including garbage and refuse, shall be removed to maintain the residence in sanitary condition." The surveyor can then cite the provider if it is unsanitary - regardless of how frequently the trash is/is not removed.
10.2.4	Safety and Environmental Quality	In some cases we do not want consumers to have access to staff phone numbers, which can include personal cell phone numbers. For example, as written this would require psychologist and manager numbers to be left out for access by consumers on a CSU. Recommend this be restricted to group homes, and eliminate the requirement for on-call staff numbers to be posted unless the client is left alone in the residence for periods of time.

10.2.12	Safety and Environmental Quality	Mechanical ventilation of soiled areas and venting electric dryers to the outside can be very problematic in crisis stabilization facilities and some group homes where the structures are older. Can we grandfather existing programs and establish this on a go-forward basis?
12.3.4	Assessments and Intake Procedures	Recommend changing to read "The initial assessment shall also include recommendations for further evaluation as needed to identify a consumer's physical, emotional, and behavioral needs; social strengths; and preferences prior to the finalization of the treatment plan or treatment strategy. "
12.7.2	Plan of Care or Treatment Strategy	It is important to clearly define treatment plan and treatment strategy, as well as the circumstances in which each is required. This should closely be closely aligned with the Medicaid regulations to avoid treatment planning requirements not funded under Medicaid. For example, a treatment strategy does not contain all the items listed 12.7.2.a through 12.7.2.j. Recommend convening a small group of OHFLAC and provider personnel to craft this section of the code.
12.9	Reviews of Plans of Service	Recommend making terminology consistent with respect to "treatment plan" and "plan of service". Also recommend clarifying treatment strategies do not require formal reviews under this section.
12.10.3.c	Critical Treatment Junctures	Recommend making it clear this does not apply to in cases with treatment strategy (and no treatment plan)
12.10.3.d	Critical Treatment Junctures	Recommend making it clear this does not apply to in cases with treatment strategy (and no treatment plan)
12.10.3.e	Critical Treatment Junctures	Recommend making it clear this does not apply to in cases with treatment strategy (and no treatment plan)
12.10.3.e.4	Critical Treatment Junctures	Recommend making it clear this does not apply to in cases with treatment strategy (and no treatment plan)
12.10.3.f	Critical Treatment Junctures	Recommend making it clear this does not apply to in cases with treatment strategy (and no treatment plan)
12.11.2	Discharge Planning	New language prohibits discharging patients without appropriate appointments and services in place. This may be an issue of terminology, but if a client leaves the crisis unit and cannot be reached, or if they have abandoned services, we may "discharge" the client without appointments or other services in place. Maybe we could change the wording to stipulate "Other than for noncompliance, consumers may not be...."?

12.12.3.d	Medication Services	This language requires any medication error, including a mistake in documentation, be reported immediately to the prescribing physician. Recommend changing it to read "Medication errors, as defined in this rule, must be addressed according to written procedures. This includes properly recording it in a consumer's record, and immediately notifying the prescribing physician of any adverse drug reactions."
12.13.2.b	Special Services and Populations	Recommend changing the language to "Provide staff to consumer ratios as defined in the consumer's treatment plan."
12.28.10	Standards for Residential Services	Recommend changing the language to "providing staff in accordance with staff to client ratios defined in the consumer's treatment plan."
13.3, 13.3.1, 13.6.6, and 13.7	Administrative Due Process	Together these provisions permit DHHR to fine, limit, suspend, or revoke a behavioral health center's license and ability to operate based on a single "violation of any provision of this rule". Section 13.6.6 then specifies the above actions cannot be delayed by due process actions (i.e. administrative hearings, etc.). 13.7 then states there is no informal dispute resolution in these cases. It appears DHHR can close a center immediately for a single violation of the rule, and the center has no due process rights to address issues of fairness prior to the closure. This seems heavy-handed. There should at least be some level of expedited, independent due process before DHHR can close a center.
5.2.1; 5.1.25	CEO	Please add or Designee. Sometimes it not efficient to have the CEO involved. They may assign someone for this specific duty.
5.4.1	Code of Conduct	BH Providers are experts. We don't see where "respect" for a consumer's decision is appropriate in a licensure rule.
5.4.3	Assessments	As we have reported, the decisions should be vbased on the treatment plan. Basing services on the assessment leads to an unfunded mandate for providers.

6.2.2	Vehicle inspections	This is overly burdensome and very expensive to manage. In order to meet this requirement, the provider has to get documentation for insurance, state inspection, and registration from every staff. The provider has to notify the staff when each requirement is due, making arrangements to get the info, filing the info, tracking the info. Staff time and postage necessary to meet this requirement is very expensive. Allow staff to attest that they will follow all laws and regulations as required by the WV Department of Motor Vehicles. The requirement to produce evidence of insurance is unrealistic anyway. Staff may produce an insurance card that shows effective dates for a year, but if they miss a monthly insurance payment, it is invalid. Staff can take a picture of an inspection sticker on any random car.
7.4	Governing Body	Boards of Directors have the following roles: Hiring and Firing of the CEO, Financial monitoring, and strategic planning for the organization. Policies and procedures belong to the administration. Suggest deleting 7.4.1 and 7.4.2 and 7.4.3
7.4.3	Governing Body	Conflicts of Interest are inherent in all types of business, especially in a small state like WV. Please delete this section. We don't believe that state licensing should be attempting to dictate, who should serve on Boards of Directors. This is an example of governmental overreach. Many individuals serve on multiple boards of directors. The issue should be disclosure of conflicts of interest.
9.2.12	Staffing	This an arbitrary rule with only the opinion of the reviewer to determine whether there were or were not enough staff present. Suggest: Modification of the language in the rule to clarify the determination of adequate.
10.1.4m	Insects	It is impossible and not appropriate to rid the grounds of insects. Suggest deleting.
10.2.12	Laundry	This added sections seems extremely specific and would require extensive and impractical renovations to comply.
10.2.13	Safety	This new section suggests that eliminating health and safety risks. Risk is a part of life, as we see today with COVID-19. It is impossible to comply with this section.
12.2.2		This section should be eliminated as the consumer may require one service that is not offered. This rule would prevent the client from receiving other needed services.
3.22 page 5	Employee	Volunteer has been removed.
9.5.1 page 26	Employer, Volunteer, Student Records	Volunteer is included, contradicts 3.22

9.2.4 page 23	Personel Practices	Allows Support Specialist to be 16, but doesn't restirect population. Should a 16 yo work with a 30 yo?
Section 7.4	Governing Body	Language is written to infer that providers significantly alter the way subsidiary mtgs are conducted and to reorganize their current boards. What is the intent behind the particular proposal and is the state wanting the governing body members to be 100 percent independent from the organization?
Section 7.5.9	Release of Consumer Information and Records	This is read to impose requirements for client authorizations that go above HIPAA. For example, HIPAA allows disclosure without written authorization for purposes of treatment (providing, coordinating, or managing an individual's care by one or more healthcare providers), payment, and health care operations. As currently drafted, this seems to require that providers obtain written authorization in those instances. Is that the intent here?
Section 9.7.6	Orientation of New Staff	How will compliance be assessed for the new requirements in this section?
Section 9.2.4	Deployment and Supervision of Staff	What will be the scope of reference for "duties assigned" and creates a concern of interpretation of purposes of citations. Additionally, we would recommend changing the word "capable" to perhaps "trained."
Section 9.2.12	Deployment and Supervision of Staff	What and whom will form the basis of determing the "adequate number of qualified personel?"
Section 12.28.10	Services	What and whom will form the basis of determining the "adequate staff coverage?"
Section 13.3	Administrative Due Process, Administrative Appeals, and Judicial Review	The last line mentioning each day of continuing violations equating to separate violations indicates no opportunity for the provider to correct the action. This line should be clarified to account for providers working to address the violation in a timely manner.
Section 13.3.1	Administrative Due Process, Administrative Appeals, and Judicial Review	Allowing a license to be limited, revoked or suspended for any violation of any provision of the rule is extremely broad. We would suggest that this Section be narrowed and at a minimum, provide behavioral health center with a process to correct such violation.