



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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3/30/2023 12:54:21 PM

Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Health TITLE-SERIES: 64-26
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: PROCEDURES PERTAINING TO THE
DANGEROUSNESS ASSESSMENT ADVISORY
BOARD

CITE STATUTORY AUTHORITY: 27-6A-2

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) HB2648

Section 64-5-1(b) Passed On 3/6/2023 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 1, 2023

This rule shall terminate and have no further force or effect from the following date:

August 01, 2028

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

Yes

April L Robertson -- 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
WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 26
PROCEDURES PERTAINING TO THE DANGEROUSNESS
ASSESSMENT ADVISORY BOARD

§64-26-1. General.

1.1. Scope. -- This rule explains the responsibilities and administration of the Dangerousness Assessment Advisory Board.

1.2. Authority. -- W. Va. Code §27-6A-2(h) and §27-6A-13.

1.3. Filing Date. -- March 30, 2023.

1.4. Effective Date. -- April 1, 2023.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2028.

§64-26-2. Application and Enforcement.

2.1. Application. -- This rule applies to the Dangerousness Assessment Advisory Board and the review and consideration of referrals from circuit courts to the board.

2.2. Enforcement. -- This rule is enforced by the Office of Health Facilities, Department of Health and Human Resources, in consultation with the chairperson of the board.

§64-26-3. Definitions.

3.1. Administrator. -- The person selected by the chairperson of the board to oversee the administrative affairs of the board and to facilitate the operation of the board to promote the provision of objective expertise to circuit court judges.

3.2. Board. -- The Dangerousness Assessment Advisory Board created pursuant to W. Va. Code §27-6A-13 to provide opinion, guidance, and informed objective expertise to circuit courts as to the appropriate level of custody or supervision necessary to ensure that persons who have been judicially determined to be incompetent to stand trial and not restorable or not guilty by reason of mental illness are in the least restrictive environment available to protect the person, other persons and the public generally.

3.3. Case Referral. -- A written request by a circuit court judge by order or other writing that seeks opinion, guidance, or objective expertise from the board regarding the proposed placement plan or the proposed less restrictive placement of a forensic patient.

3.4. Chairperson -- The person nominated by the board at which a quorum is present and who is a board-certified forensic psychiatrist as defined by W. Va. Code §27-6A-13(a)(6) or a forensic psychologist as defined by W. Va. Code §27-6A-13(a)(7).

3.5. Evaluation. -- A forensic competency evaluation, forensic criminal responsibility evaluation, dangerousness risk assessment, or any forensic evaluation of a forensic patient.

3.6. Forensic Placement Audit. -- When considering case referrals or providing guidance otherwise requested by circuit court judges, the board may identify placement obstacles or barriers and develop one or more recommendations for review and consideration by the secretary, the court, or the Legislative Oversight Commission on Health and Human Resources Accountability to potentially redress such obstacles or barriers and to promote appropriate less restrictive placements.

3.7. Forensic Patient. -- A person who has been found incompetent to stand trial and not restorable or not guilty by reason of mental illness in accordance with W. Va. Code §27-6A-1 *et seq.* and who has been committed to or ordered to be placed at a mental health facility, jail, correctional facility, or other location. Forensic patients may also include juveniles subject to W. Va. Code §49-4-727 *et al.*

3.8. Medical Director. -- The chief medical officer of William R. Sharpe, Jr., Hospital as defined by W. Va. Code §27-1-13 who convenes a meeting of the board in accordance with W. Va. Code §27-6A-13(c).

3.9. Mental Health Facility. -- A mental health facility as defined by W. Va. Code §27-1-9.

3.10. Secretary. -- The secretary of the Department of Health and Human Resources.

§64-26-4. Severability.

4.1. Severability. -- If any sections or subsections of this rule are determined to be invalid, it shall not be construed to invalidate any of the provisions not otherwise affected.

§64-26-5. Conduct of Dangerousness Assessment Advisory Board.

5.1. Duties. The board shall review case referrals and other requests made to it and provide informed and objective recommendations regarding such case referrals or requests in accordance with W. Va. Code §27-6A-13(b). In its discretion, the board may perform a forensic placement audit in connection with any case referral to promote the purpose of the board and to promote appropriate placements in less restrictive settings.

5.2. Chairperson. The board shall elect a chairperson who shall preside at all regular or special meetings of the board. In the absence of the chairperson, the chairperson shall designate a board member to preside at any meeting of the board. The chairperson shall have the following specific duties: (a) call and conduct all board meetings; (b) participate in planning agendas for board meetings; (c) speak as the official representative of the board; (d) designate members of the board or the administrator to appear on the board's behalf before the West Virginia Legislature or at other forums; and (e) supervise the duties of the administrator.

5.3. Administrator. The administrator will be the primary point of contact for board members on administrative matters and operations of the board.

5.4. Regular Meetings. The board shall convene at least once each month to review pending case referrals and make recommendations regarding case referrals. A quorum consists of six members, two of whom must meet the criteria of W. Va. Code §27-6A-13(a)(6) and §27-6A-13(a)(7). Meeting location will be determined by the administrator in consultation with the chairperson and can be conducted in person or electronically via visual communication. The administrator will prepare a meeting agenda in consultation with the medical director and the board chairperson, if applicable, and provide the agenda to board members at least five days prior to a regular meeting.

5.5. Special Meetings. A special meeting at which a quorum is present may be convened at the request of the medical director; the written request of at least four members of the board to the administrator; or at the administrator's recommendation if a circuit court makes a case referral that requires consideration prior to the board's next regular meeting. The administrator will prepare a meeting agenda in consultation with the medical director and the board chairperson, if applicable.

5.6. Records for Case Referrals. The board shall have access to all court records and mental health records available to the circuit court and all documents consulted by the medical director or the statewide forensic clinical director regarding the treatment and potential placement of the forensic patient for whom a case referral or other request is under consideration. At a minimum, the documents of the forensic patient shall include all dangerousness risk assessments; all psychological testing or assessments at current mental health facility; the conditional release plan; all notes from community integration if applicable; all behavior notes; medical provider notes for last 90 days; medication administration list for last 90 days; placement date list (pink/orange sheet) maintained by the mental health facility; psychiatric evaluation(s); data from the START; and relevant pleadings, e.g., criminal complaint. The Forensics Department at William R. Sharpe, Jr., Hospital shall make all such documents available to board members via a secure and encrypted website.

5.7. Recommendations in Response to Case Referrals. The board shall develop its recommendations based solely on the records available as defined in subsection 5.6. The board may not conduct any adversarial, contested, or evidentiary hearings in developing its recommendations. Any recommendation by the board requires the approval of at least five board members (two of whom must meet the criteria of W. Va. Code §27-6A-13(a)(6) and §27-6A-13(a)(7)) at which a quorum is present. Recommendations by the board in response to a case referral shall be communicated to the requesting circuit court via letter by the chairperson within 10 days after any regular meeting or special meeting at which the case referral was considered. The board shall provide responsive and objective guidance to a court's inquiry based on available clinical information and records the board shall further provide any information or recommendations to the court that the board in its independent judgment deems appropriate to assist the court with matters including, but not limited to, treatment, placement, discharge, release, community outings, custody, supervision, and barriers or obstacles to treatment, placement, discharge, release, community outings, custody, and supervision of forensic patients.

5.8. Recusal. Any member of the board who within the prior two years has performed an evaluation of a forensic patient, received remuneration as a result of an evaluation of a forensic patient, or offered or provided supervisory review or approval of an evaluation of a forensic patient under the authority of his or her professional license shall be recused from any consideration of any case referral involving such forensic patient and shall not participate in any board proceedings or discussions related to any such case referral. Notwithstanding anything herein to the contrary, the board in consultation with the board's counsel may determine that recusal is unnecessary based on the peculiar

circumstances of the case referral, the disclosures of the board member, or the nature of the prior evaluation.

5.9. Mail. The Office of Health Facilities, West Virginia Department of Health and Human Resources, located at 100 Dee Drive, Charleston, West Virginia 25311, shall be responsible for the receipt of all correspondence and case referrals from the courts. The Office of Health Facilities shall provide copies of all correspondence and case referrals promptly to the chairperson and the administrator.

§64-26-6. Confidentiality.

6.1. Subject to case referral recommendations required by section 5.7. of this rule, all proceedings and communications of the board and opinions expressed by members of the board and the administrator are confidential, not subject to subpoena, and not subject to public disclosure or dissemination. The provisions of W. Va. Code §6-9A-1 *et seq.* and W. Va. Code §29B-1-1 *et seq.* are inapplicable to the board and the board's operations.

§64-26-7. Immunity.

7.1. Members of the board shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of their duties or responsibilities on the board: *Provided*, That nothing in this subsection shall be construed to protect any person from suit or liability, or both, for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person or a board member who fails to recuse herself or himself from participating in any case referral as required by subsection 5.8.

§64-26-8. Compensation.

8.1. Each board member whose regular salary is not paid by the State of West Virginia shall be paid the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Reimbursement for expenses shall not be made, except upon an itemized account, properly certified by the members of the board. All reimbursement for expenses shall be paid out of the State Treasury upon a requisition upon the State Auditor.