

Chapter IV  
Director



L. Clark Hansbarger, M.D.  
Director

# State of West Virginia

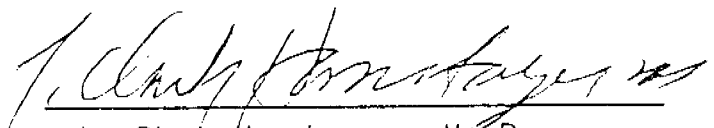
DEPARTMENT OF HEALTH  
CHARLESTON 25305

## NOTICE OF PUBLIC HEARING

Pursuant to Section five, Article three, Chapter twenty-nine-A of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, the West Virginia Department of Health shall convene a public hearing at 10:00 a.m. on August 15, 1983, P & G Building, Conference Room 1, 2019 Washington Street, East, Charleston, West Virginia 25305 on for the purpose of taking evidence pertaining to the filing of proposed Behavioral Health Licensing Regulations, Chapter 27-9, Series 1 (1984).

Any citizen or other interested party may appear in person to present evidence. Any citizen or other interested party may submit written evidence to the Regulatory Services Program of the West Virginia Department of Health by mail to 1800 Washington Street, East, Charleston, West Virginia 25305 or in person at Room 10, P & G Building, 2019 Washington Street, East, Charleston, West Virginia 25305 not later than August 15, 1983 at 4:30 p.m. The Department request that parties wishing to comment make an effort to submit written copies of their comments in order to facilitate review of said comments.

The issues to be heard shall be limited to the actual information contained in the proposed and abovementioned regulations. Copies of the regulations may be obtained from the Regulatory Services Program, address heretofore appearing or by telephoning 304-348-0050.

  
L. Clark Hansbarger, M. D.  
Director

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

THIS DATE 7/15/83  
Administrative Law Division

Entered

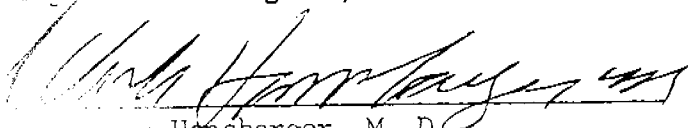
FISCAL NOTE FOR PROPOSED RULES

Rule No. 27-9, Series I Subject Behavioral Health Licensure Regulation  
 Type of Rule:  Legislative  Interpretive  Procedural  
 Agency Health Department Address 1800 Washington Street, East  
Charleston, WV 25305

Authorized Representative \_\_\_\_\_ Phone 348-0050

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

Explanation of above estimates.  
 This rule is a revision and updating of an existing rule and there is no change anticipated in the costs needed to administer the rule. The number of centers is not expected to increase appreciably. The present cost to the Health Department, approximately \$50,200 per year to review 14 comprehensive regional behavioral health centers and 25 smaller centers, is already included in the ongoing operating budget. There is also an ongoing cost to the State Fire Marshall's office which will not change.  
 Date July 15, 1983 Agency Health Department

Signature of Agency Head  
  
 William Hansbarger, M. D.  
 Director

Signature of Authorized Representative  
 \_\_\_\_\_

FILED IN THE OFFICE OF  
**A. JAMES MANCHIN**  
 SECRETARY OF STATE  
 THIS DATE 7/15/83  
 Administrative Law Division

STATEMENT OF ECONOMIC IMPACT OF PROPOSED RULES OR REGULATIONS

Health Department

27-9, Series I

Subject Behavioral Health  
Licensure Regulations

1. Explanation of Overall Economic Impact of Proposed Rule.

2. Economic Impact on State Government.

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

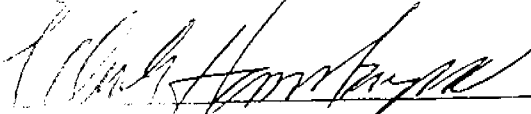
There is no change in the estimated cost for a center to be licensed. The cost of experiencing a licensure survey is estimated to range from \$1500-\$2500 for a large comprehensive regional behavioral health center and to be approximately \$800 for a smaller center (primarily staff time during a survey). Surveys are conducted every two years except for yearly visits at residential programs.

4. Economic Impact on Citizens/Public at Large.

Date July 15, 1983

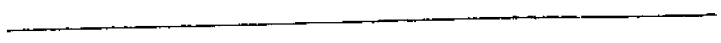
Agency Health Department

Signature of Agency Head



Mark Hansbarger, M.D.  
Director

Signature of Authorized Representative



FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 7/15/83  
Administrative Law Division

PROPOSED

WEST VIRGINIA LEGISLATIVE RULES  
BOARD OF HEALTH

Chapter 27-9  
Series I  
(1984)

Behavioral Health Licensure Regulations

July 5, 1983

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 7/15/83  
Administrative Law Division

West Virginia Legislative Rule  
Board of Health  
Behavioral Health Licensure  
Chapter 27-9  
Series I  
(1984)  
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WEST VIRGINIA LEGISLATIVE RULES

BOARD OF HEALTH

Chapter 27

Series 1

(1984)

Subject: Licensure of Behavioral Health Centers

Section 1. General

1.1. Scope - These legislative rules establish licensure regulations to operate a center or institution or part thereof, to provide outpatient, residential or other services to contribute to the care and treatment of the mentally ill or mentally retarded, or prevention of such disorders.

A comprehensive regional behavioral health center is one designated by the West Virginia Department of Health to provide mandated services and which is subject to contract compliance review.

1.2. Authority - These legislative rules are issued under the authority of Chapter 27, Article 9, Section 1; and, Chapter 27, Article 17, Section 3, of the West Virginia Code of 1931, as amended.

1.3. Filing Date - These legislative rules were promulgated on the\*\*\* day of \*\*\*\*\*, 19\*\*, and were filed on the \*\*\* day of \*\*\*\*\*, 19\*\*, in the Secretary of State's Office.

1.4. Effective Date - These legislative rules became effective on the \*\*\* day of \*\*\*\*\*, 19\*\*.

Section 2. Suppression and Repeal of Former Regulations - These legislative rules supercede and repeal Department of Mental Health Regulations for Licensing Psychiatric and Other Related Facilities and Programs, Chapter 27-1A, Series II (1971).

Section 3. Application and Enforcement

3.1. Application - These legislative rules apply to profit and non-pro-

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fit 24-hour residential treatment or training programs with a capacity to service more than four residents. A center which operates a 24 hour hospital-based treatment unit shall have that unit licensed under West Virginia Regulations for Licensing Hospitals.

3.2. Exceptions - These regulations do not cover hospitals, nursing homes, personal care homes, boarding homes, non-supervised apartment living, facilities licensed or certified by the Department of Human Services which do not provide treatment to the mentally ill, mentally retarded, or substance abuser e.g. foster care homes, self-help groups, information and referral services, psychiatric inpatient services, and private practices by licensed practitioners within the scope of their professional license.

3.3. Enforcement - These rules shall be enforced by the West Virginia Department of Health.

#### Section 4. Definitions

Singular-Plural and Masculine-Feminine. Wherever in these Regulations, the singular or plural is used, it can be any number; and when the masculine or feminine is used, it can include either sex.

4.1. Administrative - Relates to the fiscal and general management of a facility rather than to the direct provision of services to clients.

4.2. Admission - A client entry into one or more of the services provided by the facility.

4.3. Ancillary Services - Activities that complement the provision of behavioral health services, e.g., pharmacy, laboratory, or transportation services.

4.4. Apartment Living - A residence for individuals who have indicated an ability to live independently or with minimal supervision.

4.5. Applicant - The person who submits an application for a license or for renewal of a license to operate a behavioral health center.

4.6. Behavioral Health Services - Those services intended to help individuals gain or regain the capacity to function adaptively in their environment, to care for oneself and family, and to be accepted by society. This includes individuals with emotional or mental disorders, alcohol or drug abuse problems, and mental retardation or other developmental disabilities.

4.7. Boarding Home - An establishment which is held forth to the public as providing, or which is operated to provide, only room and board to persons not in need of personal supervision or residential, medical or nursing treatment. In contrast to nursing homes or personal care homes, a boarding home does not provide personal assistance in eating, dressing, ambulation, or any other daily living activities, any type of medical or nursing care, or any degree of personal supervision.

4.8. Bylaws - The code of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are called.

4.9. Center - An organization that provides behavioral health services, including all of its locations.

4.10. Client - An individual receiving direct services from the staff of a center.

4.11. Client record- A dated and signed written compilation of information that describes and documents the evaluation and present and prospective treatment of a client.

4.12. Department - West Virginia Department of Health.

4.13. Director - The director of the West Virginia Department of Health or other employee acting on behalf of the director.

4.14. Discharge - The termination of the client's affiliation with a center.

4.15. Documentation - A written record relating to compliance with the regulations.

4.16. Emergency Services - The provision of diagnosis and care, as well as appropriate referral, to individuals experiencing emotional crisis, requiring immediate intervention regardless of their other service status.

4.17. Executive Director - The staff person designated by a governing body to administer a center.

4.18. Goal - An expected result or condition that takes time to achieve, is specified in a statement of relatively broad scope, and provides guidance in establishing intermediate objectives directed toward its attainment.

4.19. Governing Body - The person or group of persons with ultimate responsibility for a center; e.g., the board of directors of a corporation, the general partners of a partnership, the trustees of a trust, or the sole proprietor of a service provider.

4.20. Guardian - A person or agency charged with some degree of care and management of an individual under state law.

4.21. Human Rights Committee - An official body consisting of at least six members no more than one-third of which are staff of the center, and at least one-third of which are present or former clients or their representatives.

4.22. Information and Referral Services - A service whose purpose is to inform community members of the services available for a variety of human problems and procedures to obtain these services.

4.23. License - The document issued by the department which indicates approval for the operation of a behavioral health center.

4.24. Licensee - A center duly licensed by the department to provide behavioral health services.

4.25. Non-ambulatory - Unable to walk independently.

4.26. Normalization - The utilization of means which are as culturally normative as possible. The four basic components of normalization are: (a) recognition of the right to self-determination; (b) recognition of the dignity of risk and failure; (c) normality of all life components: work, education, home, and social environments and activities; and (d) integration of services and facilities with the community.

4.27. Registered Nurse (R.N.) - A graduate of an approved/accredited school of nursing who is currently licensed to practice in West Virginia.

4.28. Licensed Practical Nurse (L.P.N.) - A graduate of an approved school of nursing who is currently licensed to practice in West Virginia.

4.29. Objective - An expected result or outcome, which is stated in measurable terms, has a specified time for achievement, and is related to the attainment of a goal.

4.30. Personnel Record - The complete employment record of an employee, including job application, education and employment history, pay records, attendance and leave records, performance evaluation, and, when applicable, evidence of current licensure, certification, or registration.

4.31. Pharmacist - An individual who is a graduate of an accredited school of pharmacy who is currently licensed and registered to prepare, preserve, compound, and dispense drugs and chemicals in West Virginia.

4.32. Physician - A doctor of medicine or doctor of osteopathy who is currently licensed to practice medicine in West Virginia.

4.33. Policy - A statement of the principles which guide and govern the activities, procedures and operations of a program.

4.34. Procedures - The designated methods by which policies are implemented and agency operations are to be carried out.

4.35. Program - An organized system of services designed to address the treatment needs of clients.

4.36. Program Evaluation - A component of a center that determines the degree to which a program is meeting its stated goals and objectives.

4.37. Psychiatrist - A doctor of medicine who specializes in the assessment and treatment of individuals having psychiatric disorders who is board eligible by the American Board of Psychiatry and Neurology and is currently licensed to practice medicine in West Virginia.

4.38. Psychologist - An individual who is currently licensed as a psychologist in West Virginia.

4.39. Quality Assurance - An organized process designed to enhance client care through the review and evaluation of client care and rights and which includes the correction of identified problems.

4.40. Residential Services - A community-based congregate type of housing established for people with similar needs, levels of independence, and ability. The residence includes features necessary for normalization

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while providing conditions necessary to effectively train clients in adaptive behaviors and independent living skills.

4.41. Restraint - A physical or mechanical device used to restrict the movement of the whole or a portion of a client's body. This does not include mechanisms used to assist a client in obtaining and maintaining normative body functioning, for example, braces and wheelchairs.

4.42. Seclusion - Confined placement of a client into an area removed from the normal service area.

4.43. Self-Help Groups/Mutual Aid Groups - Individuals organized by and for people who share a common problem, e.g., Alcoholics Anonymous, Parents Anonymous, Recovery Incorporated.

4.44. Self-Preservation Capability - Used to indicate a client has the ability to follow directions and take appropriate action for leaving the center under emergency conditions.

4.45. Service - A functional division of a program or of the professional staff. Also used to indicate the delivery of care.

4.46. Shall - Used to indicate a method of compliance with a regulation which is mandatory.

4.47. Should - Used to indicate a method of compliance with a regulation which is commonly accepted practice but is not mandatory.

4.48. Staff - Personnel paid by the center to provide services.

4.49. Staff Development - Activities conducted both in and out of the agency to improve staff's ability to perform their assigned tasks, to assume higher levels of responsibility, and to serve better the needs of clients.

Sec. 4.50.

4.50. State Authority - "State Authority" means the State Authority designated pursuant to Section 409 of Public Law 92-255, the Drug Abuse Office and Treatment Act of 1972. The Director of the Department of Health is the West Virginia State Authority under Section 409 of Public Law 92-255.

4.51. Treatment - The broad range of planned and continuing services, including diagnostic evaluation, counseling, medical, psychiatric, psychological, training, and social service care, which may be extended to clients and influences the behavior of such individuals toward identified goals and objectives.

4.52. Treatment Plan - A written care plan, appropriate to meet the identified needs of the client, which specifies goals, activities and services determined through process of assessment.

4.53. Variance - Means a declaration that a rule may be accomplished in a manner different from the manner set forth in the rule.

4.54. Volunteer - A person who, without direct financial remuneration, provides services to the center.

4.55. Waiver - Means a declaration that a certain rule is inapplicable in a particular circumstance.

## Section 5. State Administrative Procedures

### 5.1. General Licensing Provisions

5.1.1. No person may establish, operate, maintain, offer or advertise within the State of West Virginia, a behavioral health center as defined herein or mental health center as defined in Chapter 27, Articles 9-1 and 17-3 of the West Virginia Code of 1931, as amended unless that person obtains a

current valid license.

5.1.2. All central, satellite, and sub-unit locations where services are provided by the center shall be inspected prior to a license being issued to the center.

5.1.3. Plans for new construction at a center shall be submitted to the director for approval based on safety considerations prior to construction.

5.1.4. Separate buildings on the same premises operated under the same ownership and management shall constitute one licensed center, unless the director determines otherwise.

5.1.5. A license shall be valid only for the center and person or entity named in the application.

5.1.6. A license is not transferable.

5.1.7. When the name for a center is changed, the director shall be notified.

5.1.8. A name change shall be shown on the next license issued.

5.1.9. A license shall state: (a) the name of the center to which it applies; (b) the type of client to be served i.e., mentally ill, alcohol or drug abuser, or mentally retarded/developmentally disabled; (c) the category of service: less than 3 hours, 3-8 hours, or 24-hour residential, including number of beds; (d) the date of issuance; and, (e) the expiration date.

5.1.10. Centers in operation prior to the effective date of these regulations shall be required to institute modifications of buildings unless excepted by the department where it is determined no undue hazard to health or safety to the client exists. Any construction, extension, modification, or

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alteration taking place after the effective date of these regulations shall be in compliance with all applicable provisions of these regulations.

5.1.11. The governing body of a center is the applicant for the license.

5.1.12. Applications for licenses shall be made on forms provided by the department.

5.1.13. Applications for license shall be valid for two years from the date of issuance subject to compliance with the rules and regulations specified herein. herein.

5.1.14. All 24-hour community residential services shall be reviewed at least once a year, other services shall be evaluated at least once every two years.

5.1.15. The current license shall be prominently displayed, except in 24-hour community residential locations, where it shall be shown upon request.

5.1.16. Waivers or variances may be granted by the director if, in his opinion, the application of these standards clearly would be impractical and provided that alternate arrangements are not considered to be detrimental to the health or safety of the clients or employees of the centers. Such modifications shall conform as nearly as is practical to the current regulations.

5.2. Initial License

5.2.1. An applicant shall request an application from the director not less than 60 days and not more than 120 days prior to the date proposed for commencement of operation.

Sec. 5.2.2.

5.2.2. The following information shall be submitted with the application to the director:

- (a) the names, addresses and places of employment of members of the governing body;
- (b) the name, title, and address of the person to receive correspondence from the department;
- (c) a copy of the filed certificate of incorporation, articles of incorporation, certificate of authority, or certificate of limited partnership, filed with the West Virginia Secretary of State or if another type entity, its documents authorizing it to operate;
- (d) a non-refundable fee of \$10.00 for the center.

5.2.3. Upon receipt of the application, the director shall request inspections or reviews by the State Fire Marshal's Office and the offices and divisions of the department which are assigned to perform applicable reviews of programs, operations and procedures.

5.2.4. After inspections or reviews, the State Fire Marshal's Office, and assigned departmental offices and divisions will make recommendations to the director, who will issue or deny a license within 60 days.

5.2.5. The department shall provide consultation in obtaining compliance with these rules and regulations.

5.2.6. The department shall issue an initial license if it finds that: (a) the applicant is in conformance with or, in the case of proposed activities, supplies evidence of ability and commitment to conform to, these rules and regulations; and, (b) has completed an application and submitted the application fee.

5.3. Renewal License

5.3.1. An applicant for a renewal license shall submit an application to the director on forms provided by the director not less than 60 days and not more than one hundred twenty days prior to the expiration date of the current license. A non-refundable fee of \$10.00 shall be included with the application.

5.3.2. The department shall issue a renewal license when it finds that: (a) the applicant is in compliance with the provisions of these regulations and with applicable laws; and, (b) the applicant has submitted a complete application and the renewal license fee.

5.3.3. A renewal license shall be issued for a term of two years subject to continued compliance with the rules and regulations specified herein.

5.4. Provisional License

5.4.1. A provisional license may be issued by the director if he finds that:

- (a) a new center seeking initial licensure is not in full compliance with these rules; or,
- (b) a center seeking re-licensure does not fully comply with these rules.

5.4.2. A provisional license shall expire no less than six months from date of issuance and shall not be consecutively re-issued more than twice. The issuance of a provisional license shall be contingent upon submission to the director of an acceptable plan to correct identified deficiencies within the time period encompassed by such license.

5.5. Inspections

5.5.1. The director shall enforce the provisions of these rules and regulations. An on-site evaluation of every center regulated pursuant to these rules shall be conducted no less than every two years except that in the case of 24-hour community residential services, inspections shall be conducted no less than once a year. The director shall have the authority to conduct either announced or unannounced visits. The director shall have access to the center, its staff, clients (with their permission), and records including, but not limited to, client records. The director may provide for such other inspections as he may deem necessary to carry out the intent and purpose of state law and regulations for which he has enforcement authority.

5.5.2. Applicants for licenses shall consent to on-site inspections by the director or his designee, made with or without prior notice as a condition of licensing. The director or his designee shall have the right to enter upon the premises of any center which he has reason to believe may be operating as a behavioral health center. The director shall notify the center's executive director of the existence and substance of a complaint at the time of investigation of the complaint. The director shall cause a written report of the results of the investigation to be made to the complainant and the report is subject to public disclosure after verification of its validity. The director shall implement procedures to ensure the anonymity of the complainant. Centers are prohibited from recriminations against clients. The director shall not investigate complaints which he determines are for the sole purpose of harassing the center.

5.6. Plans of Correction

5.6.1. A center found on the basis of inspection or other investigation to have deficiencies in compliance with these rules shall develop a plan for correction of the deficiencies and shall submit such plan to the department within thirty days of receipt of the report of the inspection or other investigation.

5.6.2. The department may require an immediate correction in the case of a violation severely jeopardizing the health or safety of a client.

5.6.3. The plan of correction shall specify:

- (a) the deficiency to be corrected;
- (b) action taken or proposed to correct the deficiency and procedures to prevent its reoccurrence;
- (c) a calendar date by which the deficiency will be corrected. Such time shall be the shortest possible time within which the center may reasonably be expected to correct the deficiency.

5.6.4. The plan of correction shall be approved, modified or rejected in whole or in part by the department in writing within ten working days of receipt.

5.6.5. In accepting, modifying, or rejecting the plan for correction, the department shall consider:

- (a) the adequacy of the actions and procedures taken or proposed to correct the deficiency;
- (b) the seriousness of the violation;
- (c) the number of clients affected;

Sec. 5.6.5.

(d) the time proposed for effectuating the correction.

5.6.6. In modifying or rejecting a proposed plan of correction, the reasons for the modification or rejection shall be specifically stated.

5.6.7. When the department rejects a plan of correction, no less than 60 days shall be allowed for submission of a revised plan.

5.6.8. The department shall conduct such procedures as are reasonable and necessary to verify the correction of any deficiencies identified during a routine licensure inspection or any other investigation that has been made.

5.7. Department Reports and Records

5.7.1. A report of any inspection or investigation made by the department shall be in writing and shall be on file with the department.

5.7.2. Reports of the department shall specify the nature of each deficiency and indicate the regulation(s) being violated.

5.7.3. The department shall make available for public inspection the following:

- (a) applications and exhibits;
- (b) inspection reports;
- (c) reports of any other investigations;
- (d) any records of hearings, decisions and declaratory rulings; and
- (e) any responses of the center requested to be made part of the public record.

5.7.4. The department shall provide copies of materials available for public information, upon written request, at a reasonable fee to cover the cost of materials, staff time, and equipment.

Sec. 5.7.5.

5.7.5. The department shall treat a report of inspection of a center as public information from the time a written plan of correction is submitted.

5.7.6. If the center does not submit a written plan of correction within the time specified by the department or these rules, reports pertaining to the center inspection shall be made public at the expiration of the specified time.

5.7.7. Other records and reports shall be treated as public information from the time they are submitted to or issued by the director; provided, however, that nothing contained in these rules shall be construed to require or permit the public disclosure of confidential medical, social, personal, or financial records of any client or staff of the center.

5.7.8. Before releasing a report of record deemed public information, the department shall delete any confidential information regarding a client which could reasonably permit identification of the client.

5.7.9. The department shall delete from investigative reports, complaints which are made available to the public under this section any information required to be held confidential under these rules or state or federal law.

Section 6. Governing Body

6.1. Centers shall have available copies of all documents that have been filed by the governing body with the Office of the Secretary of State of West Virginia.

6.2. An incorporated governing body shall have bylaws which describe the qualifications and methods for selection for membership, provisions for holding meetings, and procedures for conducting governing body business.

Sec. 6.3.

6.3. The governing body shall designate an executive director/administrative officer to administer the center in accordance with the policies and procedures established by the governing body.

6.4. The governing body shall adopt a plan of operation which shall include a statement of purpose, program goals, and description of basic services.

Section 7. Administration

7.1. Personnel

7.1.1. The center shall maintain a job description for each position which includes a job title, minimum training and experience qualifications, general description of duties, responsibilities, and designation of supervisor.

7.1.2. All personnel shall be qualified to carry out their assigned responsibilities.

7.1.3. The center shall maintain a confidential personnel record for each employee.

7.1.4. The employee shall have access to his personnel record.

7.1.5. The center shall operate under written personnel policies and procedures that: (1) comply with federal and state laws and regulations; and, (2) are available to each employee.

7.1.6. If the center utilizes volunteers, it shall establish and follow written policies concerning recruitment, selection, training, assignment, supervision, and evaluation of volunteers. These policies shall comply with state laws and regulations, such as those relating to labor and insurance. Orientation with special attention to clients' rights and confidentiality shall be provided.

7.2. Management Practices

7.2.1. The center shall develop and implement written policies and procedures to assure the provision of the services and programs described in its plan of operation.

7.2.2. The center shall have a table of organization that shows the current operations of the center, including personnel responsible for the programs and services, staffing patterns, and the lines of authority, responsibility and communication among functional units and staff.

7.2.3. All policies shall be consistent with applicable federal and state regulations.

7.2.4. Accessibility to the handicapped shall be provided in accordance with Chapter 18 Article 10F of the West Virginia Code of 1931 as amended.

Section 8. Safety

Intent

To ensure the safety of clients receiving behavioral health services, clients, staff, program reviewers, and inspectors must share the responsibility and work cooperatively.

Developing fire safety regulations becomes complicated and value-laden when deciding to what degree safety standards are to be written. Influencing factors in this decision-making are (1) mandates to provide services to persons with various types and degrees of behavioral health handicaps, (2) application of the principles of least restrictive environment and normalization, and (3) the reality of varied and limited resources.

Sec. 8.

Because of these influencing factors, there are variations among the existing (and even planned) centers. To analyze these variations, categories have been developed according to length of service i.e., less than 3 hours, 3 to 8 hours, and 24 hour residential services. This method is also consistent with the application of fire safety regulations; generally the less dependent individual receives services in the less than 3 hour services category and would, therefore, need fewer fire safety regulations; while the more dependent individual receiving services in the supervised 24 hour residential environment would require the need for applying more fire safety regulations.

8.1. Fire

Centers providing services in less than 3 hour or 3 to 8 hour categories must meet the National Fire Protection Association Life Safety Code 101 (1981) Chapters 26 and 27. Additional fire regulations applicable to residential centers are listed in Section 14.

8.2. Sanitation

Centers providing services in the less than 3 hour or 3 to 8 hour categories must meet the following standards. Additional sanitation regulations applicable to residential centers are listed in Section 14.

8.2.1. Water Supply

- (a) All centers shall be provided with a potable water supply approved by the department.
- (b) All water supply systems shall comply with the design standards, specifications, instructions and regulations issued by the department.

Sec. 8.2.1.

(c) Drinking fountains, if provided, shall be of the angle-jet type with a non-oxidizing mouthguard. Such fountains shall be properly regulated and easily accessible to the clients.

(d) Single service drinking cups, if used, must be dispensed from an approved dispenser.

#### 8.2.2. Sewage and Excreta Disposal

(a) All centers shall be served by an approved public sewage system or by a sewage disposal system that has been approved by the department.

(b) Sewage and excreta disposal systems shall be kept in good repair, and properly maintained and operated

#### 8.3. Food Service

Any center preparing or serving food to the public or in a residential center accommodating more than 10 persons (see 14.4.11. and 14.4.12.) shall comply with the state board of health Food Service Sanitation Regulations.

### Section 9. Client Services and Records

#### 9.1 Client Services

9.1.1. The center shall have written policies and procedures for admission of clients into the service(s).

9.1.2. The staff shall observe the ethical standards of their profession in the care and treatment of clients.

9.1.3. The medical responsibility for clients shall be vested in a physician. For Medicaid reimbursement, services must be by or under the direction of a physician or by a licensed practitioner within the scope of his license under state law.

9.1.4. Diagnosis and Treatment

- (a) The center shall have written procedures for coordination of initial evaluations and formulation of treatment plans.
- (b) The initial evaluation shall be entered in a client's record within five days of initial interview and shall include the following:
  - (1) Presenting problems;
  - (2) Background history;
  - (3) Interview information;
  - (4) Recommendation for further evaluation and initial treatment prior to finalization of treatment plan.
- (c) Based on information obtained during the initial interview, staff shall determine the need for and make recommendation for additional evaluations. These evaluations shall be entered in the record and may include the following:
  - (1) Psychiatric/psychological evaluation;
  - (2) Physical examination;
  - (3) Neurological examination;
  - (4) Laboratory tests;
  - (5) Occupational therapy evaluation;
  - (6) Physical therapy evaluation;
  - (7) Rehabilitation evaluation;
  - (8) Special needs, e.g., nutrition or dietary modifications.
- (d) Additional information about the client's condition shall be recorded immediately in the client's record.

- (e) When diagnoses are rendered, they shall be:
  - (1) written in standard nomenclature as provided in either the American Psychiatric Association's latest edition of the Diagnostic and Statistical Manual of Mental Disorders or the latest edition of the International Classification of Diseases.
  - (2) substantiated by valid and reliable data based upon accepted professional standards of examinations and tests indicated by factual description of client's symptoms and problems.

9.1.5. Treatment Plan

- (a) There shall be a written plan of treatment for each client based on the initial evaluation of the client's treatment or training needs and the resources of the center. The plan shall be developed within 7 days of admission and finalized within 30 days.
- (b) The client or guardian shall participate in the development of the treatment plan and reviews, unless the individual's inability or unwillingness to participate is documented. Client's informed consent for treatment shall be verified by her signature or the guardian's signature.
- (c) The treatment plan shall contain specific goals the client is to achieve for improvement or maintenance of mental health or optimal adaptive functioning.
- (d) The treatment plan shall contain specific objectives that relate to the goals and expected achievement dates.
- (e) The treatment plan shall describe the services, activities, and programs planned for the client.

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- (f) The methods used in implementing the treatment plan shall be appropriate to the client's needs. Unusual or aversive methods shall be justified in the treatment plan and shall be given specific written informed consent by the client.
- (g) Services provided to the client shall be primarily directed toward implementation of the treatment plan and verified by documentation, e.g. progress notes, attendance records, post-tests, and performance indicators.
- (h) There shall be a review of the treatment plan at least every 90 days by assigned staff. The review shall indicate progress towards the objectives and any needed modifications in the treatment plan.
- (i) At termination, a summary of care shall be set forth clearly in the client record.

9.1.6. Emergency Services

When emergency services are provided, the center shall have written procedures which include at least the following:

- (a) Specification of staff coverage and consultation on call;
- (b) Instructions relative to contacting the client's physician, case manager, or family.
- (c) Provision for communication with the nearest emergency medical service; hospital and police.
- (d) Circumstances under which definitive care should not be provided and procedures which should be followed in referring an individual to a more appropriate facility.

9.1.7. Client Records for Emergency Service Clients:

A client record shall be kept on every individual receiving emergency service. The record of emergency services shall include, as far as the information is available, the following:

(a) Emergency Telephone Contacts:

- (1) Identification data relating to the client or individual making the contact, i.e., family friend, police, etc.
- (2) Description of significant clinical data;
- (3) Response of professional taking the emergency call;
- (4) Record of recommendation made;
- (5) Specific instructions given for client;
- (6) Provisions for follow-up.

(b) Walk-in Emergencies:

- (1) Identification data including the client's legal status;
- (2) The time of arrival, and the time of discharge;
- (3) Means of transportation to the emergency service;
- (4) Pertinent history including emergency care given prior to the arrival at the center;
- (5) A description of significant clinical data;
- (6) Treatment plan;
- (7) The condition of the individual on transfer or discharge;
- (8) Disposition including instructions given to the individual relative to necessary follow-up care. Instructions given to clients upon discharge from the emergency service should be given in writing, dated and signed, and a copy of such instructions should be made a part of the client's record.

- (9) The signature of the staff member providing the emergency service to the client;
- (10) The record of emergency service provided shall be incorporated into the client's previous record, if one exists.

9.2. Client Records

9.2.1. There shall be a client record maintained for every client receiving services by the center.

9.2.2. The client record shall contain:

- (a) identification data including name, date of birth, address, and client's legal status;
- (b) appropriate social and medical history concerning the client;
- (c) a summary of the assessment process and treatment or training recommendations;
- (d) a record of any evaluations of the client;
- (e) plan of treatment or training based on initial assessment with date of the next review;
- (f) a record of any signed and dated physicians orders;
- (g) an incident report of any accidents, seizures, illnesses, and treatment thereof;
- (h) a record of any medication administered as indicated in Section 11.1.1.;
- (i) copies of all consultation reports;
- (j) a record of any dietary modifications or nutritional needs;
- (k) a continuing record of treatment provided, i.e., progress notes which include a summary of the treatment provided, client's pro-

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- gress toward goals, and immediate plan for continuing treatment;
- (l) treatment or discharge summary within 30 days of termination;
  - (m) communications pertinent to the well-being of the client; and
  - (n) the results and treatment plan changes from the review conducted at least every 90 days.

9.2.3. Client records shall be kept current, accurate, and any notations, including treatment plan, shall be signed and dated by the staff providing the service.

9.2.4. Client records shall be legible and in ink or typewritten.

9.2.5. Client record information shall be kept confidential.

9.2.6. Client records or information from a client's record shall not be released except as follows:

- (a) Pursuant to an Order of a Court of Record;
- (b) To the attorney of the client, whether or not in connection with pending judicial proceedings after securing positive identification that the individual is in fact the attorney of the client; or
- (c) With the written consent of the client or guardian to:
  - (1) Physicians and providers of health, social or welfare services involved in caring for or rehabilitating the client, such information to be kept confidential and used solely for the benefit of the client;
  - (2) Agencies requiring information necessary to make payments to or on behalf of the client pursuant to contract or in accordance with law. Only such information shall be released to third party payers as is required to certify that covered ser-

vices have been provided;

- (3) Other persons who have obtained such consent.
- (d) To protect against a clear and substantial danger of imminent injury by a client to himself or another;
- (e) For treatment or internal review purposes to staff of the behavioral health facility where the client is being cared for or to other health professionals involved in the treatment of the client;
- (f) All records relating to the treatment of an individual for alcohol or drug abuse shall be subject to the Federal Regulations on Confidentiality of Alcohol and Drug Abuse Patient Records (42CFR part 2) except where the statutory requirements of the Code of West Virginia Chapter 27 are more stringent;
- (g) Nothing in Section 9.2. shall be construed to interfere with the right of the director to examine client records in the course of executing his duties and responsibilities to administer these rules and appropriate other state and federal law and regulations;
- (h) The center may charge copying fees which reflect the actual costs of the copies.

9.2.7. Client records shall contain information relating only to the individual's course of care and treatment. The behavior of no other client who is under treatment or training shall be recorded in another client's record; EXCEPT such information directly affecting the care and treatment of client, in which case the other client shall not be identified in client record by name or number.

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9.2.8. There shall be a system of identification and filing of client records to ensure rapid location and retrieval of client records at all times.

9.2.9. Client records or photographed reproductions shall be retained for a minimum of three (3) years following termination. In the case of minors, records shall be retained until three (3) years after the client's eighteenth birthday.

9.3. Alcohol and Drug Abuse Outpatient and Prevention Services

9.3.1. If an alcohol and drug abuse outpatient and prevention service is provided, it shall meet these regulations in addition to the remainder of section 9.

9.3.2. The alcohol and drug abuse outpatient and prevention service shall be a separate unit which provides special functions as the liaison agency between the Alcohol and Drug Abuse Residential Centers and the community and is responsible for continuity of after-care services for the person recovering from his illness.

9.3.3. The alcohol and drug abuse outpatient and prevention program must provide guidelines, technical assistance, and training for other agencies and community organizations which are developing programs for the prevention, treatment, and rehabilitation of alcoholics and drug abusers. It shall additionally provide counseling services to addicted persons not in a residential program.

Section 10. Quality Assurance

The center shall have and implement a systems review of the appropriateness and effectiveness of client services which includes an analysis of the results of the treatment plan review for each client and of reports by the human rights committee.

Section 11. Ancillary Services

The provisions of Section 11 shall apply if a behavioral health center licensed under these rules provides the described service. The center shall not be required to provide any of these services in order to be licensed, but if a particular service is provided, it shall comply with the requirements for that service.

11.1. Drugs and Pharmacy

11.1.1. The center shall establish policies and procedures governing medication administration, storage, and accountability. Such policies and procedures shall detail responsibilities of all staff members; define the center's automatic stop orders; describe frequency and responsibility for review of orders, drug regimens, and accounting procedures; and define protocol for telephone and other verbal orders (if any).

11.1.2. All medications administered to clients shall be authorized by written, dated, and signed order of a physician, dentist, or optometrist.

11.1.3. All medications administered shall be recorded in each individual's client record showing drug, dosage, route, date, and time of administering, and shall be signed by the individual administering.

11.1.4. Changes in the client's condition as a result of receiving the

medication shall be noted in the client's record.

11.1.5. Clients who are able to self-medicate shall do so. This provision shall include insulin injections.

11.1.6. All medications administered to clients who are unable to self-medicate, except those requiring stop orders and injectables, shall be administered by a registered nurse, licensed practical nurse, or a responsible person trained and certified by a physician for the administration of specific drugs.

11.1.7. All medications requiring stop orders and injectables may be administered by a registered nurse or licensed practical nurse under the direct orders of a physician.

11.1.8. Medications shall not be administered to any client other than the one to whom they were prescribed.

11.1.9. For clients who are unable to self-medicate, the center shall provide a locked area to hold the medication.

11.1.10. No medications shall be administered to minors or to those found incompetent without the written consent of the parent or guardian.

11.1.11. When a center does not have a pharmacy, each medication bottle or container shall be delivered directly to the center in an unopened package which has been sealed by the pharmacist.

11.1.12. Each medication shall have a separate container showing at least: the individual's name, address, date filled, physician, name of drug, dosage, route of administration (orally, etc.), frequency (daily, every 4 hours, etc.) and the amount or number of drugs dispensed (pills, ounces, etc.).

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Sec. 11.1.13. Medications subject to controlled substances regulations shall be in full compliance with Drug Enforcement Agency Regulations.

11.2. Pharmacy

Centers operating a pharmacy or maintaining only a drug storage and administrative service, shall meet all the requirements set forth in Part VI, Section A, West Virginia Regulations for Licensing Hospitals and the Pharmacy Laws and Regulations of the West Virginia Board of Pharmacy, as amended.

11.3. Laboratory

Centers operating a laboratory shall meet the minimum requirements of the Medical Certification of Hospitals (42 CFR 405.1028) Food and Drug Administration Regulations under Title 21, Chapter 1, Subchapter C, Part 130, as revised, when utilized for urinalysis for morphine, barbiturates, amphetamines, and other drugs as part of a methadone treatment program.

11.4. Radiology

Centers operating an X-ray department shall comply with the minimum standards of the Medicare Certification of Hospitals 42 CFR 405.1029.

11.5. Transportation Services

Centers operating routine transportation services for clients shall have written policies and procedures pertaining to:

- (a) qualifications for drivers and aides,
- (b) safety regulations, including client staff ratios,
- (c) emergency procedures for drivers and aides, and
- (d) vehicle maintenance schedules.

Section 12. Client's Rights

Discussion

Persons with behavioral health problems are more likely to have their human and civil rights denied because of their condition. This occurs not only in the course of their everyday life, but also in the course of receiving needed services. Consequently, special attention and effort are required to assure that these human and civil rights are exercised and protected in all behavioral health services.

12.1. Basic Rights

Each client shall have:

12.1.1. The right to treatment and services under conditions that support the client's personal liberty and restrict such liberty only as necessary to comply with treatment needs.

12.1.2. 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.

12.1.3. The right to ongoing participation in the planning of services to be provided and in the development and periodic revision of the treatment plan and the right to be provided with a reasonable explanation of all aspects of one's own condition and treatment.

12.1.4. The right to refuse treatment, except during an emergency situation, where harm to self is likely, or as permitted under law in the case of a person committed for treatment.

12.1.5. The right not to have to participate in experimentation in the absence of the client's informed, voluntary, written consent; the right to

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appropriate protections associated with such participation; and the right and opportunity to revoke such consent.

12.1.6. The right to freedom from restraint or seclusion, other than during an emergency situation, where harm to self or others is likely, with appropriate safeguards.

12.1.7. The right to a humane treatment environment that affords reasonable protection from harm, appropriate privacy, and freedom from verbal or physical abuse.

12.1.8. The right to confidentiality of records.

12.1.9. The right to access, upon request, to one's own client records.

12.1.10. The right to be informed, in appropriate language and terms, of the rights described in this section.

12.1.11. The right to assert grievances with respect to infringement of these rights, including the right to have such grievances considered in a fair, timely, and impartial procedure.

12.1.12. The right of access to a qualified advocate in order to understand, exercise, and protect one's rights.

12.1.13. The right to be informed, in advance, of charges for services.

12.1.14. The right to all available services without discrimination because of race, creed, color, sex, age, national origin, marital status, lack of wealth or duration of residence.

12.1.15. The right of one's civil rights, including but not limited to, civil service status and appointment, the right to register and vote at elections, the right to acquire and dispose of property, execute instruments,

enter into contractual relationships, to marry and obtain a divorce, to hold professional or occupational or vehicle operator's licenses, unless he has been adjudicated incompetent in a separate proceeding pursuant to Article 11, Chapter 27, Code of West Virginia, 1931, as amended, and the county court has made a specific finding that such individual is incompetent to exercise the specific right or category of rights.

12.1.16. The right to referral, as appropriate, to other providers of behavioral health services.

12.2. Medications

12.2.1. All clients receiving services in a behavioral health center have a right to be free from unnecessary or excessive medication.

12.2.2. Medication shall not be used as punishment, for the convenience of the staff, as a substitute for program, or in quantities that interfere with the client's treatment program.

12.2.3. Every client and guardian shall have the right to know what medication the client is taking, the dosage, the purpose of the medication and possible side effects.

12.3. Seclusion and Restraints

12.3.1. Seclusion shall be used only when a client is seriously harming self or others after verbal efforts and medication have not had a calming effect.

12.3.2. A client shall be placed in seclusion only upon the dated and signed order by a physician written in the client's record.

12.3.3. In every instance in which a client is placed in seclusion, a full report shall be made by the physician, describing the circumstances and

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the purpose for which seclusion is ordered. One copy of the report shall be forwarded to the executive director, and one shall be placed in the client's case record. The physician's seclusion report shall include at least:

- (a) Justification for the seclusion;
- (b) The degree of security required;
- (c) The items which a client may have while in seclusion;

12.3.4. The staff person in charge of the center shall be responsible for assuring that each client in seclusion shall be checked no less frequently than fifteen (15) minutes. A log shall be maintained of these checks.

12.3.5. A physician's seclusion order shall be for a specified time, in no event to exceed twelve (12) hours.

12.3.6. Seclusion shall not be used as punishment for social misbehavior under any circumstances.

12.3.7. Restraints may be used when seclusion has failed to prevent a client from seriously harming self or others.

12.3.8. Restraints shall not be used for the purpose of punishment. Restraints shall be applied to a client only upon the dated and signed order written in the client's record by his attending physician. The executive director or his representative shall be notified when restraints are used.

12.3.9. All orders for restraints shall be written by the client's attending physician for a specified time, in no event to exceed twelve (12) hours. A statement justifying the client's medical need for such restraint for the period indicated shall be included in the order.

12.4. Behavioral Management

12.4.1. Behavioral management refers to efforts to modify maladaptive

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or problem behaviors, and to replace them with behaviors that are adaptive and appropriate.

12.4.2. Clients shall not discipline other clients except as part of an organized self-government program that is conducted in accordance with written policy.

12.4.3. The center shall have written policy that defines the use of behavioral management programs, the staff members who may authorize their use and a mechanism for monitoring and controlling their use.

12.4.4. Documentation of significant maladaptive behavior and of actions taken by staff as a consequence of such behavior, shall be maintained in the record.

12.4.5. When maladaptive or problem behaviors are to be modified, the client's treatment plan shall include provisions to teach the individual the circumstances under which the behaviors can be exhibited appropriately, to channel the behaviors into similar but appropriate expressions, or to replace the behaviors with behaviors that are adaptive and appropriate.

12.4.6. Each plan to modify maladaptive behaviors shall specify the following:

- (a) The behavioral objectives of the program;
- (b) The method to be used;
- (c) The schedule for use of the method;
- (d) The person responsible for the program; and
- (e) The data to be collected to assess progress toward the objectives.

12.4.7. All behavioral management programs that involve the use of aversive conditioning or time-out procedures shall be:

- (a) Reviewed and approved prior to implementation;
- (b) Conducted only with the written consent of the affected client and guardian if appropriate;
- (c) Described in the individual's treatment plan.

12.4.8. When a time-out procedure is employed, the client's record shall document the fact that the situation from which the individual is removed for time-out provides consistent and positive reinforcement of desired, adaptive behaviors.

12.4.9. Removal from a situation for time-out purposes shall not be more than one hour, without prior approval by the human rights committee.

12.4.10. When time-out procedures are utilized, a staff member shall monitor the client at all times and the client shall be returned to the situation from which they were removed as soon as they have regained control of their behavior or within the maximum time specified in the treatment plan.

12.4.11. Key locks shall not be employed to confine individuals to rooms for time-out. (Key locks may be used to keep clients out of rooms that are not in use.)

12.4.12. Aversive conditioning shall be used only in those extreme, last-resort situations in which withholding it would be contrary to the best interests of the client because his behavior is dangerous to himself or to other persons and is extremely detrimental to his development, and because the individual's failure to respond to positive reinforcement procedures has been documented in his or her record.

12.4.13. Physical restraint may be used as an integral part of a treatment plan designed to lead to a less restrictive way of managing, and ulti-

mately to the elimination of the behavior for which the restraint is applied if the following provisions are followed:

- (a) Each program plan utilizing restraint shall specify:
  - (1) The behavior to be eliminated;
  - (2) The method to be used;
  - (3) The schedule for use of the method;
  - (4) The person responsible for the program; and
  - (5) The data to be collected to assess progress toward the objectives;
- (b) Each program plan utilizing restraint shall be reviewed and approved prior to implementation by the center's human rights committee;
- (c) The client's record shall contain documentation for all periods of restraint; with justification and authorization for each.

12.4.14. When food is provided or withheld as part of a behavior management program, its effect on nutrition and dental status shall be considered.

- (a) Foods that may be deleterious to health shall not be used as rewards unless it is documented that alternative rewards have been tried without success.
- (b) Behavior management programs shall not result in the denial of three nutritionally balanced meals per day.

12.4.15. Clients shall not be removed from a therapeutic program except when the client so loses his ability to control his behavior that participation constitutes a danger to himself or others. When a client's behavior

deteriorates to this degree, increased attention shall be devoted to returning the client to a level that allows participation in the treatment plan or a new treatment plan shall be designed to meet his needs.

12.5. Client's Rights in a Residential Center

12.5.1. No child (under eighteen years of age) shall be housed in a residential center licensed to serve adults.

12.5.2. Procedures for client's communications by telephone and mail or visits shall include the following:

- (a) A resident is entitled to unimpeded, private, and uncensored communication with others by mail and telephone and to visit with persons of her choice, except in the circumstances and under the conditions set forth in this section.
- (b) Each center shall endeavor to implement the rights guaranteed by subsection (a) by making telephones reasonably accessible, by ensuring that correspondence can be conveniently received and mailed, and by making space for visits available. Writing materials, telephone usage funds, and postage shall be provided to residents unable to afford them.
- (c) Reasonable times and places for the use of telephones and visits may be established and, if established, shall be in writing.
- (d) The right of a resident to communicate by mail or telephone may be limited if each limitation is essential to prevent the resident from violating a law or to prevent substantial and serious physical or mental harm to or exploitation of the resident, and if each limitation is approved by the executive director or his designee.

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- (e) The right of a resident to visit with persons of his choice may be limited if each limitation is essential in order to prevent substantial and serious physical and mental harm to or exploitation of the resident, and if each limitation is approved by the executive director or his designee.
- (f) A resident may be prevented by a center from telephoning an individual who has complained to the center of harassment by the resident and has requested the resident be prevented from calling him in the future.
- (g) No limitation upon the rights guaranteed by subsection (a) may apply between a resident and an attorney of record, or between a resident and other persons when the communication involves matters which may be the subject of legal inquiry.
- (h) Any limitation adopted under the authority of subsection (d), (e), or (f), the date it shall expire, and justification for its adoption shall be promptly noted in the client's record.

12.6. Client's Labor

12.6.1. Clients may engage in labor if the labor is compensated in accordance with the Fair Labor Standards Act 29, U.S.C.S. 206 or the state minimum wage law, whichever applies.

12.6.2. If the center uses machines or power equipment, it shall comply with applicable local, state, and federal safety requirements.

12.6.3. Clients in residential centers may be required to perform house-keeping tasks in the residence.

12.7. Experimental Treatment

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12.7.1. All clients shall have the right not to be subjected to experimental research without the informed, voluntary, and written consent of the client or guardian, after opportunity for consultation with independent specialists and with legal counsel.

12.7.2. For clients who have been adjudicated incompetent and whose court-appointed committee's authority extends to giving consent to experimental treatment, such committee may give consent to experimental treatment after opportunity for consultation with independent specialists and independent legal counsel.

12.7.3. Experimental treatment shall be in full compliance with the principles of the current statement on the Use of Human Subjects for Research by the American Association on Mental Deficiency, and with the principles for research involving human subjects required by the United States Department of Health and Human Services.

12.7.4. The methods of obtaining informed consent for experimental treatment shall be reviewed and approved by a Human Rights Committee or client advocate external to the center. Experimental drug treatments shall be limited to FDA Phase III drug studies.

12.8. Violation of a Client's Rights

12.8.1. A report shall be made within 24 hours to the executive director of all violations, or suspected violations, of a client's rights. A complaint may be made by a client, employee, or any other individual.

12.8.2. The executive director shall make a thorough investigation without delay and a written report of her findings to the human rights committee. The client shall be identified by case number only.

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12.8.3. The executive director shall make a written, dated, signed record of action taken to preclude a repetition of such violations, or suspected violations, relative to the specific clients involved, or any other clients.

12.8.4. A succinct notation of the incident and the effect of the incident on the client's illness or treatment shall be made in the client's record.

12.8.5. If the action of the executive director taken on behalf of a client regarding a violation of the client's rights is unfavorable, insufficient, or not forthcoming within a reasonable time, the client or his representative may appeal to the governing body.

### Section 13. 3 to 8 Hour Services

#### Discussion

A 3 to 8 hour service provides an environment where the client's treatment or training plan is typically carried out in a group setting. The primary purposes of the scheduled activities in this environment are to develop new skills, restore former skills, or maintain attained skills for the clients. Size of the group, staff-to-client ratio, client's length of stay and degree of supervision required in the service depend upon the client's need for service.

#### 13.1. Applicable Regulations

Centers providing 3 to 8 hour services shall meet the regulations in this section in addition to the regulations listed in Sections 6, 7, 8, 9, 10, 11, and 12.

13.2. Policies and Procedures

13.2.1. The center shall have and follow policies and procedures pertaining to rules of conduct and rights of clients. The rules and rights must address those activities listed in these regulations as well as personal possessions and religious practices. These rules and rights must be available to the clients.

13.2.2. The center shall have policies and procedures pertaining to the client's leisure time (physical fitness, recreation, etc.)

13.2.3. The center shall have policies and procedures governing clients' authorized and unauthorized departures from and returns to the center during regularly scheduled services.

13.3. Emergencies, Physical Health, and Daily Living

13.3.1. There shall be procedures for the provision of emergency medical services to clients and staff.

13.3.2. Emergency telephone numbers (fire department, local police, and on-call staff) shall be posted by the telephone.

13.3.3. All regular staff shall receive training in emergency first aid and emergency care. This training shall occur as part of staff orientation and shall include yearly CPR certification and Heimlich's Maneuver as well as first aid practices at least every two years.

13.3.4. Any meals or snacks provided by the center shall be of wholesome quality and chosen to contribute essential nutrients which promote the health of the clients.

13.4. Domestic Animals

13.4.1 Dogs, cats, or other domestic animals shall be appropriately

confined and maintenance of animals shall be consistent with applicable local ordinances.

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

13.4.3. All dogs and cats owned or under the supervision of the center or clients shall have been properly vaccinated (for dogs this includes rabies, leptospirosis, distemper, hepatitis and parvo and for cats this includes rabies) and documentation of such vaccination or preventive measures shall be available in the center.

#### Section 14. 24 Hour Community Residential Services

##### Discussion

The function of community residential centers is to help normalize living conditions and as far as possible, to replicate homestyle living as it exists in the community. Community residential centers provide an environment which enables individuals to cope with food, clothing, and personal care issues of daily living, to get along with others in their community, and to make appropriate use of the community's services. Community residential centers address the individual needs of persons with behavioral health disorders (i.e. mentally ill, mentally retarded, and substance abusers) who are in precarious living circumstances (e.g. in need of basic shelter or temporary relief due to death in family.) The residential services are planned in conjunction with other services (e.g. sheltered workshop or aftercare group).

In keeping with the principles of developing independence and normalization, the following applies to fire protection: Centers with residents who

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are capable of self-preservation, fire protection should be no greater or no less than the fire protection found in the ideal home. For instance, assuring there are periodic fire drills, convenient exits, and properly functioning furnace. Those centers with persons who are incapable of reacting normally to fire or risk of fire should receive the fire protection necessary to allow reasonable assurance of safety in the event of fire.

14.1. Applicable Regulations

Centers providing 24 hour residential services shall meet the regulations in this section in addition to the regulations listed in Section 6, 7, 8, 9, 10, 11, and 12.

14.2 Organization

There shall be an annual program plan for the residence. The plan shall include, but not be limited to, a statement of philosophy, goals of the center, type and number of population to receive services, staffing schedule, and hours of operation. There shall be documentation to verify the plan has been implemented.

Residence for the mentally ill or retarded which are developed after the effective date of these regulations shall not exceed 10 residents in each unit, module, or cottage. The number of residents in residences for alcohol and drug abusers is listed in 14.6.

14.3. Management of Residence

14.3.1. Insurance - Residents shall be protected by fire and liability insurance purchased by the governing body.

14.3.2. Individual Treatment Plans

(a) Residential services must be provided in conjunction with regulations listed in Section 9, Client Services and Records.

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- (b) The individual treatment plan must indicate if the resident should be adhering to any therapeutic or modified diet. If so, the individual treatment plan should document the prescribed diet and the procedures planned for implementing the diet.

14.3.3. Policies and Procedures

- (a) The residence shall have rules of conduct which address the activities listed in these regulations and includes provisions for personal possessions. These rules shall be available to the residents, staff, resident's family/guardian or advocate.
- (b) Procedures shall be established to ensure the residents receive funds due them and to protect the resident's funds. A center which handles money for clients shall make an accounting of all receipts and disbursements to the client at least quarterly.
- (c) A procedure shall be established to ensure that a daily record is maintained which lists the current residents.
- (d) The center shall have policies and procedures covering admissions, discharges, and a waiting list.
- (e) The center shall have policies and procedures governing residents leaving (i.e. elopements, home visits, and trips) and returning to the residence.
- (f) The center shall have policies and procedures pertaining to the residents' leisure time (physical fitness, recreation, etc.)
- (g) The center shall provide staff supervision of clients whenever clients are present in the residence.

14.3.4. Emergencies, Physical Health and Daily Living

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- (a) There shall be procedures for the provision of emergency medical services to residents and staff.
- (b) Emergency telephone numbers (for fire department, local police, and on-call staff) shall be posted by the telephone. All residential staff shall receive training in emergency first aid and emergency care. This training shall occur as part of their orientation and shall include yearly CPR certification, Heimlich's Maneuver, and first aid practices at least every two years.
- (c) The residence shall ensure that each resident has access to adequate wholesome food of quality and quantity to meet the recommended daily dietary allowance (recommended by the Food and Nutrition Board of the National Research Council) for specific nutrients.
- (d) The residence shall follow written procedures which contribute to the development of residents' skills in selecting foods to meet their specific nutritional needs and promote healthful living throughout life.
- (e) Each resident remaining in the residence beyond 30 consecutive days must receive an initial physical examination by a physician or a nurse practitioner at the expense of the client or guardian. If an individual had been examined in the past six months, this report is acceptable when verified by the physician. The examination is to include a CBC, TB skin test, urinalysis, VD screening, hepatitis screening, and immunizations, when necessary. When an individual does not receive a physical examination prior to admission, the

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- individual's record must indicate the circumstances for not receiving the examination and plans for obtaining the examination.
- (f) The residence shall ensure access to health care in accordance with the age and general health of the resident.
  - (g) A resident while affected with any disease in a communicable form, or while a carrier of such disease, or while affected with boils, infected wounds, sores or a respiratory infection shall not associate with other residents when there is a likelihood of such person transmitting the disease to the other residents and no person known or suspected of being infected with any such disease or condition shall be employed in such area or capacity. Isolation techniques may be utilized with affected clients with physician approval. (While having a common cold would not be grounds for discharging or transferring a resident, when in doubt of the seriousness of the cold, a physician should be consulted.)
  - (h) The staff shall notify the executive director immediately of any known or suspected case of communicable disease and any outbreak of intestinal disorder occurring within the residence.
  - (i) Staff shall take the necessary steps to be informed of the State Public Health Laws and state board of health regulations relative to the reporting and control of communicable diseases and shall comply in full with the laws and regulations.
  - (j) In the event of an outbreak of a highly infectious disease, a residence shall, upon the orders of the director, be immediately closed to the public.

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- (k) The residence shall ensure that each resident receives training and practices good habits in personal care, hygiene and grooming.
- (l) The residence shall assist each resident in acquiring adequate well-fitting, seasonable clothing, as required for health, comfort, and physical well-being.
- (m) The residence shall have routine schedules that approximate normal living situations for sleeping and eating.
- (n) Staff shall take all necessary precautions to ensure an accident-free environment for the residents.
- (o) A standard American Red Cross first aid kit, or equivalent, shall be readily available at all times in the facility.
- (p) Swimming pools and bathing beaches which are part of a residential facility shall be constructed, maintained and operated in compliance with the state board of health Swimming Pool and Bathing Beach Regulations.

14.3.5. Supervision and Housekeeping

Staff shall operate the center in compliance with all applicable provisions of these regulations and shall provide supervision to maintain the centers and its equipment in good repair, and in a clean and sanitary condition.

14.4. Physical Facility and Sanitation

Residential centers shall comply with the water supply, sewage and excreta disposal regulations listed in Section 6 and the following:

14.4.1. Buildings, Grounds, Equipment

- (a) All buildings or structures, grounds, and equipment shall comply with all applicable building codes and health, fire and safety laws, regulations and ordinances.

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- (b) The center shall be kept in good repair and maintained in a clean, safe and sanitary condition.
- (c) Floors, walls and ceilings shall be of easily cleanable construction and all floors, walls, ceilings and attached appurtenances, fixtures and equipment shall be kept clean and in good repair.
- (d) Carpeting shall not be used in bathrms, nor in food preparation or dishwashing areas.

14.4.2. Lighting, Ventilation, Heating

- (a) All rooms shall have approved ventilation either by natural or mechanical means.
- (b) A general illumination level of not less than ten foot candles shall be provided and maintained and a minimum of forty foot candles shall be available at specific areas such as work areas, kitchen and dishwashing areas, laundry rooms and bathrooms.
- (c) Each center shall be equipped with approved heating devices capable of maintaining a temperature of at least 64<sup>0</sup>F at floor level in all applicable rooms.
- (d) Heating equipment shall conform to AGA, U.L., Inc., American National Standards Institute or other nationally recognized standards.
- (e) Gas and oil-fired heating devices shall be properly vented to the outside air.
- (f) Unprotected open-faced heaters are prohibited.

14.4.3. Bedrooms

- (a) Bedrooms shall provide a minimum of 80 sq. ft. per person for one person occupancy and a minimum of 60 sq. ft. of floor space per person when occupied by two or more persons.

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- (b) Beds shall be separated from other beds by at least two feet. PROVIDED that this provision shall not preclude the use of bunk beds as long as requirements of (c) below are met.
- (c) Each occupant of a residential center shall be provided a separate bed and bedding. Cots and rollaway beds are not acceptable. All mattresses shall be provided with mattress pad and covers. Other furnishings appropriate to the length of stay and needs of the residents shall be provided.
- (d) Bedding shall be kept clean and in good repair and each bed shall be furnished with freshly laundered bed linens at least once per week or more often, if necessary.
- (e) Beds shall not be placed in corridors, livingrooms, kitchens, dining rooms, basements, attics, or any area not commonly used as a bedroom or in any area accessible only by a ladder or folding stairs or through a trapdoor.
- (f) Each occupant shall be provided with his or her own hand and bath towels, washcloth and toothbrush. Clean towels and washcloths shall be provided to each occupant at least once a week or more often, if needed.

14.4.4. Storage Area

- (a) Approved storage facilities shall be provided for, but not limited to, the following items: foodstuffs, utensils, work materials, cleaning supplies, clothing, linens, medicines and toxic materials.
- (b) Poisons and other potentially hazardous items shall be kept in a secure place behind a locked door.

14.4.5. Sanitary Facilities

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- (a) Lavatories, bathtubs and showers shall be provided with hot and cold running water under pressure, and shall be equipped with mixing faucets or tempered water.
- (b) Water temperature at the lavatory, bathtub or shower faucet outlet shall not exceed 115<sup>0</sup>F.
- (c) Spring-loaded faucets and combination faucet-fountains are prohibited.
- (d) Bathtubs and their fixtures shall be kept clean and maintained in good repair.
- (e) Bathrooms shall have moisture resistant non-absorbent floor and walls.
- (f) Each residential center shall provide for each six occupants or fraction thereof at least one bathroom containing a minimum of one commode, one lavatory and one bathtub or shower.
- (g) Residential centers accomodating both sexes shall provide for privacy in sanitary facilities and residences with more than six residents shall provide separate bathrooms for each sex.

14.4.6. Solid Waste

- (a) All garbage and refuse shall be stored in approved water-tight and vermin-proof containers, and such containers shall be kept clean and free of accumulations of residue.
- (b) Solid waste containers shall be provided in sufficient number and capacity to properly store all solid waste.
- (c) Solid waste, including garbage and refuse, shall be removed from the premises weekly, or more often, if necessary.

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- (d) A concrete platform or a metal rack shall be required for outside storage of solid waste containers.
- (e) When approved municipal or private solid waste disposal service is not available, the staff shall dispose of the solid waste in accordance with the applicable provisions of the state board of health Solid Waste Regulations.

14.4.7. Plumbing

- (a) All plumbing shall meet the requirements of local plumbing codes or ordinances, or in the absence thereof, the National Plumbing Code.
- (b) Cross connections and potential back-siphonage situations are prohibited.

14.4.8. Insect and Rodent Control

- (a) Grounds, buildings and structure shall be maintained free of insect breeding areas, rodent harborages and infestations of insects and rodents of public health significance.
- (b) All exterior openings of buildings and structure shall be effectively screened or insects and rodents excluded by other effective means.
- (c) All exterior doors shall be close-fitting and screen doors or doors used in lieu thereof shall be self-closing.
- (d) Only those insecticides and rodenticides approved by the department shall be used in a residential center.

14.4.9. Laundry

- (a) Laundry, if done on the premises, shall be done in a separate space

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designed for that particular purpose including space for sorting soiled clean linen and clothing. PROVIDED that in centers accommodating eight or fewer occupants, a separate laundry room designed for that particular purpose shall not be required. No laundry operation shall be done in any food preparation or dishwashing area.

- (b) Soiled laundry shall be stored in non-absorbent easily cleanable covered containers or disposable plastic bags.
- (c) Soiled and clean laundry shall not be stored or placed in the same container or on a common table or shelf.
- (d) Washing machines shall be installed so that no back-siphonage possibilities exist.
- (e) Common laundry (e.g., towels and washcloths, bed clothes, mattress pads and covers, kitchen towels and dish cloths) after washing shall be mechanically dried at room temperature of 160<sup>0</sup>F. or higher until dried or a chemical sanitizer may be added to the rinse water and the laundry air-dried.
- (f) Laundry for clients affected with communicable diseases shall be cleaned and kept separate from other laundry.

14.4.10. Domestic Animals

- (a) Dogs, cats or other domestic animals shall be appropriately confined in a residential facility.
- (b) Wild, dangerous or obviously ill animals are prohibited.
- (c) Animals and their quarters shall be kept in a clean condition at all times.

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- (d) All dogs and cats owned or under the supervision of an occupant of a residential center shall have been properly vaccinated (for dogs, this includes rabies, leptospirosis, distemper, and parvo and for cats this includes rabies) and documentation of such vaccination or preventive measures shall be available in the facility.

14.4.11. Residential centers accomodating more than 10 persons shall comply in full with all applicable provisions of the state board of health Food Service Sanitation Regulations.

14.4.12. Residential centers accommodating ten or less persons may utilize a family type kitchen, PROVIDED,

- (a) The kitchen shall provide sufficient space to carry out proper food preparation and dishwashing operations.
- (b) Food shall be protected from contamination during storage, preparation and service.
- (c) Food contact utensils and equipment shall be of approved material, easily cleanable construction and in good repair.
- (d) Refrigeration equipment shall be provided to assure the maintenance of potentially hazardous food at or below 45<sup>o</sup>F.
- (e) Dishwashing facilities and methods shall be employed to effectively remove food soil and soaps or detergents.
- (f) Cleaned dishes, utensils and equipment shall be stored in a clean dry area protected from contamination.
- (g) Foods shall be from approved sources. The use of home canned foods is prohibited.

- (h) Dishes for clients affected with communicable diseases shall be cleaned and stored separately.

#### 14.5. Fire

##### Discussion

Two types of fire regulations will be used to inspect 24 hour residential centers, they are: (1) Community Residential Facility for Persons Capable of Self-Preservation or (2) Residential-Custodial Care Facility.

14.5.1. Residential centers providing services only to individuals who have been identified as being capable of self-preservation must be approved by the fire marshal in accordance with the regulations listed in the National Fire Protection Association Life Safety Code 101, (1981) Chapters 20, 22 and proposed Chapter 21 as published in a Fire Safety Evaluation System for Board and Care Homes National Technical Information Service Report #PB83-192674 (1983).

For residences serving the mentally retarded and developmentally disabled, all residents shall be certified by a physician or psychologist to be (1) ambulatory (2) receiving active treatment (3) capable of following directions and taking appropriate action for self-preservation under emergency conditions.

14.5.2. Residential centers providing services to individuals who are incapable of self-preservation because of physical or mental limitation must be approved by the fire marshal in accordance with the Residential-Custodial Care Facility regulations contained in the National Fire Protection Association Life Safety Code 101, (1981) Chapters 12 and 13.

14.6. Residential Centers for Alcohol and Drug Abusers

14.6.1. Applicable Regulations

Residential centers for alcohol and drug abusers shall comply with the regulations listed in this section in addition to those listed in Sections 6, 7, 8, 9, 10, 11, 12, and the remainder of 14.

14.6.2. Detoxification centers or units providing medical management for alcohol and drug abusers shall provide care for management of acute withdrawal from alcohol and other drugs for a limited period of time as determined by client need in conformance with the following:

- (a) A detoxification center may be located within a general hospital or may be a free-standing center but it should be affiliated with licensed community centers and programs providing elements of care for mental disorders.
- (b) Detoxification centers shall be under the supervision of a physician and staffed with a competent administrator, adequate professional and nonprofessional personnel to provide accepted standards of safe client care.
- (c) The nursing service shall be under the direction or supervision of a licensed registered nurse.
- (d) A treatment plan shall be developed for clients admitted to detoxification centers coordinating the medical, nursing and after-care elements of planned treatment.
- (e) The detoxification center shall provide counseling services to clients by counselors with training and demonstrated ability in aiding clients to recognize the nature of their illness and the importance

of a continuing program of after-care, treatment, and rehabilitation.

14.6.3. Extended care treatment centers for alcohol and drug abuse clients shall provide residential intensive treatment programs for a period of three months, or longer, as determined by client needs in conformance with the following:

- (a) an extended care center for alcohol and drug abuse clients may be located on the ground of a licensed mental health facility, psychiatric hospital, or other hospital, or may be licensed as a free-standing center.
- (b) The extended care center for alcohol and drug abuse clients shall provide intensive treatment and rehabilitative services as follows:
  - (1) A psychiatrist's services shall be available as needed on a written contractual basis;
  - (2) A psychologist's services shall be available as needed on a written contractual basis;
  - (3) Other staff shall be clinically supervised by an individual with a graduate degree in counseling, psychology or social work or by an addiction counselor.
- (c) Nursing services shall be under the direction or supervision of a licensed registered nurse. A treatment plan shall be developed within 7 days of admission for clients admitted to the alcohol and drug abuse extended care centers including, but not limited, to:
  - (1) Medical and nursing services, as needed;
  - (2) Therapy through utilization of counseling, group and individual

psychotherapy, if indicated;

- (3) Psychology services providing testing, consultation, and psychological evaluation, as needed;
- (4) Social services relating to intake, a social history, discharge planning, and coordinating helping services;
- (5) The patient care plan shall be reviewed at least weekly and modified.

14.6.4. Domiciliary facilities for alcohol and drug abuse clients shall include those centers commonly referred to as Fellowship Homes, or Halfway Houses. The center shall provide a community residential accomodation in a group setting for alcoholics and/or other drug-dependent persons in conformance with the following:

- (a) The center should be centrally located in a pleasant neighborhood convenient to community transportation. The exterior of the center should conform with other homes in the area.
- (b) The domiciliary center shall provide a comprehensive program for the rehabilitation of the individual in a homelike atmosphere which shall include, but not be limited to:
  - (1) Residential care;
  - (2) Guidance;
  - (3) Appropriate physical fitness routines established for each individual in accordance with age or physical problem limitations;
  - (4) Supervision; and
  - (5) Personal services relating to those areas of individual adjust-

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ment which enable the person to move to independent living in normal surroundings.

- (c) The center should have a bed complement that does not exceed thirty (30) residents.
- (d) There shall be space set aside for meetings, television, and reading, as well as office space.
- (e) The center staff shall be under the direction of a manager, or director with background, education, experience and demonstrated ability commensurate with responsibilities of the position.

14.6.5. Public inebriate shelters provide a place of custody and evaluation of incapacitated alcoholics in conformance with the following:

- (a) Toilet and bathing facilities shall be readily available to each occupant and provide a reasonable degree of privacy (enclosed tub or shower and separate, enclosed toilet facility.)
- (b) Each occupant must be provided with a bed, clean sheets, blankets, etc., unless there is a written medical order to remove such items as suicide precautions.
- (c) There must be provision for regular surveillance at not less than fifteen minute intervals.
- (d) There must be evidence of provision for medical care on at least an emergency basis.
- (e) The area must be free of physical hazards.
- (f) An effort shall be made to provide as normal a living arrangement as possible within the facility, consistent with custody and security requirements and with the condition of the person being sheltered.

- (g) There shall be screening by trained personnel for the need for medical detoxification and procedures to move the client to medical care if needed.
- (h) The shelter shall provide counseling by trained personnel and offer follow-up services to each client.

Section 15. Penalties

15.1. The department shall have the power to suspend or revoke a license if it finds that: (a) the center is in substantial violation of these rules; or (b) the center is found by due process of law to be in violation of the provision of Chapter 27 of the Code of West Virginia of 1931, as amended.

15.2. The department may refuse to grant a license or may revoke a license if it determines that there has been subterfuge or other dishonest action in applying for an initial or a renewal license.

15.3. The director may by order reduce the bed capacity of a residential program or center or both, when on the basis of inspection he makes the following findings: (a) that the licensee is not providing adequate care under the existing bed capacity; and (b) that reduction in bed capacity would place the program or center in a position to render adequate care.

15.4. The director shall notify a licensee of reduction in bed capacity stating the terms of the order, the reasons therefor and the date set for compliance.

Section 16. Administrative Due Process

16.1. An applicant for a license or a licensee or any other person aggrieved by an order or other action by the director pursuant to these regulations or to Chapter 27, Articles 2A or 9 of the West Virginia Code of 1931,

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as amended shall have the opportunity for a hearing by the director, upon written request to the director in a manner prescribed in and by the Rules of Procedure for Contested Case Hearings and Declaratory Rulings.

16.2. A hearing pursuant to this section shall be conducted in accordance with the pertinent provisions of Chapter 29A, Article 5 of the West Virginia Code of 1931, as amended and the aforementioned Rules of Procedure for Contested Case Hearings and Declaratory Rulings.

16.3. If the director revokes a license, the director may stay the effective date of revocation by no more than ninety days upon a showing that the stay is necessary to assure appropriate placement of clients.

16.4. The director's order shall be final unless vacated or modified either personally or by registered or certified mail or the licensee's or non-licensed operator's written notice pursuant to the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, Chapter 16-1, Series I, 1981 of the board of health.

16.5. In addition to all other powers granted to the director under Chapter 27, Article 2A or 9 of the West Virginia Code of 1931, as amended and these regulations, the director may hold a case under advisement and make a recommendation as to requirements to be met by the licensee in order to avoid revocation of a license, in accordance with Chapter 27, Article 2A or 9 of the West Virginia Code of 1931, as amended.

16.6. Where the director takes a case under advisement, the director shall:

- (a) enter an order stating the decision to hold the case under advisement;

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- (b) notify the licensee and his attorney of record, if any, of the action, by certified mail, return receipt requested.
- (c) enter an order showing satisfactory compliance, dismissing the complaint, if the licensee meets the requirements of the order; and
- (d) upon entering the second order, under this section, the director shall notify the licensee and his attorney of record, if any, by certified mail, return receipt requested.

Section 17. Severability

The provisions of these rules are declared to be severable. If any provisions of these rules shall be held invalid, the remaining rules shall remain in effect.