

John D. Rockefeller IV
Governor



L. Clark Hansbarger, M.D.
Director

State of West Virginia

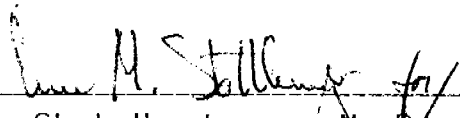
DEPARTMENT OF HEALTH
CHARLESTON 25305

Notice

Legislative Rule: Licensure of Behavioral Health Centers, West Virginia Board of Health Legislative Rules, Chapter 27-9, Series I, 198_.

The above titled legislative rule is hereby submitted to the Legislative Rule Making Review Committee.

This rule will repeal and supersede Regulations for Licensing Psychiatric and Other Related Facilities and Programs, West Virginia Board of Health Legislative Rules, Chapter 27-9, Series I, originally filed in 1971, amended in 1973 and 1974, refiled in 1981. The present document represents a complete redrafting and is effectively a new rule. Therefore, underlining and strike-through of the present rule have not been submitted as they would be impractical and uninformative. Copies of the present rule can be supplied at your request.


L. Clark Hansbarger, M. D.
Secretary
West Virginia Board of Health

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE NOV. 14, 1983
Administrative Law Division
Entered

John D. Rockefeller IV
Governor



L. Clark Hansbarger, M.D.
Director

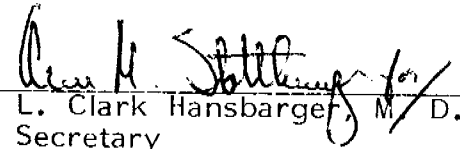
State of West Virginia

DEPARTMENT OF HEALTH
CHARLESTON 25305

Certification

Legislative Rule: Licensure of Behavioral Health Centers, West Virginia Board of Health Legislative Rules, Chapter 27-9, Series I, 198.

The above titled legislative rule constitutes the official rule approved by the West Virginia Board of Health on October 21, 1983 and filed pursuant to law in the Office of the Secretary of State, State of West Virginia.


L. Clark Hansbarger, M.D.
Secretary
West Virginia Board of Health

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE NOV. 14, 1983
Administrative Law Division
Entered

WEST VIRGINIA BOARD OF HEALTH
RULE ABSTRACT

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

TITLE: Licensure of Behavioral Health Centers

THIS DATE NOV. 14, 1983
Administrative Law Division

TYPE: Legislative

AUTHORITY AND RELATED CODE: These legislative rules are issued under the authority of and are related to Chapter 27, Article 9, Section 1 and Chapter 27, Article 17, Section 3 of the West Virginia Code.

NUMBER: 27-9, Series I

SCOPE: These legislative rules establish general standards and procedures for the licensure of behavioral health services and programs.

APPLICATION: These rules apply to any political subdivision, person, persons, association, or corporation, whether for profit or not, which shall establish, maintain or operate a center, institution, or part thereof providing outpatient, residential or other services for the care and treatment of the mentally ill or mentally retarded or otherwise developmentally disabled or services contributing to the prevention of such disorders, except as identified within the regulation. These rules specifically apply to the following types of services and facilities: services less than three (3) hours per session, services of three (3) to eight (8) hours per session; twentyfour (24) hour residential treatment or training programs serving four (4) or more adult residents; and twentyfour (24) hour group residential facilities for developmentally disabled adults or children.

SUMMARY: The rule sets forth details of state administrative procedures regarding the processing of applications for initial and renewal licenses, provisional licenses, state inspections and complaint investigations, plans of correction, and availability of department reports and records. The rule gives basic general requirements for the governing and administration of behavioral health centers. It sets basic minimum standards for physical facility, safety, basic rights of clients, elements of treatment and additional supporting services, and recordkeeping needed to insure client safety.

CONTACT PERSON IN REGULATORY SERVICES DIVISION: Kay Howard, 348-3223

RESPONSIBLE OFFICE AND CONTACT PERSON: Randy Myers, Office of Behavioral Health Services, 348-0627

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

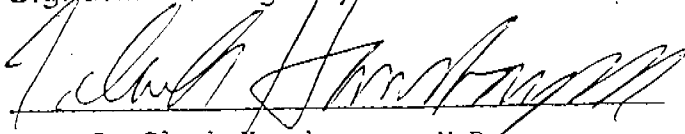
1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ See Below	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Others					

2. Explanation of above estimates.

These rules revise and update existing rules. No changes are anticipated in the costs of administering the rules as the number of centers is not expected to increase appreciably. The current cost to the Health Department to review 14 comprehensive regional behavioral health centers and 25 smaller centers, approximately \$50,200 per year, is a part of the Department's ongoing operating budget. (There is also an ongoing cost to the State Fire Marshal's office which will not change.)

3. Date September 16, 1983 Agency Health Department

Signature of Agency Head



L. Clark Hansbarger, M.D.
 Director

Signature of Authorized Representative

FILED IN THE OFFICE OF
A. JAMES MANCHIN
 SECRETARY OF STATE
 THIS DATE 9/16/83
 Administrative Law Division

STATEMENT OF ECONOMIC IMPACT OF PROPOSED RULES OR REGULATIONS

Agency Health Department

Rule No. 27-9, Series I

Subject Behavioral Health Licensure Regulation

1. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

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

There is no change in the estimated cost for a center to be licensed. (The cost of experiencing a licensure survey may range from \$1500-\$2500 for a large comprehensive regional behavioral health center and from \$200 to \$800 for a smaller center, primarily staff time during a survey. Surveys are conducted every two years except for yearly visits at residential programs.)

C. Economic Impact on Citizens/Public at Large.

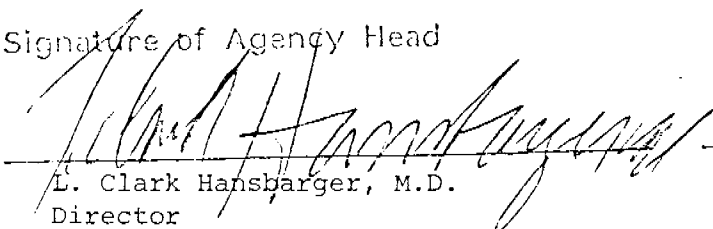
None

Date September 16, 1983

Agency Health Department

Signature of Agency Head

Signature of Authorized Representative


L. Clark Hansbarger, M.D.
Director

WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Licensure of Behavioral Health Centers

Chapter 27-9
Series I
(1984)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11/14/83
Administrative Law Division

WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Licensure of Behavioral Health Centers

Chapter 27-9
Series 1
(1984)

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WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Chapter 27-9
Series I
(1984)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11/14/83
Administrative Law Division

Subject: Licensure of Behavioral Health Centers

Section 1. General

1.1. Scope - These legislative rules establish general standards and procedures for the licensure of behavioral health services and programs.

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

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. Supersession and Repeal of Former Regulations - These rules supersede and repeal department of health Regulations for Licensing Psychiatric and Other Related Facilities and Programs, Chapter 27-9, Series I (1983).

Section 3. Application and Enforcement

3.1. Application - These rules shall apply to any political subdivision, person, persons, association, or corporation, whether for profit or not, which shall establish, maintain or operate a center, institution, or part thereof providing outpatient, residential or other services for the care and treatment of the mentally ill or mentally retarded or otherwise developmentally disabled or services contributing to the prevention of such

Board of Health
Legislative Rule 27-9
Series I

disorders, except as identified herein in Section 3.2. These rules shall specifically apply to the following types of services and facilities: services less than three (3) hours per session, services of three (3) to (8) eight hours per session; twenty-four (24) hour residential treatment or training programs serving four (4) or more adult residents; and twenty-four (24) hour group residential facilities for developmentally disabled adults or children.

3.2. Exceptions - These rules shall not apply to:

- a) Hospitals governed by West Virginia Legislative Rule, Board of Health, Hospital Licensure, Chapter 16-5B, Series I, (1983) as amended;
- b) Twenty-four (24) hour inpatient services operated by a center located within a general or psychiatric hospital. Such services shall be licensed under West Virginia Legislative Rule, Board of Health, Hospital Licensure, Chapter 16-5B, Series I, (1983). as amended;
- c) Nursing homes governed by West Virginia Legislative Rule, Board of Health, Nursing Home Licensure, Chapter 16-5C, Series I, (1983), as amended;
- d) Personal care homes governed by West Virginia Legislative Rule, Board of Health, Personal Care Home Licensure, Chapter 16-5C, Series II, (1983), as amended;
- e) Boarding homes;
- f) Non-supervised apartment living quarters occupied by clients of the center;
- g) Residential facilities providing mental health or substance abuse services for individuals under the age of eighteen (18) which are

subject to licensure by the West Virginia department of human services;

h) Adult family care homes under the supervision of the West Virginia department of human services;

i) Self-help groups;

j) Information and referral services; or

k) Private practices in non-residential settings by licensed practitioners within the scope of their professional license or by other professions certified as follows: 1) social workers by the national academy of social workers; 2) marriage counselors or family therapists certified by the american association for marriage and family therapy; or 3) addiction counselors certified by the West Virginia association of alcohol and drug abuse counselors.

3.3. Enforcement - These rules shall be enforced by the director of the West Virginia department of health.

Section 4. Definitions

4.1. Admission - The entry of an individual into one or more of the services provided by the facility.

4.2. Applicant - The political subdivision, person, persons, or corporation who submits an application for a license or for renewal of a behavioral health license.

4.3. Aversive Procedures - Restrictive procedures that impose consequences a client finds undesirable in a treatment program to decrease inappropriate behaviors. What is undesirable varies with the individual but generally includes such measures as fines or loss of privileges.

4.4. Behavioral Health Services - Those services intended to help

individuals gain or regain the capacity to function adaptively in their environment, to care for themselves and their families, 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.

4.5. 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.

4.6. Center - An organization that provides behavioral health services, including all of its locations. In order to facilitate simplicity of language within these rules, the term "center" as used herein includes "institution" or part of either a center or of an institution.

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

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

4.9. Comprehensive Regional Mental Health or Mental Retardation Center - A licensed non-profit center which receives designation as a comprehensive regional center from the health department. Such centers must comply with the requirements of the West Virginia Code and are additionally

subject to contract compliance reviews by the health department regarding the provision for mandated and other services. A valid license under these rules is a minimum pre-requisite condition for such designation.

4.10. Department - West Virginia department of health.

4.11. Director - The director of the West Virginia department of health or other employee acting on behalf of the director.

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

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

4.14. 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.

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

4.16. 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.

4.17. Governing Body - The person or group of persons with ultimate responsibility for a center; for example, 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.

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

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

4.20. Institution - An organization that provides behavioral health services. See definition of center.

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

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

4.23. Mechanical Restraints - Handcuffs, straitjackets, or other restraining devices which are designed and applied for the purpose of preventing the individual from engaging in assaultive or self abusive behavior.

4.24. 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.

4.25. 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.

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

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

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

4.29. Protective Devices - Protective devices refers to those devices applied for the purpose of protecting the individual from accidental or unintentional injury or which are used to provide support. Examples of such protective devices are bed or chair ties which help to support the individual and prevent falling from the bed or chair. A device, such as an elbow splint, which immobilizes a joint and limits movement of a limb, is considered a protective device if it is applied solely for the purpose of preventing the client from scratching or otherwise damaging scars, wounds, burns or other injury sites on his or her own body and which allows the client a degree of freedom or mobility which could not be permitted without the use of such device.

4.30. Residential Services - A community-based congregate type of housing established for people with similar needs, levels of independence, and ability.

4.31. Seclusion - Seclusion occurs when a client is placed alone in a room or enclosed space with closed doors which the individual cannot open from inside for the protection of the client or others.

4.32. Self-Help Groups/Mutual Aid Groups - Individuals organized by and for people who share a common problem, such as, alcoholics anonymous, parents anonymous, recovery incorporated.

4.33. 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.

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

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

4.36. Time Out - Time out is a positive adaptive procedure which utilizes isolation of the client to decrease inappropriate behavior. Time out may be achieved by staff placing the client in a quiet corner of the room or removing the client to another room which is not locked.

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

4.38. 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. The treatment plan may be known by other names such as: individual program plan, individual service plan, individual education plan, individual program and development plan, individual rehabilitation plan.

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

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

4.41. Waiver - 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 political subdivision, person, persons, association, or corporation shall establish, operate, maintain within the State of West Virginia, a behavioral health center, or institution, or part thereof unless a license therefor has been obtained from the director.

5.1.2. A license shall be valid only for the center and person or organization named in the application and shall not be transferable or assignable.

5.1.3. When the name of a center is changed, the director shall be notified within thirty (30) days. The new name shall be shown on the next license issued.

5.1.4. A license shall state: (a) the name of the center; (b) the types of clients to be served, such as, mentally ill, alcohol or drug abuser, or mentally retarded/developmentally disabled; (c) the category of service: less than three (3) hours, three to eight (3-8) hours, or twenty-four (24) hour residential; (d) the number of beds for residential facilities; (e) all service delivery locations operated by the center; (f) the date of issuance; and (g) the expiration date.

5.1.5. An initial or renewal license shall be valid for two years from the date of issuance, subject to compliance with these rules.

5.1.6. The current license shall be prominently displayed at all service locations operated by the center, except in twenty-four (24) hour community residential locations, where it shall be shown upon request.

5.1.7. Applications for initial or renewal license shall identify the

individuals legally responsible for the operation of the center.

5.1.8. The license shall apply to all central, satellite and sub-unit locations operated by the center for the purpose of providing services or administering such services.

5.1.9. An expired or otherwise invalid license shall be surrendered to the director on written demand.

5.1.10. The director shall provide consultation in obtaining compliance with these rules.

5.1.11. Neither an initial, renewal or a provisional license shall be issued unless an inspection has been made.

5.1.12. Waivers or variances to the provisions of these rules may be granted by the director if the application of these standards clearly would be impractical and provided that any alternate arrangements are not detrimental to the health or safety of the clients or employees of the center. Such alternate arrangements shall comply as nearly as is practical with these rules.

5.2. Construction, Renovation, Alterations

5.2.1. Plans for new construction or for renovations or alterations of existing physical facilities of a center shall be submitted to the director for approval based on safety, sanitation, accessibility to the handicapped and similar considerations prior to the commencement of such new construction, renovations or alterations.

5.2.2. Centers in operation prior to the effective date of these regulations shall be required to institute modifications of buildings where undue hazards to the health or safety of clients or staff exist.

5.3. Initial License

5.3.1. An applicant shall submit an application to the director on forms supplied by the director not less than sixty (60) days and not more than one hundred twenty (120) days prior to the date proposed for the commencement of operation. A non-refundable fee of \$10 shall be submitted with the application.

5.3.2. The following information pertaining to ownership shall be submitted:

(a) the name and address of each person, who as a stockholder or otherwise, has a proprietary interest of five (5) percent or more in the center;

(b) the name and address of each officer and director of a corporation, whether for profit or not;

(c) a disclosure of ownership by any parent company or subsidiary, if applicable, and the names and addresses of its officers and directors.

5.3.3. Upon receipt of the application, the director shall request inspections or reviews by the state fire marshal's office.

5.3.4. The director shall issue an initial license if the applicant: (a) is in compliance with or, in the case of proposed activities, supplies evidence of ability and intent to comply with these rules; and (b) has submitted a complete application and the application fee.

5.4. Renewal License

5.4.1. An applicant for a renewal license shall submit an application to the director on forms provided by the director not less than sixty (60)

days and not more than one hundred twenty (120) days prior to the expiration date of the current license. A non-refundable fee of \$10 shall be included with the application.

5.4.2. Upon receipt of the application, the director shall request inspections or reviews by the state fire marshal's office.

5.4.3. The director shall issue a renewal license if the applicant: (a) is in compliance with the provisions of these rules; and (b) has submitted a complete application and the renewal license fee.

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

5.5. Provisional License

5.5.1. A provisional license may be issued by the director if: (a) a new center seeking initial licensure is not in full compliance with these rules; or (b) a center seeking relicensure does not fully comply with these rules.

5.5.2. The issuance of a provisional license shall be contingent upon demonstrated improvement in compliance with these rules and submission to the director of an acceptable plan of correction within the time period encompassed by such license.

5.5.3. A provisional license shall expire no more than six months from date of issuance and shall not be consecutively reissued more than twice.

5.6. Inspections

5.6.1. An on-site inspection of every center regulated pursuant to

these rules shall be conducted no less frequently than once every two years except that in the case of twenty-four (24) hour community residential services, inspections shall be conducted no less frequently than once a year.

5.6.2. Inspections shall include every service or program location operated by the center. The director shall have the authority to conduct either announced or unannounced visits.

5.6.3. The director shall have access to the center, its staff, clients (with their permission), and records including, but not limited to, client records.

5.6.4. The director may provide for such other inspections or investigations as he or she may deem necessary to carry out the intent and purpose of state law and regulations for which he or she has enforcement authority.

5.6.5. The director shall have the right to enter upon the premises of any facility which he or she has reason to believe may be operating as a behavioral health center.

5.7. Complaint Investigation

5.7.1. Any person may register a complaint with the director alleging violation of applicable laws or rules by a center. A complaint shall state the substance of the complaint and the center by name.

5.7.2. The director shall conduct an investigation of the complaint.

5.7.3. The director shall have the authority to conduct unannounced inspections of center locations involved in the complaint and any other investigations necessary to determine the validity of the complaint.

5.7.4. The director shall notify the center's executive director or the person in charge of the location involved in the complaint of the substance of the complaint only at the time of the investigation.

5.7.5. No later than five (5) working days after the completion of the investigation, the director shall prepare a written report of the results of the investigation and shall notify the complainant and the center in writing of the results of the investigation.

5.7.6. A description of the corrective action the center will be required to take and of any disciplinary action to be taken by the director shall be sent to the complainant on request.

5.7.7. The name of a complainant or of any client named in the complaint shall be kept confidential and shall not be disclosed without the written authorization of the individual. Before any information is disclosed to the public regarding a complaint and its investigation, any information in the complaint or the report of investigation which could reasonably identify the complainant or any client shall be deleted, unless the public interest by clear and convincing interest requires disclosure in the particular instance.

5.7.8. If a complaint becomes the subject of a judicial proceeding, nothing in this subsection shall be construed to prohibit the disclosure of information which would otherwise be disclosed in a judicial proceeding.

5.7.9. Centers shall be prohibited from discharging or discriminating in any way against any client by whom or on whose behalf a complaint has been submitted to the director or who has participated in a complaint investigation process. Centers shall be prohibited from discharging or discriminating against any employee who has submitted a complaint or who

has assisted the director or any other legal authority in a complaint-related investigation for reason of such submission or assistance.

5.7.10. Violation of the prohibitions of Subsection 5.7.9 of these rules shall be grounds for suspending or revoking a license.

5.8. Plans of Correction

5.8.1. 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 director within thirty (30) days of receipt of the report of the inspection or other investigation.

5.8.2. The director may require an immediate correction in the case of a violation severely jeopardizing the health or safety of a client or employee.

5.8.3. The plan of correction shall specify:

(a) the deficiencies to be corrected;

(b) action taken or proposed to correct the deficiencies and procedures to prevent its reoccurrence;

(c) a calendar date by which the deficiency will be corrected. The date shall allow the shortest possible time within which the center may reasonably be expected to correct the deficiencies.

5.8.4. The plan of correction shall be approved, modified or rejected in whole or in part by the director in writing within ten (10) working days of receipt.

5.8.5. In accepting, modifying, or rejecting the plan for correction, the director shall consider:

(a) the adequacy of the actions and procedures taken or proposed to correct the deficiencies.

(b) the seriousness of the violation;

(c) the time proposed for implementing the correction; and

(d) any other relevant factors.

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

5.8.7. When the director rejects a plan of correction, a reasonable amount of time, but no more than thirty (30) days shall be allowed for submission of a revised plan.

5.8.8. The director 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.

5.9. Department Reports and Records

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

5.9.2. Reports shall specify the nature of each deficiency and indicate the provision of these rules being violated.

5.9.3. Reports and records related to these rules shall be treated as public information, except as specified herein regarding complaints, from the time they are received by or completed by the director, except that, before releasing a report or record deemed public information, the director shall delete any information which could reasonably be expected to permit identification of a client and any information of a personal nature such as

that kept in a medical, personal or similar file, or other information required to be kept confidential by state and federal law and rules and regulations. When an inspection report is released prior to the center's submission of or the director's review of a plan of correction, such fact shall be identified with the release.

5.9.4. The director 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, according to law and department policy or regulation.

Section 6. Governing Body

6.1. 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.

6.2. 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 by training and experience to carry out their assigned responsibilities. These qualifications shall be documented by detailed statements of experience and training, references and any other material related to training and experience.

7.1.3. All personnel of and consultants of the center shall be in compliance with any state professional licensure requirements.

7.1.4. The center shall develop and implement policies and procedures for the provision of staff development which update and expand skills. Staff shall be provided with training when their assignments change to include new duties and skills. A record of participation in staff development and training activities shall be maintained.

7.1.5. The center shall provide orientation to all new staff. The orientation shall place special emphasis on treatment policies, client rights and the use of emergency procedures, such as restraints.

7.1.6. The center shall maintain a confidential personnel record for each employee, which shall contain at least job title, a record of employment, education, other training, job application, and when applicable, evidence of compliance with state licensure, certification or registration requirements or other certification requirements stated in these rules.

7.1.7. An employee shall have access to his or her personnel record and shall have the right to designate others to have access to the record.

7.1.8. The center shall not discriminate in any matter of employment on the basis of race, color, national origin, ancestry, religion, physical handicap or sex and 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.

7.1.9. If the center utilizes volunteers, it shall establish written policies and procedures 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.

7.2.5. The center shall carry liability and any other insurance necessary to protect the center from foreseeable liabilities arising from the operations of the center.

Section 8. General Physical Facility and 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) the need 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.

Because of these influencing factors, there are variations among the existing (and even planned) centers. To recognize these variations, provisions are made for categories according to length of service, such as, less than three (3) hours, three (3) to eight (8) hours, and twenty-four (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 three (3) hour services category and therefore, need fewer fire safety regulations; and the more dependent individual receives services in a supervised twenty-four (24) hour residential environment and needs more fire safety regulations for adequate protection.

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

8.2. Sanitation - All centers providing services must meet the following standards. Additional sanitation standards 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 rules of the West Virginia board of health.

(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 according to the design standards and rules of the West Virginia board of health.

(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 with modules, houses or cottages accommodating more than ten (10) persons shall comply with the West Virginia board of health food service sanitation rules. Standards for modules, houses or cottages serving ten (10) or less persons are given in Section 14.

Section 9. Client Services

Discussion

This section provides rules for treatment and services for all cate-

gories, that is, for less than three (3) hours, for three (3) to eight (8) hours and for twenty-four (24) hour residential services. Additional standards for three (3) to eight (8) hour services are found in Section 13. Additional standards for twenty-four (24) hour residential services are given in Section 14.

9.1. Client Services Generally

9.1.1. The center shall have written policies and procedures for admission of clients into the services.

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, by a licensed practitioner within the scope of his or her license under state law; or acceptable by other federal standards.

9.1.4. Unless excepted elsewhere in these rules, treatment of or services to clients shall be by or under the supervision of a staff member with at least a master's degree in a human services or health field except that skill training may be by or under the supervision of a registered nurse or an individual with a bachelor's degree in a human service, education, or health field.

9.2. Diagnosis and Treatment

9.2.1. The center shall have written procedures for coordination of initial evaluations and formulation of treatment plans.

9.2.2. The initial evaluation shall be entered in a client's record within five days of intake interview and shall include the following:

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- (a) Presenting problems;
- (b) Background history, including social and medical information;
- (c) Interview information;
- (d) Recommendation for further evaluation and initial treatment prior to finalization of treatment plan.

9.2.3. Based on information obtained during the intake 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:

- (a) Psychiatric/psychological evaluation;
- (b) Physical examination;
- (c) Neurological examination;
- (d) Laboratory tests;
- (e) Occupational therapy evaluation;
- (f) Physical therapy evaluation;
- (g) Rehabilitation and vocational evaluation;
- (h) Adaptive behavior evaluation or direct observation of behavior;
- (i) Special needs, for example, nutrition or dietary modifications.

9.2.4. Additional information about the client's condition shall be recorded immediately in the client's record.

9.2.5. When diagnoses are rendered, they shall be:

- (a) written in standard nomenclature as provided in either the american psychiatric association's latest edition of the Diagnostic and Statistical Manual of Mental Disorders, the latest edition of the International Classification of Diseases or the latest Classification for Mental Retardation of the american association for mental deficiency.

(b) 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.

9.3. Treatment Plan

9.3.1. 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 and implemented within seven (7) days of admission and finalized within thirty (30) days.

9.3.2. The client or guardian shall participate in the development of the treatment plan and reviews. If a client is unable or unwilling to participate and such inability or unwillingness to participate is documented in writing, then planning can be done without participation by the client. The client's informed consent for a course of treatment specified in the treatment plan or updates shall be verified by his or her signature or the guardian's signature.

9.3.3. The treatment plan shall contain specific goals the client is to achieve for improvement or maintenance of mental health or optimal adaptive functioning.

9.3.4. The treatment plan shall contain specific objectives that relate to the goals and expected achievement dates.

9.3.5. The treatment plan shall describe the services, activities, and programs planned for the client.

9.3.6. The methods used in implementing the treatment plan shall be appropriate to the client's needs. Aversive methods shall be used only as outlined in Section 9.6.

9.3.7. Services provided to the client shall be primarily directed toward implementation of the treatment plan and verified by documentation, for example, progress notes, attendance records, post-tests, and performance indicators.

9.3.8. There shall be a review of the treatment plan at least every ninety (90) days by assigned staff except that where longer intervals between client contacts with the center are part of an approved treatment plan, such reviews of the treatment plan shall occur at least every one hundred eighty (180) days. The review shall summarize the amount of treatment or training provided, indicate progress towards the objectives, indicate problems which impeded treatment progress whether client- or center-based, and provide a decision either to continue the treatment plan because of an acceptable level of progress or to modify the treatment plan.

9.3.9. At termination, a summary of care shall be set forth clearly in the client record.

9.4. 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.

9.5. Additional Standards for Alcohol and Drug Abuse Outpatient and Prevention Services

9.5.1. An alcohol and drug abuse outpatient and prevention service shall provide special functions as the liaison agency between the alcohol and drug abuse residential centers and the community and shall be responsible for continuity of after-care services for recovering clients.

9.5.2. An alcohol and drug abuse outpatient and prevention program shall 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 for clients not in a residential program.

9.6. Management of Inappropriate Behaviors

Discussion

Management of inappropriate behaviors refers to efforts to modify maladaptive or problem behaviors and to replace them with behaviors that are adaptive and appropriate.

9.6.1. The center shall have written policy that defines the use of procedures to manage inappropriate behavior, the staff members who may authorize their use and a mechanism for monitoring and controlling their use.

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

9.6.3. 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 and that isolation was required to help the client reestablish self control.

9.6.4. 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. If the inappropriate behavior for which time-out is utilized occurs frequently, for example three (3) days in a week or three (3) weeks in a row, a treatment plan to manage the inappropriate behavior shall be designed. If time-out is utilized as a procedure in a treatment plan, maximum times for the use of time-out shall be included in the plan. When the maximum time exceeds fifteen (15) minutes, the plan shall be approved by the human rights committee prior to implementation.

9.6.5. When inappropriate 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.

9.6.6. 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.

9.6.7. The use of aversive conditioning or protective devices shall be:

- (a) Reviewed and approved prior to implementation by the human rights committee;
- (b) Conducted only with the written informed consent of the affected client and guardian if appropriate;
- (c) Described in the individual's treatment plan; and
- (d) Documented in the client's record for all periods involving the use of aversive conditioning or protective devices with justification and authorization for each use thereof.

9.6.8. Protective devices may be used as an integral part of a treatment plan designed to lead to a less restrictive way of managing, and ultimately to the elimination of the behavior for which the device is applied.

9.6.9. 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 or her behavior is dangerous to himself or herself or to other persons and is extremely detrimental to his or her development, and because of the individual's failure to respond to a variety of positive teaching procedures employed consistently and for a reasonable length of time. The dangerous or detrimental conditions and failure to respond shall be documented in his or her record.

9.6.10. When food is provided or withheld as a procedure to manage inappropriate behavior, the effect on nutrition and dental status shall be considered.

(a) Foods and other substances such as cigarettes 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) Plans to manage inappropriate behavior shall not result in the denial of three nutritionally balanced meals per day.

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

9.6.12. Clients shall not be removed from a therapeutic program as a form of punishment. When clients so lose their ability to control their behavior that participation constitutes a danger to themselves or others, they may be removed from the treatment program in which case staff shall devote increased attention to returning the clients to a level of functioning that allows participation in the treatment plan or shall design a new treatment plan to meet the clients' needs.

9.7. Medical Emergency

9.7.1. Medical emergencies are those which involve a threat of death or serious physical harm requiring immediate treatment.

9.7.2. The center shall have a procedure for dealing with medical emergencies in an effective and timely manner.

9.7.3. A complete description of the emergency and the staff's course of action shall be entered in the client's record.

9.8. Psychiatric Emergency

Discussion

A psychiatric emergency exists when a client loses control and acts in

a manner that poses substantial likelihood of physical harm to himself or herself or to others. A psychiatric emergency is a rare occurrence at a center, but on those occasions where less restrictive measures such as talking the client down are not effective or where the client is actively dangerous to himself or herself or to others, the center may utilize intrusive measures such as the administration of medication, seclusion or mechanical restraints until the crisis is resolved or the client can be transported to an inpatient facility.

9.8.1. The center shall have a clear procedure for handling psychiatric emergencies.

9.8.2. Staff shall immediately notify the appropriate supervisor of any psychiatric emergency and clear other clients from the immediate area.

9.8.3. Unless the client is immediately dangerous to himself or herself or others, as, for example, the client is actually attempting suicide or attacking others, staff shall try less restrictive methods of crisis management such as efforts to establish one to one verbal rapport.

Section 9.8.4. If the client is immediately dangerous to himself or herself or to others and less restrictive methods do not work, staff may intervene with more intrusive methods until the crisis is resolved or the client is transported to an inpatient facility. Seclusion or restraints may be used as an extreme resort if necessary to control the emergency. Such seclusion or restraints shall not be used for a period that exceeds three (3) hours.

9.8.5. A client shall be placed in seclusion only with the dated and signed approval of a physician, the executive director or his or her designee written in the client's record.

9.8.6. 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.

9.8.7. All harmful objects shall be removed from any area utilized for the purpose of seclusion.

9.8.8. Restraints may be used when seclusion is inappropriate because the client is actively suicidal or requires constant observation.

9.8.9. Restraints shall be applied to a client only with the dated and signed approval in the client's record by a physician, the executive director or his or her designee. The executive director shall be notified when restraints are used.

9.8.10. Supervision of clients in restraints shall be on a one to one basis for the duration of the time the restraints are in place.

9.8.11. In cases where the crises abates before it is necessary to transport the client to an inpatient facility, a physician, the executive director or his or her designee may approve the client's release from seclusion or restraints.

9.8.12. A complete description of the emergency shall be immediately entered in the client record and include:

- (a) a report of the incident;
- (b) staff actions and rationale for each method employed;
- (c) a continuing description of the client's response to staff actions;
- (d) all approvals by a physician, the executive director or his or her designee to utilize obtrusive measures;

- (e) seclusion checks and restraint reports at least every fifteen (15) minutes;
- (f) the resolution of the emergency; and
- (g) plans to continue services to the client.

9.9. Evaluation of Client Services - 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 treatment plan reviews and of reports by the human rights committee.

Section 10. Client Records

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

10.2. The client record for non-emergency services 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) treatment plans and updates including the date of the next review and documentation of the consent of the client for treatment;
- (f) a record of any signed and dated physicians orders;
- (g) a complete report of any accidents, psychiatric emergencies, seizures, or illnesses occurring while the client is on the center's premises or engaged in center activities and treatment thereof;
- (h) a record of any medication administered as indicated in Sections 11.1.1 and 11.1.4;

- (i) copies of all consultation reports;
- (j) a record of any dietary modifications or nutritional needs;
- (k) a continuing record of treatment data, such as performance indicators, post-tests, or progress notes which include a summary of the treatment provided, progress toward goals, and immediate plans for continuing treatment;
- (l) treatment or discharge summary within thirty (30) days of termination;
- (m) communications pertinent to the well-being of the client; and
- (n) the results of treatment and changes to the treatment plan.

10.3. The client record of emergency services shall include, as far as the information is available, the following:

10.3.1. For emergency telephone contacts:

- (a) identification data relating to the client or individual making the contact, such as, family, friend, police;
- (b) description of significant clinical data;
- (c) response of professional taking the emergency call;
- (d) record of recommendation made;
- (e) specific instructions given for client;
- (f) provisions for follow-up.

10.3.2. For walk-in emergencies:

- (a) identification data including the client's legal status;
- (b) the time of arrival, and the time of discharge;
- (c) means of transportation to the emergency service;
- (d) pertinent history including emergency care given prior to the arrival at the center;

(e) a description of significant clinical data;

(f) treatment plan;

(g) the condition of the individual on transfer or discharge;

(h) disposition, including instructions given to the individual relative to necessary follow-up care. In addition to any oral instructions given to clients upon discharge from the emergency service, written instructions shall be given which are dated and signed, and documentation of providing such instructions shall be made a part of the client's record.

(i) the signature of the staff member providing the emergency service to the client;

(j) the record of emergency service provided shall be incorporated into the client's previous record, if one exists.

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

10.5. Client records shall be legible and in ink or typewritten. Computer-printed records shall be acceptable.

10.6. Client records shall contain information relating only to the individual client'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 for such information directly affecting the care and treatment of client, in which case other clients who are not relatives shall not be identified in the client record by name or number.

10.7. There shall be a system of identification and filing of client

records to ensure rapid location and retrieval of client records at all times.

10.8. Client records or photographed reproductions shall be retained for a minimum of five (5) years following termination. In the case of minors, records shall be retained until five (5) years after the client's eighteenth birthday. Methods of disposal shall be designed to assure the confidentiality of information in the record.

10.9. The center shall use as necessary the services of a qualified medical records administrator or technician to assure that the center's records are organized and maintained properly.

10.10. The center shall develop staff procedures, sanctions and office procedures as are necessary and appropriate to protect the confidentiality of the records of clients and to govern the release of such records to proper interested parties.

10.11. Client records may be released without consent as follows except as specified in Section 10.9 of these rules:

(a) in a proceeding under section four, article five, chapter 27 of the West Virginia Code to disclose the results of an involuntary examination made pursuant to section two, three, or four, article five, of chapter 27 of the West Virginia Code;

(b) in a proceeding under article six-A of chapter 27 of the West Virginia Code to disclose the results of an involuntary examination made pursuant thereto;

(c) pursuant to an order of any court based upon a finding that said information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section;

(d) to protect against a clear and substantial danger of imminent injury by a patient or client to himself or herself or another; and

(e) for treatment or internal review purposes to staff of the center.

10.12. Client records may be released only with the written consent of the client to:

(a) the client;

(b) the attorney of the client;

(c) physicians and other providers of health, social, educational or welfare services involved in caring for or in rehabilitating the client, provided that such information shall be kept confidential and used solely for the benefit of the client;

(d) agencies or organizations requiring information necessary to make payments to or on behalf of the client pursuant to contract or in accordance with law, provided that only such information shall be released to third party payors as is required to certify that covered services have been provided; and

(e) others obtaining such consent.

10.13. All records relating to the treatment of an individual for alcoholism or drug abuse shall be subject to the federal regulations on confidentiality of alcohol and drug abuse patient records found at Part 2 of Subchapter A of Chapter 1, Title 42, Code of Federal Regulations or to the statutory requirements of the West Virginia Code, whichever is more stringent.

10.14. Nothing in these rules shall be construed to interfere with

the right of the director to examine client records in the course of executing his or her responsibilities to administer these rules or other appropriate state and federal law or regulations.

10.15. The center may charge copying fees to cover the actual cost of copies.

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

11.1.1. The center shall establish policies and procedures governing prescription 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 prescription medications administered to clients shall be authorized by written, dated, and signed order of a physician, or others authorized by law to prescribe medications.

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 the medication.

11.1.4. Changes in the client's condition as a result of receiving the medication, including adverse reactions, 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. The center shall provide these clients secure areas in which to keep their medications, as needed.

11.1.6. Medications requiring stop orders and injectables, except for insulin, shall be administered by a physician, a registered nurse, a licensed practical nurse or other individual having such authority under state law. Other medications may be administered by a responsible person approved in writing by a physician for the administration of specific drugs.

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

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

11.1.9. Every client or guardian and any responsible person as identified in 11.1.6 shall be informed as to what medication the client is taking, the dosage, the purpose of the medication, possible side effects, the effects of not taking the medication, alternate treatments and their effects.

11.1.10. Individually prescribed medications shall be packaged by a pharmacist in accordance with state law unless administered by a physician or a registered nurse and shall be delivered directly to the center in an unopened package which has been sealed by the pharmacist.

11.1.11. Each prescription medication shall have a separate container

showing at least: the individual's name, address, date filled, physician, name of drug, dosage, route of administration, frequency and the amount or number of drugs dispensed, except for those medications administered by a physician or a registered nurse.

11.1.13. Medications subject to controlled substances regulations shall be in full compliance with state and federal law and regulations.

11.2. 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 may occur 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.

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 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. Restraint and seclusion may only be used in situations where there is imminent danger the client will injure himself or others and all other less restrictive methods of control have been exhausted.

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 his or her own client records in accordance with state law.

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 his or her 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, handicap, national origin, or marital status.

12.1.15. The right to exercise his or her civil rights, including but not limited to, 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 or she has been adjudicated incompetent in a separate proceeding pursuant to article 11, chapter 27 of the Code of West Virginia, and the county commission 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. Rights Devolving to Committee or Guardian - In the case of a person adjudicated incompetent according to West Virginia law, certain of these rights may devolve to the committee or guardian, if so specified by the court of county commission.

12.3. Medications

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

12.3.2. 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.

12.4. Client's Rights in a Residential Center

12.4.1. Residents shall be housed with other individuals of similar age and activity levels unless specific reasons such as the need to protect a client with a low level of adaptive skills and ability for self defense, are noted in the treatment plan.

12.4.2. A resident is entitled to unimpeded, private, and uncensored communication with others by mail and telephone and to visit with persons of her or his choice, except in the circumstances and under the conditions set forth in this section.

12.4.3. Each center shall endeavor to implement the rights guaranteed by Subsection 12.4.2 by making telephones reasonably accessible, by ensuring that correspondence can be conveniently received and mailed, and by making space for visits available.

12.4.4. Reasonable times and places for the use of telephones and visits may be established and, if established, shall be in writing.

12.4.5. The right of a resident to communicate by mail and telephone or to visit with persons of his or her choice may be limited if each limitation is situation specific and 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. Such limitation shall be approved by the executive director or his or her designee and shall not last longer than is necessary to achieve the goals of the limitation.

12.4.6. 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 or her in the future.

12.4.7. No limitation upon the rights guaranteed by this subsection may apply between a resident and his or her attorney, or between a resident and other persons when the communication involves matters which may be the subject of legal inquiry.

12.4.8. Any limitation adopted under the authority of this subsection, the date it shall expire and the justification for its adoption shall be promptly noted in the client's record.

12.5. Client's Labor

12.5.1. 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.

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

12.5.3. Clients in residential centers may be required to perform housekeeping tasks in the residence.

12.6. Experimental Research

12.6.1. 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.

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

12.6.3. Experimental research 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.

12.6.4. The methods of obtaining informed consent for experimental research shall be reviewed and approved by a human rights committee or client advocate external to the center. Experimental drug treatments shall be limited to the United States Food and Drug Administration Phase III drug studies.

12.6.5. Experimental research shall be reviewed by the human rights committee at least every 2 months or if changes in the project procedure are contemplated. Progress shall be reported to the executive director at this time.

12.7. Human Rights Committee

12.7.1. The center shall have a human rights committee whose role is to assist the center in the protection of client's rights and to perform the specific responsibilities outlined herein.

12.7.2. A center with fewer than thirty (30) clients shall have a minimum of three members on the human rights committee and a center with more than thirty (30) clients shall have a minimum of five (5) members.

12.7.3. At least one third of the committee members shall be consumers and no more than one third shall be staff of the center.

12.8. Violation of a Client's Rights

12.8.1. A report shall be made within twenty-four (24) hours to the executive director of all violations, or suspected violations, of a client's rights, except immediate notification shall be made in the case of physical abuse. A complaint may be made by a client, employee, or any other individual.

12.8.2. The executive director shall initiate a thorough investigation without delay. A written report shall be given within a reasonable period of time to the human rights committee of his or her findings and actions taken to preclude a repetition of such violations, or suspected violations, relative to the specific clients involved, or any other clients. The client shall be identified by case number only.

12.8.3. Centers shall be prohibited from discharging or discriminating in any way against any client by whom or on whose behalf such a complaint has been submitted or who has participated in a complaint investigation. Centers shall be prohibited from discriminating against any employee who has submitted a complaint or assisted in any complaint related investigation for the reason of such submission or assistance.

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 of the center or to the department.

Section 13. Three to Eight (3 - 8) Hour Services

Discussion

A three to eight (3-8) 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 three to eight (3-8) 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 such as physical fitness and recreation.

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. Twenty-four (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 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 twenty-four (24) hour residential services shall meet the regulations in this section in addition to the regulations listed in Sections 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.

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

14.4. Location - The residence shall be in a location which is consistent with the philosophy and purpose of the residence and includes appropriate access to transportation and behavioral and medical services.

14.5. Treatment Plans

14.5.1. In the case of residences for the purpose of normalization and the maximization of independence, the treatment plan shall include provisions for developing needed independent living skills such as, shopping, conversation, use of leisure time, personal care, grooming, transportation, health, problem solving, and vocation.

14.5.2. The treatment plan must indicate if the resident should be adhering to any therapeutic or modified diet. If so, the treatment plan

should document the prescribed diet and the procedures planned for implementing the diet.

14.6. Policies and Procedures

14.6.1. 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.

14.6.2. Procedures shall be established to ensure that 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.

14.6.3. A procedure shall be established to ensure that a daily record is maintained which lists the current residents.

14.6.4. The center shall have policies and procedures covering admissions, discharges, and a waiting list.

14.6.5. The center shall have policies and procedures governing residents leaving (such as, elopements, home visits, and trips) and returning to the residence.

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

14.6.7. The center shall provide staff supervision of clients whenever clients are present in the residence or engaged in center sponsored activities except as part of efforts to promote independence in which case staff shall monitor clients use of non-supervised activities for appropriateness.

14.7. Emergencies and Physical Health

14.7.1. There shall be procedures for the provision of emergency medical services to residents and staff.

14.7.2. Emergency telephone numbers for fire department, local police, and on-call staff shall be posted by the telephone and capable clients shall be instructed in their usage. All regular 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.

14.7.3. Staff 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. This requirement shall not apply to shelters for public inebriates.

14.7.4. Each resident remaining in the residence beyond thirty (30) consecutive days must receive an initial physical examination by a physician or a nurse practitioner working from physician-approved protocols 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 individual's record must indicate the circumstances for not receiving the examination and plans for obtaining the examination.

14.7.5. The residence shall ensure access to health care in accordance with the age and general health of the resident.

14.7.6. Staff shall take all necessary precautions to ensure an accident-free environment for the residents.

14.7.7. 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.)

14.7.8. 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.

14.7.9. Staff shall take the necessary steps to be informed of 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.

14.7.10. 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.

14.7.11. A standard american red cross first aid kit, or the equivalent shall be readily available at all times in the facility.

14.7.12. Swimming pools and bathing beaches which are part of a residential facility shall be constructed, maintained and operated in compliance with the applicable provisions of swimming pool and bathing beach regulations of the West Virginia board of health.

14.8. Daily Living

14.8.1. The requirements of Subsection 14.8 shall not apply to shelters for public inebriates.

14.8.2. The residence shall have routine schedules that approximate normal living situations for sleeping and eating.

14.8.3. Staff 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.

14.8.4. Staff shall ensure that each resident receives training and practices good habits in personal care, hygiene and grooming.

14.8.5. Staff shall assist each resident in acquiring adequate well-fitting, seasonable clothing, as required for health, comfort, and physical well-being.

14.8.6. In the case of a residence for the purpose of normalization and maximization of independence, staff shall ensure the provision of opportunities for off premises activities and the maximum use of the client's abilities to direct their own activities.

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

14.10. Physical Facility and Sanitation - Residential centers shall comply with the water supply, sewage and excreta disposal regulations listed in Section 8 and the following:

14.10.1. 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.

(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 bathrooms, nor in food preparation or dishwashing areas.

14.10.2. 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 64⁰F 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.

14.10.3. 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.

(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 the requirements of (a) above 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, living rooms, 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.

14.10.4. 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 except this rule shall not preclude use of these materials by clients who have been trained to use them safely.

14.10.5. Sanitary Facilities

(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 115⁰F.

(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.

14.10.6. 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.

(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 law and regulations governing the management of solid waste.

14.10.7. 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.

14.10.8. 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.

14.10.9. Laundry

(a) Laundry, if done on the premises, shall be done in a separate space designed for that particular purpose including space for sorting soiled and 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 (such as towels and washcloths, bed clothes, mattress pads and covers, kitchen towels and dish cloths) after washing shall be mechanically dried at a temperature of 160⁰F. 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.

14.10.10. 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.

(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.

14.10.11. Food Service

(a) Residential centers accommodating more than ten (10) persons shall comply in full with all applicable provisions of the state board of health Food Service Sanitation Regulations.

(b) Residential centers with modules, houses, or cottages accommodating ten or less persons may utilize a family type kitchen in each module, house, or cottage, Provided,

(1) The kitchen shall provide sufficient space to carry out proper food preparation and dishwashing operations.

(2) Food shall be protected from contamination during storage, preparation and service.

(3) Food contact utensils and equipment shall be of approved

material, easily cleanable construction and in good repair.

(4) Refrigeration equipment shall be provided to assure the maintenance of potentially hazardous food at or below 45⁰F.

(5) Dishwashing facilities and methods shall be employed to effectively remove food soil and soaps or detergents.

(6) Cleaned dishes, utensils and equipment shall be stored in a clean dry area protected from contamination.

(7) Foods shall be from approved sources. The use of home canned foods is prohibited.

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

14.11. Fire

Discussion

Two types of fire regulations will be used to inspect twenty-four (24) hour residential centers; they are: (1) community residential facility for persons capable of self-preservation or (2) residential-custodial care facility.

14.11.1. 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).

In the case of residences serving the mentally retarded and develop-

mentally disabled, identification of being capable of self preservation shall consist of documented certification by a physician or psychologist that the resident is receiving active treatment and is capable of following directions and taking appropriate action for self-preservation under emergency conditions.

14.11.2. 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.

14.12. Residential Centers for Alcohol and Drug Abusers

14.12.1. Applicable Regulations - Residential centers for alcohol and drug abusers shall comply with the regulations listed in Section 14 in addition to those listed in Sections 6, 7, 8, 9, 10, 11, and 12.

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

(a) A detoxification center may be located within a general hospital or may be a free-standing center if affiliated with licensed 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.

14.12.3. Treatment Centers - Treatment centers or programs for alcohol and drug abuse clients which provide residential intensive treatment programs shall comply with the following:

(a) The center or program may be located on the grounds of a licensed behavioral health facility, psychiatric hospital, or other hospital, or may be licensed as a free-standing center.

(b) A physician's services shall be available as needed by staff or on a written contractual basis.

(c) A psychologist's services shall be available as needed by staff or on a written contractual basis.

(d) Other staff shall be clinically supervised by an individual with a graduate degree in counseling, psychology or social work or by an addiction counselor.

(e) A treatment plan shall be developed within seven (7) days of admission for clients admitted to the center or program 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 treatment, testing, consultation, and psychological evaluation, as needed;
- (4) social services relating to intake, a social history, discharge planning, treatment and coordinating helping services;
- (5) the treatment plan shall be reviewed at least weekly and modified as necessary.

14.12.4. Community Residences - Community residences for alcohol and drug abuse clients, commonly referred to as fellowship homes or half-way houses, shall comply with the following:

(a) The residence 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;
- (5) personal services relating to those areas of individual adjustment which enable the person to move to independent living in normal surroundings; and
- (6) individual recovery plans.

(b) The residence shall have a bed complement that does not exceed thirty (30) residents.

(c) There shall be space set aside for meetings, television, and reading, as well as office space.

(d) 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.

14.12.5. Public Inebriate Shelters - Public inebriate shelters which provide a place of custody and evaluation of incapacitated alcoholics shall comply 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 arrange for follow-up counseling and other services for each client.

(i) The shelter shall not be required to comply with the requirements of these rules concerning treatment plans.

Section 15. Penalties

15.1. The director shall have the power to suspend or revoke a license if he or she finds that the center is in substantial violation of these rules.

15.2. The director may refuse to grant a license or may revoke a license if he or she 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 or she 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, 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, West Virginia Board of Health Procedural Rules, Chapter 16 - 1, Series I (1983).

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 aforementioned Rules of Procedure for Contested Case Hearings and Declaratory Rulings.

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, articles 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;

(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.

DATE: November 14, 1983

TO: Legislative Rule-Making Review Committee

FROM: Health Department

SUBJECT: INFORMATION TO BE SUPPLIED TO THE COMMITTEE

RULES: Licensure of Behavioral Health Centers, West Virginia Board of Health Legislative Rules, Chapter 27-9, Series I, 198

INFORMATION REQUIRED

1. Please give the citation of the statute which authorizes your promulgation of these rules.

Chapter 27, Article 9, Section 1 and Chapter 27,

Article 17, Section 3

2. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation: (29A-3-5)

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N.A.

- b. Was the hearing held on the date scheduled and were all interested parties permitted to be heard?

N.A.

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N.A.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
 SECRETARY OF STATE
 THIS DATE 11/14/83
 Administrative Law Division

- d. Is the transcript of all evidence received preserved and available for public inspection and copying?

N.A.

3. For all rules promulgated:

- a. When did you file the rules in the State Register together with notice of a hearing time, date and location? (29A-3-5)

September 16, 1983

- b. Did you give at least 30 days notice and no more than 60 days notice? (29A-3-7)

Yes

- c. What other notice, including advertising, did you give of the hearing? (29A-3-5)

Press release to capitol pressroom. Notices to behavioral health centers, associations for behaviorally disabled citizens, professional boards of examiners and associations, Commission on Aging, Department of Human Services, Division of Vocational Rehabilitation, other misc:

- d. Was the hearing held on the scheduled date? If not, why not?

yes

- e. Was the opportunity given for all interested parties to submit data, objections, suggested amendments, views, evidence or arguments?

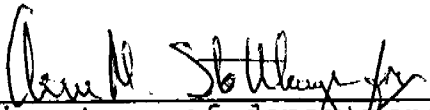
Yes

- f. List all persons who appeared at the hearing and what type of comment they made about the proposed rules (for, against, suggested and amendments). Please attach a copy of the minutes of the hearing.

See attached list and attached summary of
comments received at public hearing

g. On what date did you file in the State Register notice of your action on the proposed rules together with the text of such rules?

November 14, 1983


Signature of department head,
board chairman or executive
secretary.

(Please attach additional sheets if necessary)

PUBLIC HEARING ATTENDANCE RECORD

In re Behavioral Health Licensing Regulations

Chapter 27-9, Series I (1984) - October 17, 1983

Conference Room, P+G Building, 2019 Washington

Street, E., Charleston, WV

P L E A S E P R I N T

Name Charli Fulton

Address 1116 B Kanawha Blvd. East.
Charleston, W.Va. 25301

Representing Appalachian Research + Defense Fund

Do you wish to make a comment? yes no

Name Ronald W. Talkington

Address #1 Stevens Road

Representing Seneca MH/MR Council

Do you wish to make a comment? yes no

Name _____

Address _____

Representing _____

Do you wish to make a comment? yes _____ no _____

P L E A S E P R I N T

PERSONS SUBMITTING WRITTEN COMMENTS
As Part of Public Hearing

In re: Licensure of Behavioral Health Centers, West Virginia Board
of Health Legislative Rules, Chapter 27-9, Series I, 198_.

Les Delpizzo, Executive Director
Summit Center for Human Development

David O. Miller, Executive Director
Hancock Brooke Mental Health Service

Miss Garnette Thorne, Executive Secretary
Board of Examiners for Registered Professional Nurses

C. Cooper Fulton, Attorney at Law
Appalachian Research and Defense Fund, Inc.

Summary of Comments Received at
Public Hearing(s) in re

Title, Type and Number: Licensure of Behavioral Health
Centers. Legislative. Chapter 27-9 Series I 198-

Date(s) and Location(s): Monday, October 17, 1983

P & G Building, Room 10, 2019 Washington Street, East,
Charleston, West Virginia.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11/14/83
Administrative Law Division

Two individuals attended the public hearing. Only one of these offered extensive comments on the proposed regulation; this individual also supplied a written version of the comments. Four other individuals commented in writing. A compilation of comments received, discussion and proposed changes appears below. The changes noted have been incorporated into the regulation as filed with the Legislative Rule-Making Review Committee. Strike-throughs indicate language that has been stricken from the rule; under-scoring indicates new language that has been added subsequent to the hearing. Copies of actual documents received are on file in the Health Department.

1. Comment: Most commenters stated they were quite pleased with the regulation overall. One commenter noted a historical imbalance in the funding of regional centers places some centers at a disability in complying to licensing rules.

Response: Compliance with the licensing rules is a basic requirement for Department of Health funding. As the licensing rules provide minimum physical and treatment safety regulations, they should not create an unreasonable burden on centers.

Proposed: No change

2. Comment: Two commenters stated the rules should be changed generally to be consistent with certain standards and policies in E.H. vs Matin, commonly referred to as the Hartley Plan. One commenter requested a rule stating that the licensee should comply with all court orders and court ordered plans to the extent it serves clients within the ambit of the plan.

Response: The rules reflect the intent of the law to provide physical and treatment safety to clients of any community behavioral health center. The Hartley plan addresses right to treatment issues for patients in state behavioral health hospitals. The rules have less stringent requirements in some instances than the Hartley plan because of their general applicability as basic standards. Changes in earlier drafts and as described below have been made to avoid conflicting requirements between the rules and the Hartley policies. Designated regional community mental health/mental retardation centers as part of the Hartley plan may have to do more to meet Hartley policies but they should not have to do something different.

Court orders frequently address issues of law which go beyond the minimum safety issues intended by law for the rules to address. It would be beyond the intent of the law to require centers to meet these court orders and plans as a condition of licensure.

Proposed: No change

3. Comment: There is no section in this rule which provides a clear and broad guarantee that clients will not be subject to physical abuse, verbal abuse or corporal punishment. Suggest Department of Health Policy No. 3311 for good description of what should be considered abuse. Also, residential centers should be required to properly feed, clothe, and care for health and safety requirements of clients.

Response: Rule 12.1.7 provides a clear and broad protection from verbal and physical abuse as well as requiring a humane treatment environment with protection from harm. Rule 14.7 addresses issues related to adequate food and health care in residential centers. Rule 14.8.5 requires staff to assist clients in acquiring adequate clothing. It is not necessary to incorporate Policy No. 3311 for examples of verbal and physical abuse into the rule.

Proposed: No change

4. Comment: The definition of comprehensive regional mental health/mental retardation centers should contemplate the possibility that a center might be organized for profit.

Response: Chapter 27-2A of the West Virginia Code allows such centers to be operated by non-profit boards or to be operated directly by the Department of Health. The Code does not permit the designation of profit making centers. A recent national development has encouraged community mental health centers to develop profit making subsidiaries with profits going to the main center. The Department of Health requires centers to have department approval before such a subsidiary is created.

Proposed: No change

5. Comment: The Human Rights Committee should be defined.

Response: The definition is contained in Rule 12.7.

Proposed: No change

6. Comment: The definition of seclusion in 4.31 should be consistent with the definition in the Hartley Plan.

Response: A change has been made to clarify that a lock is not the only method of keeping someone "locked" in a room. This is a technical clarification rather than a substantive change.

Proposed: Section 4.31. Seclusion occurs when a client is placed in a locked room alone in a room or enclosed space with closed doors which the individual cannot open from inside for the protection of the client or others.

7. Comment: Section 4.37. The term treatment is not appropriate to describe the services provided to mentally retarded individuals. More appropriate terms are training, education, and habilitation.

Response: The term treatment has been defined in an inclusive manner and training is listed as a type of treatment. For additional clarification education and habilitation will be added to the definition.

Proposed: Section 4.37. Treatment - The broad range of planned and continuing services, including diagnostic evaluation, counseling, medical, psychiatric, psychological, training, education, habilitation, and social service care, which may be extended to clients and is designed to improve the behavior of such individuals toward identified goals and objectives.

8. Comment: Section 4.38. The plan should be renamed the individual program plan to make the terminology consistent throughout the mental health system since the Hartley Plan uses the term individual program plan.

Response: Neither term is consistent in the programs licensed under this regulation. Individual program plan is confusing to some centers which use the term program to reflect a service area. Reviewers will not be citing centers for calling the plan any name as long as the plans are complete and implemented.

Proposed: No change

9. Comment: Section 5.1.8 should require all central, satellite and subunit locations to be inspected prior to license being issued.

Response: This requirement is contained in Section 5.6.2.

Proposed: No change

10. Comment: Section 5.2.2 should require any new construction, extension, modification or alteration taking place after the effective date of these rules to be in compliance with all applicable provisions of the rules.

Response: Section 5.2.1 requires any new construction, renovations, or alterations to be in compliance.

Proposed: No change

11. Comment: The granting of provisional licenses should be highly restricted.

Response: This is an option left to the Director in cases where a center may be close to compliance with the rules and failure to license would cause harm as services would not be available to citizens.

12. Comment: One commenter stated Section 5.7 is extremely one sided, with no role for the center to respond in the event of a complaint. Also believes there should be a graded set of interventions between the Department and the centers. There should be a mandate to the Director to contact a center when a complaint is made and discretionary for the Director to decide on an unannounced visit.

Response: The investigation of a complaint allows for the center response and a formal response can be made to the Department's final report. The

interventions the Department makes are graded to the level of the problem found in the investigation. Thus, a finding of no fault would be stated as such in the report and no requirements would be made of the center. The Department would accept any response the center might wish to make to be included with the report and might require a plan of correction as outlined in Section 5.8. The center also has the option to appeal the findings of the Department through the administrative due process outlined in Section 16. The Director should have the discretion of notifying a center of a complaint prior to investigation to allow for situations where the notification itself would jeopardize the investigation.

Proposed: No change

13. Comment: One commenter had serious disagreement with the Department's reports on compliance reviews or client complaints being made public without a response from the affected center being included.

Response: Section 5.9 complies with the Freedom of Information Act (West Virginia Code, Chapter 29B) which requires the Department to treat reports as public information, with certain exceptions. Complaints and associated reports are held confidential pending completion of an investigation if necessary to protect the integrity of the complaint investigation. Other routine reports are construed to be public information from the time of completion. The Department will include center responses and plans of corrections if they have been received at the time of a request for information but cannot withhold the report pending a center response. Safeguards to protect clients are incorporated in the regulation.

Proposed: No change

14. Comment: The new provision of Section 7.2.5 requiring the center to carry liability and other insurance is an important and necessary requirement and should be left as it is.

Response: This was added to an earlier draft.

Proposed: No change

15. Comment: Inasmuch as the Department of Health has developed a "Continuum of Care Plan" under the E.H. v. Martin plan, services required to meet that plan should receive priority.

Response: Services are mandated by the Department in contracts with comprehensive mental health/mental retardation centers. A variety of other centers which are not mandated to provide a variety of services will be seeking a license under these rules.

Proposed: No change

16. Comment: I found it very surprising that the regulations would begin mandating the use of only master's level therapists. This process is very unfair and very inefficient in a state such as West Virginia which has a number of people who have been providing direct services for a very long time, usually under supervision and who are extremely skilled. In fact, this

is the sort of "input-oriented" quality assurance that has been proven time and again to be ineffective and has very little impact on the output--namely, quality of patient care.

Response: The reviewer appears to misunderstand Section 9.1.4 which mandates treatment provided by or under the supervision of a master's level therapist with the exception of skill training by or under the supervision of a registered nurse or a bachelor's degree in a human service, education, or health field.

Proposed: No change

17. Comment: Section 9.3 -- Treatment Plan should require that the individual program plan for each client be implemented by those persons who developed the plan. For clients admitted to residential facilities, the plan should be developed within three days of admission.

Response: A change appears unnecessary. As a practical matter centers do not have sufficient staff to allow some staff to develop treatment plans for other staff. The Hartley Plan calls for an initial treatment plan to be developed within three days of admission to be followed with an interim plan within seven days which is finalized within 30 days. The rule has a provision similar to the initial plan in Section 9.2.2.(d) which is required within five days of admission. The treatment plan is similar to the interim plan and is required within seven days with finalization within 30 days.

Proposed: No change

18. Comment: Providers of services to clients/patients mandated by Hartley vs Martin need to provide emergency services consistent with the Hartley Plan (Section 9.4).

Response: The requirements for emergency services are for minimum physical and treatment safety and apply only to a center which has an emergency service. The rule requires less than the Hartley Plan, but is not inconsistent with it. Comprehensive centers covered by the continuum of care section of the Hartley Plan are mandated to provide a comprehensive emergency service through contracts with the department.

Proposed: No change

19. Comment: I was extremely disappointed to still see a stress on separate "services" and "programs" for drug and alcoholism populations being mandated. The present proposed regs, when coupled with the definitions, effectively maintain the necessity to have a substance abuse department. Again, I would stress that this is the prescription of means when that is inappropriate for licensing regulations; instead, there should be a stress on prescription of ends. As alternate language, I would suggest the following: "All behavioral health service providers will be required to show a capacity to provide outpatient, training, counseling, prevention, and aftercare/continuity of care services to drug and alcohol abusers in their service area."

Response: Section 9.5 does not mandate any center to have a separate alcohol and drug abuse service; however, if a center does have a separate

service, the requirements of 9.5.1 apply. It is understood by the Department that some centers have generic outpatient services which work with a variety of clients including alcohol and drug abuse. Section 9.5 does not apply to this type of service.

Proposed: No change

20. Comment: Section 9.6, Management of Inappropriate Behaviors, is a vast improvement over the original draft of this rule. In addition to the requirements contained in this section, however, there should be a specific requirement that under no conditions will the administering of electric shocks be used as aversive conditioning.

Response: The Department feels there are adequate safeguards in the rules to protect clients from any unnecessary use or type of aversive conditioning. In addition to client or guardian approval, there must be evidence of the good faith use of alternative measures and approval by the Human Rights Committee, at least one third of which is consumers. There is no known use of electric shocks by community centers presently.

Proposed: No change

21. Comment: Section 9.8.4 conflicts with the right to refuse treatment as set forth in the Department of Health policy in 2.01.01 of the Hartley Plan. This section should be rewritten to reflect the absolute right of a client to refuse treatment.

Response: Section 9.8.4 was intended to reflect the duty staff have to intervene immediately to protect the client or others from harm without denying a client's right to refuse treatment. The non-substantive change proposed here clarifies this immediate duty and eliminates the apparent inconsistency. The change also eliminated some redundancy between 9.8.4 and 9.8.5 by combining the two items. Subsequent sections have been re-numbered.

Proposed: ~~9-8-4: If the client is immediately dangerous or unobtrusive methods do not work, staff may intervene with more obtrusive methods without consent but only to the extent necessary to control the emergency.~~

~~9-8-5 If the client continues to be out of control and a threat to self or others, seclusion or restraints may be used without consent until the crisis is resolved or the client is transported to an inpatient facility. Such seclusion or restraints shall not be used for a period that exceeds three (3) hours.~~

Section 9.8.4 If the client is immediately dangerous to himself or herself or to others and less restrictive methods do not work, staff may intervene with more intrusive methods until the crisis is resolved or the client is transported to an inpatient facility. Seclusion or restraints may be used as an extreme resort if necessary to control the emergency. Such seclusion or restraints shall not be used for a period that exceeds three (3) hours.

22. Comment: Section 9.8 Psychiatric Emergency, should be rewritten to prohibit the use of seclusion and restraint (both mechanical and chemical) in managing the behavior of developmentally disabled persons. The only

exception to this should be that restraint, to the extent that it is allowed under the standards set forth by the Accreditation Council for Services for Mentally Retarded and Other Developmentally Disabled Persons (ACMRDD), should be permitted.

Response: This section allows the use of seclusion and restraints only when the client loses control and acts in a manner that is dangerous to himself or herself or to others in order to protect the client or others. This is the same provision the ACMRDD standards allow for the application of restraints. The center must make a determination of the appropriateness of seclusion or restraints based on safety. Additional restrictions on this determination for the developmentally disabled are unnecessary.

Proposed: No change

23. Comment: A dynamic quality assurance program should be required. This program will help toward accreditation and certification. Most importantly it is a guarantee of the quality of services being provided to clients. The quality assurance program in this section is inadequate. It should correspond to that required by The Joint Commission on Accreditation of Hospitals.

Response: This comment relates to the earlier issue of assuring minimum physical and treatment safety via licensing vs assuring treatment efficiency and effectiveness through a costly quality assurance program. The Department feels that these are sufficient requirements to evaluate treatment effectiveness in Section 9.9.

Proposed: No change

24. Comment: Section 10.12 is too restrictive of the client's right to receive his records. It should be written to affirmatively state that client's records shall be released with the written consent of the client to all the persons listed in Sections (a) - (e).

Response: Section 10.12 is constructed to define circumstances in which a client's record may be released. Chapter 16, Article 29, Section 1 of the West Virginia Code, enacted by the 1983 Legislature, places some restrictions on the right of record access, specifically relevant here: "(a) In the case of a patient receiving treatment for psychiatric or psychological problems, a summary of the record shall be made available to the patient, his authorized agent or authorized representative following the termination of the treatment program." This statute does not require the restriction of access, but it does appear to permit such restriction. The regulation is constructed permissively in order to avoid conflict with this new law. Regulations are required to be consistent law.

25. Comment: Section 10.15 should be rewritten to reflect the fact that indigent clients have a right to receive copies of their records without payment. See Section 2.01.01 of the Hartley plan and Adams v. Presteria Center for Mental Health Services, Civil Action No. 83C16 (Circuit Court of Lincoln County, West Virginia).

Response: These regulations will apply to centers, programs and clients for whom Hartley standards are not necessarily relevant, as discussed earlier. Additionally, Chapter 16, Article 29 of the Code, cited above, allows health care providers reimbursement for reasonable expenses incurred in copying records. Adams v. Prester was decided prior to the enactment of this new law; is not a decision of the West Virginia Supreme Court of Appeals; and appears not to have general applicability because of the unique facts of the case in question. The Department believes that the rule may not make the provision of copies of records to indigent persons without payment mandatory. The Department would, of course, be pleased to see the voluntary adoption of such a policy by centers.

Proposed: No change

26. Comment: Section 12.1.4 should be rewritten to conform with the right to refuse treatment policy as is established by Section 2.01.01 of the Hartley plan. Community behavioral health problems should not be allowed to override the client's right to refuse treatment any more than the state psychiatric facilities should be allowed to do so.

Response: This is also a clarification of the duty of staff to intervene in an emergency situation vs. the client's right to refuse treatment (see discussion of Section 9.8.4 above).

Proposed: 12.1. Basic Rights - Each client shall have:

...
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.~~

27. Comment: Section 12.1.6 is good; however, it should also reflect the fact that restraint and seclusion may not be used on developmentally disabled persons.

Response: This relates to the issue discussed in Section 9.8 above. Restraint or seclusion may be used on any client who is out of control and acting in a manner dangerous to himself or herself or to others.

Proposed: No change

28. Comment: Section 12.3 omits the provision of an earlier draft which guarantees every client and guardian the right to know what medication the client is taking, the dosage, the purpose of the medication and possible side effects. Such knowledge is necessary if the client is to give informed consent to the treatment. This section should be added and should be made consistent with the informed consent section of Section 2.01.01 of the Hartley plan.

Response: The provision of the earlier draft was not omitted but moved to Section 11.1.9.

Proposed: No change

29. Comment: Section 12.4.5 conflicts with the provisions of the policies established in the Hartley plan. The Hartley plan limits the duration of any restraint on communication by mail and telephone to three days at a maximum. Section 12.4.5 as written here, is far more restrictive of resident's right to communicate than the restrictions placed on residents of the state's psychiatric hospitals. This section should be rewritten to track the policy as set forth in the Hartley plan. Similarly, Section 12.4.6 should be rewritten.

Response: The standard is somewhat more flexible in that it does not require a renewal of such restrictions if the duration is longer than three days. The Department feels that the standard is adequately protective for a general licensure rule. (See earlier comments for general discussion of correspondence of these rules with Hartley.)

30. Comment: Section 12.4 should also contain a provision that no child under the age of 18 shall be housed in a residential center licensed to serve adults.

Response: Section 12.4.1 requires a center to house individuals based on similar age and activity levels unless a client needs special protection. It may be more appropriate to house a 17 year old with 18 and 19 year olds than with 12 and 13 year olds. The rule as written recognizes this distinction.

Proposed: No change

31. Comment: Section 12.8, Violation of a Client's Rights, is improved over the earlier draft; however, Section 12.8.2 should provide a specific time period. I would suggest five days.

Response: Five days may not be adequate to complete an investigation of a suspected violation of client rights if key staff are not available because of days off including holidays and leave and other factors. Section 12.8.2 requires the investigation to be immediate and the report to the Human Rights Committee within a reasonable period of time to allow for these potential difficulties in completing a full investigation.

Proposed: No change

32. Comment: The maximum number of residents in a group facility for the mentally ill or mentally retarded should be limited to eight persons. This is the maximum number of residents that will be permitted in any of the facilities developed in connection with the Hartley plan, and any number larger than that is far to big to provide a home-like residence.

Response: Section 14.3 allows ten (10) clients which permits the development of group homes with eight (8) regular and two (2) emergency or respite care beds. Eight is not a number that has universal agreement, although it is recognized larger numbers at some point do lead to institutional effects. It is true the Department does not intend to fund the development of group homes for more than eight beds in connection with the Hartley plan.

Proposed: No change

33. Comment: Section 14.7.7 is written in far too restrictive a manner. Many of the mentally ill and mentally retarded persons who have been residents of the state institutions are hepatitis carriers, and Section 14.7.7 as written would discourage community facilities from allowing any hepatitis carriers to reside there. The spread of hepatitis can be easily controlled by maintaining appropriate hygienic and sanitary conditions, and there is no need to isolate a hepatitis carrier merely because he is a carrier.

Response: This section was written to protect others in a group home who should be protected from communicable diseases. The use of isolation techniques as approved by a physician does not refer to a specific set of isolation techniques, but rather allows for selection of those methods appropriate to the situation. In some situations, sterilization or separation of dishes and household linens is a sufficient isolation technique. Full isolation is not specifically mandated.

Proposed: No change

34. Comment: There should be no residential centers accommodating more than ten persons as currently indicated in Section 14.10.11.1.

Response: There are specific exceptions which allow more than ten clients in a residential center, such as the fellowship homes or public inebriate shelters in Section 14.12. Also, a center may have several cottages which house less than ten but if the meals are prepared in a central area, this Section applies.

Proposed: No change

35. Comment: As outlined in Section 14.12.3(e), treatment plans for persons admitted to this type of substance abuse facility should be developed within three days of admission. This is the maximum permissible time for the preparation of and initial program plan development under the Hartley plan.

Response: This concern is similar to the one discussed for Section 9.3 above. These alcohol treatment centers must also meet the initial evaluation conditions in Section 9.2.2.

Proposed: No change

36. Comment: Section 14.12.4: Community residences for alcohol and drug abuse clients should be required to be located in an area that is accessible to public transportation. Otherwise, residents' ability to obtain employment will be hindered.

Response: Appropriate access to transportation is a general requirement for residential centers in Section 14.4.

Proposed: No change

37. Comment: Section 15 Penalties, should contain a provision making it mandatory for the director to suspend or revoke the license of any center found to have physically or mentally abused a client.

Response: The Director should have the discretion to determine whether an incident of abuse is an isolated incident with appropriate disciplinary action by the center or indicative of inappropriate conduct on the part of the center.

Proposed: No change

John D. Rockefeller IV
Governor



L. Clark Hansbarger, M.D.
Director

State of West Virginia

DEPARTMENT OF HEALTH

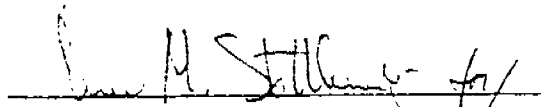
CHARLESTON 25305

Notice

Legislative Rule: Licensure of Behavioral Health Centers, West Virginia Board of Health Legislative Rules, Chapter 27-9, Series I, 198_.

The above titled legislative rule is hereby submitted to the Legislative Rule Making Review Committee.

This rule will repeal and supersede Regulations for Licensing Psychiatric and Other Related Facilities and Programs, West Virginia Board of Health Legislative Rules, Chapter 27-9, Series I, originally filed in 1971, amended in 1973 and 1974, refiled in 1981. The present document represents a complete redrafting and is effectively a new rule. Therefore, underlining and strike-through of the present rule have not been submitted as they would be impractical and uninformative. Copies of the present rule can be supplied at your request.


L. Clark Hansbarger, M. D.
Secretary
West Virginia Board of Health

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE NOV. 14, 1983
Administrative Law Division
Entered

John D. Rockefeller IV
Governor



L. Clark Hansbarger, M.D.
Director

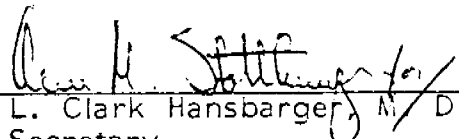
State of West Virginia

DEPARTMENT OF HEALTH
CHARLESTON 25305

Certification

Legislative Rule: Licensure of Behavioral Health Centers, West Virginia Board of Health Legislative Rules, Chapter 27-9, Series I, 198_.

The above titled legislative rule constitutes the official rule approved by the West Virginia Board of Health on October 21, 1983 and filed pursuant to law in the Office of the Secretary of State, State of West Virginia.


L. Clark Hansbarger, M.D.
Secretary
West Virginia Board of Health

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

THIS DATE NOV. 14, 1983
Administrative Law Division

Entered

WEST VIRGINIA BOARD OF HEALTH
RULE ABSTRACT

TITLE: Licensure of Behavioral Health Centers

TYPE: Legislative

AUTHORITY AND RELATED CODE: These legislative rules are issued under the authority of and are related to Chapter 27, Article 9, Section 1 and Chapter 27, Article 17, Section 3 of the West Virginia Code.

NUMBER: 27-9, Series I

SCOPE: These legislative rules establish general standards and procedures for the licensure of behavioral health services and programs.

APPLICATION: These rules apply to any political subdivision, person, persons, association, or corporation, whether for profit or not, which shall establish, maintain or operate a center, institution, or part thereof providing outpatient, residential or other services for the care and treatment of the mentally ill or mentally retarded or otherwise developmentally disabled or services contributing to the prevention of such disorders, except as identified within the regulation. These rules specifically apply to the following types of services and facilities: services less than three (3) hours per session, services of three (3) to eight (8) hours per session; twentyfour (24) hour residential treatment or training programs serving four (4) or more adult residents; and twentyfour (24) hour group residential facilities for developmentally disabled adults or children.

SUMMARY: The rule sets forth details of state administrative procedures regarding the processing of applications for initial and renewal licenses, provisional licenses, state inspections and complaint investigations, plans of correction, and availability of department reports and records. The rule gives basic general requirements for the governing and administration of behavioral health centers. It sets basic minimum standards for physical facility, safety, basic rights of clients, elements of treatment and additional supporting services, and recordkeeping needed to insure client safety.

CONTACT PERSON IN REGULATORY SERVICES DIVISION: Kay Howard, 348-3223

RESPONSIBLE OFFICE AND CONTACT PERSON: Randy Myers, Office of Behavioral Health Services, 348-0627

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

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

2. Explanation of above estimates.

These rules revise and update existing rules. No changes are anticipated in the costs of administering the rules as the number of centers is not expected to increase appreciably. The current cost to the Health Department to review 14 comprehensive regional behavioral health centers and 25 smaller centers, approximately \$50,200 per year, is a part of the Department's ongoing operating budget. (There is also an ongoing cost to the State Fire Marshal's office which will not change.)

3. Date September 16, 1983 Agency Health Department

Signature of Agency Head



L. Clark Hansbarger, M.D.
Director

Signature of Authorized Representative

FILED IN THE OFFICE OF
A. JAMES MANCHIN
 SECRETARY OF STATE
 THIS DATE 9/16/83
 Administrative Law Division

WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Licensure of Behavioral Health Centers

Chapter 27-9
Series I
(1984)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11/14/83
Administrative Law Division

WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Licensure of Behavioral Health Centers

Chapter 27-9
Series I
(1984)

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WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Chapter 27-9
Series I
(1984)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11/14/83
Administrative Law Division

Subject: Licensure of Behavioral Health Centers

Section 1. General

1.1. Scope - These legislative rules establish general standards and procedures for the licensure of behavioral health services and programs.

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

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. Supersession and Repeal of Former Regulations - These rules supersede and repeal department of health Regulations for Licensing Psychiatric and Other Related Facilities and Programs, Chapter 27-9, Series I (1983).

Section 3. Application and Enforcement

3.1. Application - These rules shall apply to any political subdivision, person, persons, association, or corporation, whether for profit or not, which shall establish, maintain or operate a center, institution, or part thereof providing outpatient, residential or other services for the care and treatment of the mentally ill or mentally retarded or otherwise developmentally disabled or services contributing to the prevention of such

Board of Health
Legislative Rule 27-9
Series I

disorders, except as identified herein in Section 3.2. These rules shall specifically apply to the following types of services and facilities: services less than three (3) hours per session, services of three (3) to (8) eight hours per session; twenty-four (24) hour residential treatment or training programs serving four (4) or more adult residents; and twenty-four (24) hour group residential facilities for developmentally disabled adults or children.

3.2. Exceptions - These rules shall not apply to:

- a) Hospitals governed by West Virginia Legislative Rule, Board of Health, Hospital Licensure, Chapter 16-5B, Series I, (1983) as amended;
- b) Twenty-four (24) hour inpatient services operated by a center located within a general or psychiatric hospital. Such services shall be licensed under West Virginia Legislative Rule, Board of Health, Hospital Licensure, Chapter 16-5B, Series I, (1983). as amended;
- c) Nursing homes governed by West Virginia Legislative Rule, Board of Health, Nursing Home Licensure, Chapter 16-5C, Series I, (1983), as amended;
- d) Personal care homes governed by West Virginia Legislative Rule, Board of Health, Personal Care Home Licensure, Chapter 16-5C, Series II, (1983), as amended;
- e) Boarding homes;
- f) Non-supervised apartment living quarters occupied by clients of the center;
- g) Residential facilities providing mental health or substance abuse services for individuals under the age of eighteen (18) which are

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subject to licensure by the West Virginia department of human services;

h) Adult family care homes under the supervision of the West Virginia department of human services;

i) Self-help groups;

j) Information and referral services; or

k) Private practices in non-residential settings by licensed practitioners within the scope of their professional license or by other professions certified as follows: 1) social workers by the national academy of social workers; 2) marriage counselors or family therapists certified by the american association for marriage and family therapy; or 3) addiction counselors certified by the West Virginia association of alcohol and drug abuse counselors.

3.3. Enforcement - These rules shall be enforced by the director of the West Virginia department of health.

Section 4. Definitions

4.1. Admission - The entry of an individual into one or more of the services provided by the facility.

4.2. Applicant - The political subdivision, person, persons, or corporation who submits an application for a license or for renewal of a behavioral health license.

4.3. Aversive Procedures - Restrictive procedures that impose consequences a client finds undesirable in a treatment program to decrease inappropriate behaviors. What is undesirable varies with the individual but generally includes such measures as fines or loss of privileges.

4.4. Behavioral Health Services - Those services intended to help

individuals gain or regain the capacity to function adaptively in their environment, to care for themselves and their families, 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.

4.5. 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.

4.6. Center - An organization that provides behavioral health services, including all of its locations. In order to facilitate simplicity of language within these rules, the term "center" as used herein includes "institution" or part of either a center or of an institution.

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

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

4.9. Comprehensive Regional Mental Health or Mental Retardation Center - A licensed non-profit center which receives designation as a comprehensive regional center from the health department. Such centers must comply with the requirements of the West Virginia Code and are additionally

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subject to contract compliance reviews by the health department regarding the provision for mandated and other services. A valid license under these rules is a minimum pre-requisite condition for such designation.

- 4.10. Department - West Virginia department of health.
- 4.11. Director - The director of the West Virginia department of health or other employee acting on behalf of the director.
- 4.12. Discharge - The termination of the client's affiliation with a center.
- 4.13. Documentation - A written record relating to compliance with the regulations.
- 4.14. 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.
- 4.15. Executive Director - The staff person designated by a governing body to administer a center.
- 4.16. 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.
- 4.17. Governing Body - The person or group of persons with ultimate responsibility for a center; for example, 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.
- 4.18. Guardian - A person or agency charged with some degree of care and management of an individual under state law.

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

4.20. Institution - An organization that provides behavioral health services. See definition of center.

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

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

4.23. Mechanical Restraints - Handcuffs, straitjackets, or other restraining devices which are designed and applied for the purpose of preventing the individual from engaging in assaultive or self abusive behavior.

4.24. 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.

4.25. 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.

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

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

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

4.29. Protective Devices - Protective devices refers to those devices applied for the purpose of protecting the individual from accidental or unintentional injury or which are used to provide support. Examples of such protective devices are bed or chair ties which help to support the individual and prevent falling from the bed or chair. A device, such as an elbow splint, which immobilizes a joint and limits movement of a limb, is considered a protective device if it is applied solely for the purpose of preventing the client from scratching or otherwise damaging scars, wounds, burns or other injury sites on his or her own body and which allows the client a degree of freedom or mobility which could not be permitted without the use of such device.

4.30. Residential Services - A community-based congregate type of housing established for people with similar needs, levels of independence, and ability.

4.31. Seclusion - Seclusion occurs when a client is placed alone in a room or enclosed space with closed doors which the individual cannot open from inside for the protection of the client or others.

4.32. Self-Help Groups/Mutual Aid Groups - Individuals organized by and for people who share a common problem, such as, alcoholics anonymous, parents anonymous, recovery incorporated.

4.33. 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.

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

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

4.36. Time Out - Time out is a positive adaptive procedure which utilizes isolation of the client to decrease inappropriate behavior. Time out may be achieved by staff placing the client in a quiet corner of the room or removing the client to another room which is not locked.

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

4.38. 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. The treatment plan may be known by other names such as: individual program plan, individual service plan, individual education plan, individual program and development plan, individual rehabilitation plan.

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

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

4.41. Waiver - 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 political subdivision, person, persons, association, or corporation shall establish, operate, maintain within the State of West Virginia, a behavioral health center, or institution, or part thereof unless a license therefor has been obtained from the director.

5.1.2. A license shall be valid only for the center and person or organization named in the application and shall not be transferable or assignable.

5.1.3. When the name of a center is changed, the director shall be notified within thirty (30) days. The new name shall be shown on the next license issued.

5.1.4. A license shall state: (a) the name of the center; (b) the types of clients to be served, such as, mentally ill, alcohol or drug abuser, or mentally retarded/developmentally disabled; (c) the category of service: less than three (3) hours, three to eight (3-8) hours, or twenty-four (24) hour residential; (d) the number of beds for residential facilities; (e) all service delivery locations operated by the center; (f) the date of issuance; and (g) the expiration date.

5.1.5. An initial or renewal license shall be valid for two years from the date of issuance, subject to compliance with these rules.

5.1.6. The current license shall be prominently displayed at all service locations operated by the center, except in twenty-four (24) hour community residential locations, where it shall be shown upon request.

5.1.7. Applications for initial or renewal license shall identify the

individuals legally responsible for the operation of the center.

5.1.8. The license shall apply to all central, satellite, and sub-unit locations operated by the center for the purpose of providing services or administering such services.

5.1.9. An expired or otherwise invalid license shall be surrendered to the director on written demand.

5.1.10. The director shall provide consultation in obtaining compliance with these rules.

5.1.11. Neither an initial, renewal or a provisional license shall be issued unless an inspection has been made.

5.1.12. Waivers or variances to the provisions of these rules may be granted by the director if the application of these standards clearly would be impractical and provided that any alternate arrangements are not detrimental to the health or safety of the clients or employees of the center. Such alternate arrangements shall comply as nearly as is practical with these rules.

5.2. Construction, Renovation, Alterations

5.2.1. Plans for new construction or for renovations or alterations of existing physical facilities of a center shall be submitted to the director for approval based on safety, sanitation, accessibility to the handicapped and similar considerations prior to the commencement of such new construction, renovations or alterations.

5.2.2. Centers in operation prior to the effective date of these regulations shall be required to institute modifications of buildings where undue hazards to the health or safety of clients or staff exist.

5.3. Initial License

5.3.1. An applicant shall submit an application to the director on forms supplied by the director not less than sixty (60) days and not more than one hundred twenty (120) days prior to the date proposed for the commencement of operation. A non-refundable fee of \$10 shall be submitted with the application.

5.3.2. The following information pertaining to ownership shall be submitted:

(a) the name and address of each person, who as a stockholder or otherwise, has a proprietary interest of five (5) percent or more in the center;

(b) the name and address of each officer and director of a corporation, whether for profit or not;

(c) a disclosure of ownership by any parent company or subsidiary, if applicable, and the names and addresses of its officers and directors.

5.3.3. Upon receipt of the application, the director shall request inspections or reviews by the state fire marshal's office.

5.3.4. The director shall issue an initial license if the applicant: (a) is in compliance with or, in the case of proposed activities, supplies evidence of ability and intent to comply with these rules; and (b) has submitted a complete application and the application fee.

5.4. Renewal License

5.4.1. An applicant for a renewal license shall submit an application to the director on forms provided by the director not less than sixty (60)

days and not more than one hundred twenty (120) days prior to the expiration date of the current license. A non-refundable fee of \$10 shall be included with the application.

5.4.2. Upon receipt of the application, the director shall request inspections or reviews by the state fire marshal's office.

5.4.3. The director shall issue a renewal license if the applicant: (a) is in compliance with the provisions of these rules; and (b) has submitted a complete application and the renewal license fee.

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

5.5. Provisional License

5.5.1. A provisional license may be issued by the director if: (a) a new center seeking initial licensure is not in full compliance with these rules; or (b) a center seeking relicensure does not fully comply with these rules.

5.5.2. The issuance of a provisional license shall be contingent upon demonstrated improvement in compliance with these rules and submission to the director of an acceptable plan of correction within the time period encompassed by such license.

5.5.3. A provisional license shall expire no more than six months from date of issuance and shall not be consecutively reissued more than twice.

5.6. Inspections

5.6.1. An on-site inspection of every center regulated pursuant to

these rules shall be conducted no less frequently than once every two years except that in the case of twenty-four (24) hour community residential services, inspections shall be conducted no less frequently than once a year.

5.6.2. Inspections shall include every service or program location operated by the center. The director shall have the authority to conduct either announced or unannounced visits.

5.6.3. The director shall have access to the center, its staff, clients (with their permission), and records including, but not limited to, client records.

5.6.4. The director may provide for such other inspections or investigations as he or she may deem necessary to carry out the intent and purpose of state law and regulations for which he or she has enforcement authority.

5.6.5. The director shall have the right to enter upon the premises of any facility which he or she has reason to believe may be operating as a behavioral health center.

5.7. Complaint Investigation

5.7.1. Any person may register a complaint with the director alleging violation of applicable laws or rules by a center. A complaint shall state the substance of the complaint and the center by name.

5.7.2. The director shall conduct an investigation of the complaint.

5.7.3. The director shall have the authority to conduct unannounced inspections of center locations involved in the complaint and any other investigations necessary to determine the validity of the complaint.

5.7.4. The director shall notify the center's executive director or the person in charge of the location involved in the complaint of the substance of the complaint only at the time of the investigation.

5.7.5. No later than five (5) working days after the completion of the investigation, the director shall prepare a written report of the results of the investigation and shall notify the complainant and the center in writing of the results of the investigation.

5.7.6. A description of the corrective action the center will be required to take and of any disciplinary action to be taken by the director shall be sent to the complainant on request.

5.7.7. The name of a complainant or of any client named in the complaint shall be kept confidential and shall not be disclosed without the written authorization of the individual. Before any information is disclosed to the public regarding a complaint and its investigation, any information in the complaint or the report of investigation which could reasonably identify the complainant or any client shall be deleted, unless the public interest by clear and convincing interest requires disclosure in the particular instance.

5.7.8. If a complaint becomes the subject of a judicial proceeding, nothing in this subsection shall be construed to prohibit the disclosure of information which would otherwise be disclosed in a judicial proceeding.

5.7.9. Centers shall be prohibited from discharging or discriminating in any way against any client by whom or on whose behalf a complaint has been submitted to the director or who has participated in a complaint investigation process. Centers shall be prohibited from discharging or discriminating against any employee who has submitted a complaint or who

has assisted the director or any other legal authority in a complaint-related investigation for reason of such submission or assistance.

5.7.10. Violation of the prohibitions of Subsection 5.7.9 of these rules shall be grounds for suspending or revoking a license.

5.8. Plans of Correction

5.8.1. 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 director within thirty (30) days of receipt of the report of the inspection or other investigation.

5.8.2. The director may require an immediate correction in the case of a violation severely jeopardizing the health or safety of a client or employee.

5.8.3. The plan of correction shall specify:

(a) the deficiencies to be corrected;

(b) action taken or proposed to correct the deficiencies and procedures to prevent its reoccurrence;

(c) a calendar date by which the deficiency will be corrected. The date shall allow the shortest possible time within which the center may reasonably be expected to correct the deficiencies.

5.8.4. The plan of correction shall be approved, modified or rejected in whole or in part by the director in writing within ten (10) working days of receipt.

5.8.5. In accepting, modifying, or rejecting the plan for correction, the director shall consider:

(a) the adequacy of the actions and procedures taken or proposed to correct the deficiencies.

(b) the seriousness of the violation;

(c) the time proposed for implementing the correction; and

(d) any other relevant factors.

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

5.8.7. When the director rejects a plan of correction, a reasonable amount of time, but no more than thirty (30) days shall be allowed for submission of a revised plan.

5.8.8. The director 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.

5.9. Department Reports and Records

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

5.9.2. Reports shall specify the nature of each deficiency and indicate the provision of these rules being violated.

5.9.3. Reports and records related to these rules shall be treated as public information, except as specified herein regarding complaints, from the time they are received by or completed by the director, except that, before releasing a report or record deemed public information, the director shall delete any information which could reasonably be expected to permit identification of a client and any information of a personal nature such as

that kept in a medical, personal or similar file, or other information required to be kept confidential by state and federal law and rules and regulations. When an inspection report is released prior to the center's submission of or the director's review of a plan of correction, such fact shall be identified with the release.

5.9.4. The director 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, according to law and department policy or regulation.

Section 6. Governing Body

6.1. 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.

6.2. 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 by training and experience to carry out their assigned responsibilities. These qualifications shall be documented by detailed statements of experience and training, references and any other material related to training and experience.

7.1.3. All personnel of and consultants of the center shall be in compliance with any state professional licensure requirements.

7.1.4. The center shall develop and implement policies and procedures for the provision of staff development which update and expand skills. Staff shall be provided with training when their assignments change to include new duties and skills. A record of participation in staff development and training activities shall be maintained.

7.1.5. The center shall provide orientation to all new staff. The orientation shall place special emphasis on treatment policies, client rights and the use of emergency procedures, such as restraints.

7.1.6. The center shall maintain a confidential personnel record for each employee, which shall contain at least job title, a record of employment, education, other training, job application, and when applicable, evidence of compliance with state licensure, certification or registration requirements or other certification requirements stated in these rules.

7.1.7. An employee shall have access to his or her personnel record and shall have the right to designate others to have access to the record.

7.1.8. The center shall not discriminate in any matter of employment on the basis of race, color, national origin, ancestry, religion, physical handicap or sex and 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.

7.1.9. If the center utilizes volunteers, it shall establish written policies and procedures 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.

7.2.5. The center shall carry liability and any other insurance necessary to protect the center from foreseeable liabilities arising from the operations of the center.

Section 8. General Physical Facility and 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) the need 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.

Because of these influencing factors, there are variations among the existing (and even planned) centers. To recognize these variations, provisions are made for categories according to length of service, such as, less than three (3) hours, three (3) to eight (8) hours, and twenty-four (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 three (3) hour services category and therefore, need fewer fire safety regulations; and the more dependent individual receives services in a supervised twenty-four (24) hour residential environment and needs more fire safety regulations for adequate protection.

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

8.2. Sanitation - All centers providing services must meet the following standards. Additional sanitation standards 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 rules of the West Virginia board of health.

(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 according to the design standards and rules of the West Virginia board of health.

(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 with modules, houses or cottages accommodating more than ten (10) persons shall comply with the West Virginia board of health food service sanitation rules. Standards for modules, houses or cottages serving ten (10) or less persons are given in Section 14.

Section 9. Client Services

Discussion

This section provides rules for treatment and services for all cate-

gories, that is, for less than three (3) hours, for three (3) to eight (8) hours and for twenty-four (24) hour residential services. Additional standards for three (3) to eight (8) hour services are found in Section 13. Additional standards for twenty-four (24) hour residential services are given in Section 14.

9.1. Client Services Generally

9.1.1. The center shall have written policies and procedures for admission of clients into the services.

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, by a licensed practitioner within the scope of his or her license under state law; or acceptable by other federal standards.

9.1.4. Unless excepted elsewhere in these rules, treatment of or services to clients shall be by or under the supervision of a staff member with at least a master's degree in a human services or health field except that skill training may be by or under the supervision of a registered nurse or an individual with a bachelor's degree in a human service, education, or health field.

9.2. Diagnosis and Treatment

9.2.1. The center shall have written procedures for coordination of initial evaluations and formulation of treatment plans.

9.2.2. The initial evaluation shall be entered in a client's record within five days of intake interview and shall include the following:

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- (a) Presenting problems;
- (b) Background history, including social and medical information;
- (c) Interview information;
- (d) Recommendation for further evaluation and initial treatment prior to finalization of treatment plan.

9.2.3. Based on information obtained during the intake 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:

- (a) Psychiatric/psychological evaluation;
- (b) Physical examination;
- (c) Neurological examination;
- (d) Laboratory tests;
- (e) Occupational therapy evaluation;
- (f) Physical therapy evaluation;
- (g) Rehabilitation and vocational evaluation;
- (h) Adaptive behavior evaluation or direct observation of behavior;
- (i) Special needs, for example, nutrition or dietary modifications.

9.2.4. Additional information about the client's condition shall be recorded immediately in the client's record.

9.2.5. When diagnoses are rendered, they shall be:

- (a) written in standard nomenclature as provided in either the american psychiatric association's latest edition of the Diagnostic and Statistical Manual of Mental Disorders, the latest edition of the International Classification of Diseases or the latest Classification for Mental Retardation of the american association for mental deficiency.

(b) 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.

9.3. Treatment Plan

9.3.1. 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 and implemented within seven (7) days of admission and finalized within thirty (30) days.

9.3.2. The client or guardian shall participate in the development of the treatment plan and reviews. If a client is unable or unwilling to participate and such inability or unwillingness to participate is documented in writing, then planning can be done without participation by the client. The client's informed consent for a course of treatment specified in the treatment plan or updates shall be verified by his or her signature or the guardian's signature.

9.3.3. The treatment plan shall contain specific goals the client is to achieve for improvement or maintenance of mental health or optimal adaptive functioning.

9.3.4. The treatment plan shall contain specific objectives that relate to the goals and expected achievement dates.

9.3.5. The treatment plan shall describe the services, activities, and programs planned for the client.

9.3.6. The methods used in implementing the treatment plan shall be appropriate to the client's needs. Aversive methods shall be used only as outlined in Section 9.6.

9.3.7. Services provided to the client shall be primarily directed toward implementation of the treatment plan and verified by documentation, for example, progress notes, attendance records, post-tests, and performance indicators.

9.3.8. There shall be a review of the treatment plan at least every ninety (90) days by assigned staff except that where longer intervals between client contacts with the center are part of an approved treatment plan, such reviews of the treatment plan shall occur at least every one hundred eighty (180) days. The review shall summarize the amount of treatment or training provided, indicate progress towards the objectives, indicate problems which impeded treatment progress whether client- or center-based, and provide a decision either to continue the treatment plan because of an acceptable level of progress or to modify the treatment plan.

9.3.9. At termination, a summary of care shall be set forth clearly in the client record.

9.4. 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.

9.5. Additional Standards for Alcohol and Drug Abuse Outpatient and Prevention Services

9.5.1. An alcohol and drug abuse outpatient and prevention service shall provide special functions as the liaison agency between the alcohol and drug abuse residential centers and the community and shall be responsible for continuity of after-care services for recovering clients.

9.5.2. An alcohol and drug abuse outpatient and prevention program shall 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 for clients not in a residential program.

9.6. Management of Inappropriate Behaviors
Discussion

Management of inappropriate behaviors refers to efforts to modify maladaptive or problem behaviors and to replace them with behaviors that are adaptive and appropriate.

9.6.1. The center shall have written policy that defines the use of procedures to manage inappropriate behavior, the staff members who may authorize their use and a mechanism for monitoring and controlling their use.

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

9.6.3. 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 and that isolation was required to help the client reestablish self control.

9.6.4. 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. If the inappropriate behavior for which time-out is utilized occurs frequently, for example three (3) days in a week or three (3) weeks in a row, a treatment plan to manage the inappropriate behavior shall be designed. If time-out is utilized as a procedure in a treatment plan, maximum times for the use of time-out shall be included in the plan. When the maximum time exceeds fifteen (15) minutes, the plan shall be approved by the human rights committee prior to implementation.

9.6.5. When inappropriate 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.

9.6.6. 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.

9.6.7. The use of aversive conditioning or protective devices shall be:

(a) Reviewed and approved prior to implementation by the human rights committee;

(b) Conducted only with the written informed consent of the affected client and guardian if appropriate;

(c) Described in the individual's treatment plan; and

(d) Documented in the client's record for all periods involving the use of aversive conditioning or protective devices with justification and authorization for each use thereof.

9.6.8. Protective devices may be used as an integral part of a treatment plan designed to lead to a less restrictive way of managing, and ultimately to the elimination of the behavior for which the device is applied.

9.6.9. 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 or her behavior is dangerous to himself or herself or to other persons and is extremely detrimental to his or her development, and because of the individual's failure to respond to a variety of positive teaching procedures employed consistently and for a reasonable length of time. The dangerous or detrimental conditions and failure to respond shall be documented in his or her record.

9.6.10. When food is provided or withheld as a procedure to manage inappropriate behavior, the effect on nutrition and dental status shall be considered.

(a) Foods and other substances such as cigarettes 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) Plans to manage inappropriate behavior shall not result in the denial of three nutritionally balanced meals per day.

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

9.6.12. Clients shall not be removed from a therapeutic program as a form of punishment. When clients so lose their ability to control their behavior that participation constitutes a danger to themselves or others, they may be removed from the treatment program in which case staff shall devote increased attention to returning the clients to a level of functioning that allows participation in the treatment plan or shall design a new treatment plan to meet the clients' needs.

9.7. Medical Emergency

9.7.1. Medical emergencies are those which involve a threat of death or serious physical harm requiring immediate treatment.

9.7.2. The center shall have a procedure for dealing with medical emergencies in an effective and timely manner.

9.7.3. A complete description of the emergency and the staff's course of action shall be entered in the client's record.

9.8. Psychiatric Emergency

Discussion

A psychiatric emergency exists when a client loses control and acts in

a manner that poses substantial likelihood of physical harm to himself or herself or to others. A psychiatric emergency is a rare occurrence at a center, but on those occasions where less restrictive measures such as talking the client down are not effective or where the client is actively dangerous to himself or herself or to others, the center may utilize intrusive measures such as the administration of medication, seclusion or mechanical restraints until the crisis is resolved or the client can be transported to an inpatient facility.

9.8.1. The center shall have a clear procedure for handling psychiatric emergencies.

9.8.2. Staff shall immediately notify the appropriate supervisor of any psychiatric emergency and clear other clients from the immediate area.

9.8.3. Unless the client is immediately dangerous to himself or herself or others, as, for example, the client is actually attempting suicide or attacking others, staff shall try less restrictive methods of crisis management such as efforts to establish one to one verbal rapport.

Section 9.8.4. If the client is immediately dangerous to himself or herself or to others and less restrictive methods do not work, staff may intervene with more intrusive methods until the crisis is resolved or the client is transported to an inpatient facility. Seclusion or restraints may be used as an extreme resort if necessary to control the emergency. Such seclusion or restraints shall not be used for a period that exceeds three (3) hours.

9.8.5. A client shall be placed in seclusion only with the dated and signed approval of a physician, the executive director or his or her designee written in the client's record.

9.8.6. 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.

9.8.7. All harmful objects shall be removed from any area utilized for the purpose of seclusion.

9.8.8. Restraints may be used when seclusion is inappropriate because the client is actively suicidal or requires constant observation.

9.8.9. Restraints shall be applied to a client only with the dated and signed approval in the client's record by a physician, the executive director or his or her designee. The executive director shall be notified when restraints are used.

9.8.10. Supervision of clients in restraints shall be on a one to one basis for the duration of the time the restraints are in place.

9.8.11. In cases where the crises abates before it is necessary to transport the client to an inpatient facility, a physician, the executive director or his or her designee may approve the client's release from seclusion or restraints.

9.8.12. A complete description of the emergency shall be immediately entered in the client record and include:

- (a) a report of the incident;
- (b) staff actions and rationale for each method employed;
- (c) a continuing description of the client's response to staff actions;
- (d) all approvals by a physician, the executive director or his or her designee to utilize obtrusive measures;

(e) seclusion checks and restraint reports at least every fifteen (15) minutes;

(f) the resolution of the emergency; and

(g) plans to continue services to the client.

9.9. Evaluation of Client Services - 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 treatment plan reviews and of reports by the human rights committee.

Section 10. Client Records

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

10.2. The client record for non-emergency services 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) treatment plans and updates including the date of the next review and documentation of the consent of the client for treatment;

(f) a record of any signed and dated physicians orders;

(g) a complete report of any accidents, psychiatric emergencies, seizures, or illnesses occurring while the client is on the center's premises or engaged in center activities and treatment thereof;

(h) a record of any medication administered as indicated in Sections 11.1.1 and 11.1.4;

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- (i) copies of all consultation reports;
- (j) a record of any dietary modifications or nutritional needs;
- (k) a continuing record of treatment data, such as performance indicators, post-tests, or progress notes which include a summary of the treatment provided, progress toward goals, and immediate plans for continuing treatment;
- (l) treatment or discharge summary within thirty (30) days of termination;
- (m) communications pertinent to the well-being of the client; and
- (n) the results of treatment and changes to the treatment plan.

10.3. The client record of emergency services shall include, as far as the information is available, the following:

10.3.1. For emergency telephone contacts:

- (a) identification data relating to the client or individual making the contact, such as, family, friend, police;
- (b) description of significant clinical data;
- (c) response of professional taking the emergency call;
- (d) record of recommendation made;
- (e) specific instructions given for client;
- (f) provisions for follow-up.

10.3.2. For walk-in emergencies:

- (a) identification data including the client's legal status;
- (b) the time of arrival, and the time of discharge;
- (c) means of transportation to the emergency service;
- (d) pertinent history including emergency care given prior to the arrival at the center;

records to ensure rapid location and retrieval of client records at all times.

10.8. Client records or photographed reproductions shall be retained for a minimum of five (5) years following termination. In the case of minors, records shall be retained until five (5) years after the client's eighteenth birthday. Methods of disposal shall be designed to assure the confidentiality of information in the record.

10.9. The center shall use as necessary the services of a qualified medical records administrator or technician to assure that the center's records are organized and maintained properly.

10.10. The center shall develop staff procedures, sanctions and office procedures as are necessary and appropriate to protect the confidentiality of the records of clients and to govern the release of such records to proper interested parties.

10.11. Client records may be released without consent as follows except as specified in Section 10.9 of these rules:

(a) in a proceeding under section four, article five, chapter 27 of the West Virginia Code to disclose the results of an involuntary examination made pursuant to section two, three, or four, article five, of chapter 27 of the West Virginia Code;

(b) in a proceeding under article six-A of chapter 27 of the West Virginia Code to disclose the results of an involuntary examination made pursuant thereto;

(c) pursuant to an order of any court based upon a finding that said information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section;

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(d) to protect against a clear and substantial danger of imminent injury by a patient or client to himself or herself or another; and

(e) for treatment or internal review purposes to staff of the center.

10.12. Client records may be released only with the written consent of the client to:

(a) the client;

(b) the attorney of the client;

(c) physicians and other providers of health, social, educational or welfare services involved in caring for or in rehabilitating the client, provided that such information shall be kept confidential and used solely for the benefit of the client;

(d) agencies or organizations requiring information necessary to make payments to or on behalf of the client pursuant to contract or in accordance with law, provided that only such information shall be released to third party payors as is required to certify that covered services have been provided; and

(e) others obtaining such consent.

10.13. All records relating to the treatment of an individual for alcoholism or drug abuse shall be subject to the federal regulations on confidentiality of alcohol and drug abuse patient records found at Part 2 of Subchapter A of Chapter 1, Title 42, Code of Federal Regulations or to the statutory requirements of the West Virginia Code, whichever is more stringent.

10.14. Nothing in these rules shall be construed to interfere with

the right of the director to examine client records in the course of executing his or her responsibilities to administer these rules or other appropriate state and federal law or regulations.

10.15. The center may charge copying fees to cover the actual cost of copies.

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

11.1.1. The center shall establish policies and procedures governing prescription 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 prescription medications administered to clients shall be authorized by written, dated, and signed order of a physician, or others authorized by law to prescribe medications.

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 the medication.

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11.1.4. Changes in the client's condition as a result of receiving the medication, including adverse reactions, 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. The center shall provide these clients secure areas in which to keep their medications, as needed.

11.1.6. Medications requiring stop orders and injectables, except for insulin, shall be administered by a physician, a registered nurse, a licensed practical nurse or other individual having such authority under state law. Other medications may be administered by a responsible person approved in writing by a physician for the administration of specific drugs.

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

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

11.1.9. Every client or guardian and any responsible person as identified in 11.1.6 shall be informed as to what medication the client is taking, the dosage, the purpose of the medication, possible side effects, the effects of not taking the medication, alternate treatments and their effects.

11.1.10. Individually prescribed medications shall be packaged by a pharmacist in accordance with state law unless administered by a physician or a registered nurse and shall be delivered directly to the center in an unopened package which has been sealed by the pharmacist.

11.1.11. Each prescription medication shall have a separate container

showing at least: the individual's name, address, date filled, physician, name of drug, dosage, route of administration, frequency and the amount or number of drugs dispensed, except for those medications administered by a physician or a registered nurse.

11.1.13. Medications subject to controlled substances regulations shall be in full compliance with state and federal law and regulations.

11.2. 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 may occur 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.

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 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. Restraint and seclusion may only be used in situations where there is imminent danger the client will injure himself or others and all other less restrictive methods of control have been exhausted.

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 his or her own client records in accordance with state law.

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 his or her 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, handicap, national origin, or marital status.

12.1.15. The right to exercise his or her civil rights, including but not limited to, 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 or she has been adjudicated incompetent in a separate proceeding pursuant to article 11, chapter 27 of the Code of West Virginia, and the county commission 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. Rights Devolving to Committee or Guardian - In the case of a person adjudicated incompetent according to West Virginia law, certain of these rights may devolve to the committee or guardian, if so specified by the court of county commission.

12.3. Medications

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

12.3.2. 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.

12.4. Client's Rights in a Residential Center

12.4.1. Residents shall be housed with other individuals of similar age and activity levels unless specific reasons such as the need to protect a client with a low level of adaptive skills and ability for self defense, are noted in the treatment plan.

12.4.2. A resident is entitled to unimpeded, private, and uncensored communication with others by mail and telephone and to visit with persons of her or his choice, except in the circumstances and under the conditions set forth in this section.

12.4.3. Each center shall endeavor to implement the rights guaranteed by Subsection 12.4.2 by making telephones reasonably accessible, by ensuring that correspondence can be conveniently received and mailed, and by making space for visits available.

12.4.4. Reasonable times and places for the use of telephones and visits may be established and, if established, shall be in writing.

12.4.5. The right of a resident to communicate by mail and telephone or to visit with persons of his or her choice may be limited if each limitation is situation specific and 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. Such limitation shall be approved by the executive director or his or her designee and shall not last longer than is necessary to achieve the goals of the limitation.

12.4.6. 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 or her in the future.

12.4.7. No limitation upon the rights guaranteed by this subsection may apply between a resident and his or her attorney, or between a resident and other persons when the communication involves matters which may be the subject of legal inquiry.

12.4.8. Any limitation adopted under the authority of this subsection, the date it shall expire and the justification for its adoption shall be promptly noted in the client's record.

12.5. Client's Labor

12.5.1. 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.

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

12.5.3. Clients in residential centers may be required to perform housekeeping tasks in the residence.

12.6. Experimental Research

12.6.1. 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.

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

12.6.3. Experimental research 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.

12.6.4. The methods of obtaining informed consent for experimental research shall be reviewed and approved by a human rights committee or client advocate external to the center. Experimental drug treatments shall be limited to the United States Food and Drug Administration Phase III drug studies.

12.6.5. Experimental research shall be reviewed by the human rights committee at least every 2 months or if changes in the project procedure are contemplated. Progress shall be reported to the executive director at this time.

12.7. Human Rights Committee

12.7.1. The center shall have a human rights committee whose role is to assist the center in the protection of client's rights and to perform the specific responsibilities outlined herein.

12.7.2. A center with fewer than thirty (30) clients shall have a minimum of three members on the human rights committee and a center with more than thirty (30) clients shall have a minimum of five (5) members.

12.7.3. At least one third of the committee members shall be consumers and no more than one third shall be staff of the center.

12.8. Violation of a Client's Rights

12.8.1. A report shall be made within twenty-four (24) hours to the executive director of all violations, or suspected violations, of a client's rights, except immediate notification shall be made in the case of physical abuse. A complaint may be made by a client, employee, or any other individual.

12.8.2. The executive director shall initiate a thorough investigation without delay. A written report shall be given within a reasonable period of time to the human rights committee of his or her findings and actions taken to preclude a repetition of such violations, or suspected violations, relative to the specific clients involved, or any other clients. The client shall be identified by case number only.

12.8.3. Centers shall be prohibited from discharging or discriminating in any way against any client by whom or on whose behalf such a complaint has been submitted or who has participated in a complaint investigation. Centers shall be prohibited from discriminating against any employee who has submitted a complaint or assisted in any complaint related investigation for the reason of such submission or assistance.

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 of the center or to the department.

Section 13. Three to Eight (3 - 8) Hour Services

Discussion

A three to eight (3-8) 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 three to eight (3-8) 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 such as physical fitness and recreation.

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. Twenty-four (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 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 twenty-four (24) hour residential services shall meet the regulations in this section in addition to the regulations listed in Sections 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.

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

14.4. Location - The residence shall be in a location which is consistent with the philosophy and purpose of the residence and includes appropriate access to transportation and behavioral and medical services.

14.5. Treatment Plans

14.5.1. In the case of residences for the purpose of normalization and the maximization of independence, the treatment plan shall include provisions for developing needed independent living skills such as, shopping, conversation, use of leisure time, personal care, grooming, transportation, health, problem solving, and vocation.

14.5.2. The treatment plan must indicate if the resident should be adhering to any therapeutic or modified diet. If so, the treatment plan

should document the prescribed diet and the procedures planned for implementing the diet.

14.6. Policies and Procedures

14.6.1. 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.

14.6.2. Procedures shall be established to ensure that 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.

14.6.3. A procedure shall be established to ensure that a daily record is maintained which lists the current residents.

14.6.4. The center shall have policies and procedures covering admissions, discharges, and a waiting list.

14.6.5. The center shall have policies and procedures governing residents leaving (such as, elopements, home visits, and trips) and returning to the residence.

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

14.6.7. The center shall provide staff supervision of clients whenever clients are present in the residence or engaged in center sponsored activities except as part of efforts to promote independence in which case staff shall monitor clients use of non-supervised activities for appropriateness.

14.7. Emergencies and Physical Health

14.7.1. There shall be procedures for the provision of emergency medical services to residents and staff.

14.7.2. Emergency telephone numbers for fire department, local police, and on-call staff shall be posted by the telephone and capable clients shall be instructed in their usage. All regular 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.

14.7.3. Staff 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. This requirement shall not apply to shelters for public inebriates.

14.7.4. Each resident remaining in the residence beyond thirty (30) consecutive days must receive an initial physical examination by a physician or a nurse practitioner working from physician-approved protocols 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 individual's record must indicate the circumstances for not receiving the examination and plans for obtaining the examination.

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14.7.5. The residence shall ensure access to health care in accordance with the age and general health of the resident.

14.7.6. Staff shall take all necessary precautions to ensure an accident-free environment for the residents.

14.7.7. 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.)

14.7.8. 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.

14.7.9. Staff shall take the necessary steps to be informed of 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.

14.7.10. 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.

14.7.11. A standard american red cross first aid kit, or the equivalent shall be readily available at all times in the facility.

14.7.12. Swimming pools and bathing beaches which are part of a residential facility shall be constructed, maintained and operated in compliance with the applicable provisions of swimming pool and bathing beach regulations of the West Virginia board of health.

14.8. Daily Living

14.8.1. The requirements of Subsection 14.8 shall not apply to shelters for public inebriates.

14.8.2. The residence shall have routine schedules that approximate normal living situations for sleeping and eating.

14.8.3. Staff 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.

14.8.4. Staff shall ensure that each resident receives training and practices good habits in personal care, hygiene and grooming.

14.8.5. Staff shall assist each resident in acquiring adequate well-fitting, seasonable clothing, as required for health, comfort, and physical well-being.

14.8.6. In the case of a residence for the purpose of normalization and maximization of independence, staff shall ensure the provision of opportunities for off premises activities and the maximum use of the client's abilities to direct their own activities.

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

14.10. Physical Facility and Sanitation - Residential centers shall comply with the water supply, sewage and excreta disposal regulations listed in Section 8 and the following:

14.10.1. 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.

(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 bathrooms, nor in food preparation or dishwashing areas.

14.10.2. 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 64⁰F 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.

14.10.3. 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.

(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 the requirements of (a) above 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, living-rooms, 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.

14.10.4. 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 except this rule shall not preclude use of these materials by clients who have been trained to use them safely.

14.10.5. Sanitary Facilities

(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 115⁰F.

(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.

14.10.6. 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.

(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 law and regulations governing the management of solid waste.

14.10.7. 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.

14.10.8. 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.

14.10.9. Laundry

(a) Laundry, if done on the premises, shall be done in a separate space designed for that particular purpose including space for sorting soiled and 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 (such as towels and washcloths, bed clothes, mattress pads and covers, kitchen towels and dish cloths) after washing shall be mechanically dried at a temperature of 160⁰F. 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.

14.10.10. 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.

(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.

14.10.11. Food Service

(a) Residential centers accommodating more than ten (10) persons shall comply in full with all applicable provisions of the state board of health Food Service Sanitation Regulations.

(b) Residential centers with modules, houses, or cottages accommodating ten or less persons may utilize a family type kitchen in each module, house, or cottage, Provided,

(1) The kitchen shall provide sufficient space to carry out proper food preparation and dishwashing operations.

(2) Food shall be protected from contamination during storage, preparation and service.

(3) Food contact utensils and equipment shall be of approved

material, easily cleanable construction and in good repair.

(4) Refrigeration equipment shall be provided to assure the maintenance of potentially hazardous food at or below 45°F.

(5) Dishwashing facilities and methods shall be employed to effectively remove food soil and soaps or detergents.

(6) Cleaned dishes, utensils and equipment shall be stored in a clean dry area protected from contamination.

(7) Foods shall be from approved sources. The use of home canned foods is prohibited.

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

14.11. Fire

Discussion

Two types of fire regulations will be used to inspect twenty-four (24) hour residential centers; they are: (1) community residential facility for persons capable of self-preservation or (2) residential-custodial care facility.

14.11.1. 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).

In the case of residences serving the mentally retarded and develop-

mentally disabled, identification of being capable of self preservation shall consist of documented certification by a physician or psychologist that the resident is receiving active treatment and is capable of following directions and taking appropriate action for self-preservation under emergency conditions.

14.11.2. 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.

14.12. Residential Centers for Alcohol and Drug Abusers

14.12.1. Applicable Regulations - Residential centers for alcohol and drug abusers shall comply with the regulations listed in Section 14 in addition to those listed in Sections 6, 7, 8, 9, 10, 11, and 12.

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

(a) A detoxification center may be located within a general hospital or may be a free-standing center if affiliated with licensed 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.

14.12.3. Treatment Centers - Treatment centers or programs for alcohol and drug abuse clients which provide residential intensive treatment programs shall comply with the following:

(a) The center or program may be located on the grounds of a licensed behavioral health facility, psychiatric hospital, or other hospital, or may be licensed as a free-standing center.

(b) A physician's services shall be available as needed by staff or on a written contractual basis.

(c) A psychologist's services shall be available as needed by staff or on a written contractual basis.

(d) Other staff shall be clinically supervised by an individual with a graduate degree in counseling, psychology or social work or by an addiction counselor.

(e) A treatment plan shall be developed within seven (7) days of admission for clients admitted to the center or program including, but not limited, to:

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- (1) medical and nursing services, as needed;
- (2) therapy through utilization of counseling, group and individual psychotherapy, if indicated;
- (3) psychology services providing treatment, testing, consultation, and psychological evaluation, as needed;
- (4) social services relating to intake, a social history, discharge planning, treatment and coordinating helping services;
- (5) the treatment plan shall be reviewed at least weekly and modified as necessary.

14.12.4. Community Residences - Community residences for alcohol and drug abuse clients, commonly referred to as fellowship homes or half-way houses, shall comply with the following:

(a) The residence 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;
- (5) personal services relating to those areas of individual adjustment which enable the person to move to independent living in normal surroundings; and
- (6) individual recovery plans.

(b) The residence shall have a bed complement that does not exceed thirty (30) residents.

(c) There shall be space set aside for meetings, television, and reading, as well as office space.

(d) 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.

14.12.5. Public Inebriate Shelters - Public inebriate shelters which provide a place of custody and evaluation of incapacitated alcoholics shall comply 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 arrange for follow-up counseling and other services for each client.

(i) The shelter shall not be required to comply with the requirements of these rules concerning treatment plans.

Section 15. Penalties

15.1. The director shall have the power to suspend or revoke a license if he or she finds that the center is in substantial violation of these rules.

15.2. The director may refuse to grant a license or may revoke a license if he or she 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 or she 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, 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, West Virginia Board of Health Procedural Rules, Chapter 16 - 1, Series I (1983).

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 aforementioned Rules of Procedure for Contested Case Hearings and Declaratory Rulings.

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, articles 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.

DATE: November 14, 1983

TO: Legislative Rule-Making Review Committee

FROM: Health Department

SUBJECT: INFORMATION TO BE SUPPLIED TO THE COMMITTEE

RULES: Licensure of Behavioral Health Centers, West Virginia Board of Health Legislative Rules, Chapter 27-9, Series I, 198

INFORMATION REQUIRED

1. Please give the citation of the statute which authorizes your promulgation of these rules.

Chapter 27, Article 9, Section 1 and Chapter 27,

Article 17, Section 3

2. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:
(29A-3-5)

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

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

N.A.

THIS DATE 11/14/83
Administrative Law Division

- b. Was the hearing held on the date scheduled and were all interested parties permitted to be heard?

N.A.

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N.A.

- d. Is the transcript of all evidence received preserved and available for public inspection and copying?

N.A.

3. For all rules promulgated:

- a. When did you file the rules in the State Register together with notice of a hearing time, date and location? (29A-3-5)

September 16, 1983

- b. Did you give at least 30 days notice and no more than 60 days notice? (29A-3-7)

Yes

- c. What other notice, including advertising, did you give of the hearing? (29A-3-5)

Press release to capitol pressroom. Notices to behavioral health centers, associations for behaviorally disabled citizens, professional boards of examiners and associations, Commission on Aging, Department of Human Services, Division of Vocational Rehabilitation, other misca

- d. Was the hearing held on the scheduled date? If not, why not?

yes

- e. Was the opportunity given for all interested parties to submit data, objections, suggested amendments, views, evidence or arguments?

Yes


- f. List all persons who appeared at the hearing and what type of comment they made about the proposed rules (for, against, suggested and amendments). Please attach a copy of the minutes of the hearing.

See attached list and attached summary of

comments received at public hearing

g. On what date did you file in the State Register notice of your action on the proposed rules together with the text of such rules?

November 14, 1983


Signature of department head
board chairman or executive
secretary.

(Please attach additional sheets if necessary)

PUBLIC HEARING ATTENDANCE RECORD

In re Behavioral Health Licensing Regulations

Chapter 27-9, Series I (1984) - October, 17, 1983

Conference Room, P-6 Building, 2019 Washington

Street, E., Charleston, WV

P L E A S E P R I N T

Name Charli Fulton

Address 1116 B Kanawha Blvd. East.
Charleston, WVA. 25301

Representing Appalachian Research + Defense Fund

Do you wish to make a comment? yes no

Name Ronald W. Talkington

Address #1 Stevens Road

Representing Seneca MH/MR Council

Do you wish to make a comment? yes no

Name _____

Address _____

Representing _____

Do you wish to make a comment? yes _____ no _____

P L E A S E P R I N T

PERSONS SUBMITTING WRITTEN COMMENTS
As Part of Public Hearing

In re: Licensure of Behavioral Health Centers, West Virginia Board
of Health Legislative Rules, Chapter 27-9, Series I, 198_.

Les Delpizzo, Executive Director
Summit Center for Human Development

David O. Miller, Executive Director
Hancock Brooke Mental Health Service

Miss Garnette Thorne, Executive Secretary
Board of Examiners for Registered Professional Nurses

C. Cooper Fulton, Attorney at Law
Appalachian Research and Defense Fund, Inc.

Summary of Comments Received at
Public Hearing(s) in re

Title, Type and Number: Licensure of Behavioral Health
Centers. Legislative. Chapter 27-9 Series I 198-
Date(s) and Location(s): Monday, October 17, 1983
P & G Building, Room 10, 2019 Washington Street, East,
Charleston, West Virginia.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11/14/83
Administrative Law Division

Two individuals attended the public hearing. Only one of these offered extensive comments on the proposed regulation; this individual also supplied a written version of the comments. Four other individuals commented in writing. A compilation of comments received, discussion and proposed changes appears below. The changes noted have been incorporated into the regulation as filed with the Legislative Rule-Making Review Committee. Strike-throughs indicate language that has been stricken from the rule; under-scoring indicates new language that has been added subsequent to the hearing. Copies of actual documents received are on file in the Health Department.

1. Comment: Most commenters stated they were quite pleased with the regulation overall. One commenter noted a historical imbalance in the funding of regional centers places some centers at a disability in complying to licensing rules.

Response: Compliance with the licensing rules is a basic requirement for Department of Health funding. As the licensing rules provide minimum physical and treatment safety regulations, they should not create an unreasonable burden on centers.

Proposed: No change

2. Comment: Two commenters stated the rules should be changed generally to be consistent with certain standards and policies in E.H. vs Matin, commonly referred to as the Hartley Plan. One commenter requested a rule stating that the licensee should comply with all court orders and court ordered plans to the extent it serves clients within the ambit of the plan.

Response: The rules reflect the intent of the law to provide physical and treatment safety to clients of any community behavioral health center. The Hartley plan addresses right to treatment issues for patients in state behavioral health hospitals. The rules have less stringent requirements in some instances than the Hartley plan because of their general applicability as basic standards. Changes in earlier drafts and as described below have been made to avoid conflicting requirements between the rules and the Hartley policies. Designated regional community mental health/mental retardation centers as part of the Hartley plan may have to do more to meet Hartley policies but they should not have to do something different.

Court orders frequently address issues of law which go beyond the minimum safety issues intended by law for the rules to address. It would be beyond the intent of the law to require centers to meet these court orders and plans as a condition of licensure.

Proposed: No change

3. Comment: There is no section in this rule which provides a clear and broad guarantee that clients will not be subject to physical abuse, verbal abuse or corporal punishment. Suggest Department of Health Policy No. 3311 for good description of what should be considered abuse. Also, residential centers should be required to properly feed, clothe, and care for health and safety requirements of clients.

Response: Rule 12.1.7 provides a clear and broad protection from verbal and physical abuse as well as requiring a humane treatment environment with protection from harm. Rule 14.7 addresses issues related to adequate food and health care in residential centers. Rule 14.8.5 requires staff to assist clients in acquiring adequate clothing. It is not necessary to incorporate Policy No. 3311 for examples of verbal and physical abuse into the rule.

Proposed: No change

4. Comment: The definition of comprehensive regional mental health/mental retardation centers should contemplate the possibility that a center might be organized for profit.

Response: Chapter 27-2A of the West Virginia Code allows such centers to be operated by non-profit boards or to be operated directly by the Department of Health. The Code does not permit the designation of profit making centers. A recent national development has encouraged community mental health centers to develop profit making subsidiaries with profits going to the main center. The Department of Health requires centers to have department approval before such a subsidiary is created.

Proposed: No change

5. Comment: The Human Rights Committee should be defined.

Response: The definition is contained in Rule 12.7.

Proposed: No change

6. Comment: The definition of seclusion in 4.31 should be consistent with the definition in the Hartley Plan.

Response: A change has been made to clarify that a lock is not the only method of keeping someone "locked" in a room. This is a technical clarification rather than a substantive change.

Proposed: Section 4.31. Seclusion occurs when a client is placed in a locked room alone in a room or enclosed space with closed doors which the individual cannot open from inside for the protection of the client or others.

7. Comment: Section 4.37. The term treatment is not appropriate to describe the services provided to mentally retarded individuals. More appropriate terms are training, education, and habilitation.

Response: The term treatment has been defined in an inclusive manner and training is listed as a type of treatment. For additional clarification education and habilitation will be added to the definition.

Proposed: Section 4.37. Treatment - The broad range of planned and continuing services, including diagnostic evaluation, counseling, medical, psychiatric, psychological, training, education, habilitation, and social service care, which may be extended to clients and is designed to improve the behavior of such individuals toward identified goals and objectives.

8. Comment: Section 4.38. The plan should be renamed the individual program plan to make the terminology consistent throughout the mental health system since the Hartley Plan uses the term individual program plan.

Response: Neither term is consistent in the programs licensed under this regulation. Individual program plan is confusing to some centers which use the term program to reflect a service area. Reviewers will not be citing centers for calling the plan any name as long as the plans are complete and implemented.

Proposed: No change

9. Comment: Section 5.1.8 should require all central, satellite and subunit locations to be inspected prior to license being issued.

Response: This requirement is contained in Section 5.6.2.

Proposed: No change

10. Comment: Section 5.2.2 should require any new construction, extension, modification or alteration taking place after the effective date of these rules to be in compliance with all applicable provisions of the rules.

Response: Section 5.2.1 requires any new construction, renovations, or alterations to be in compliance.

Proposed: No change

11. Comment: The granting of provisional licenses should be highly restricted.

Response: This is an option left to the Director in cases where a center may be close to compliance with the rules and failure to license would cause harm as services would not be available to citizens.

12. Comment: One commenter stated Section 5.7 is extremely one sided, with no role for the center to respond in the event of a complaint. Also believes there should be a graded set of interventions between the Department and the centers. There should be a mandate to the Director to contact a center when a complaint is made and discretionary for the Director to decide on an unannounced visit.

Response: The investigation of a complaint allows for the center response and a formal response can be made to the Department's final report. The

interventions the Department makes are graded to the level of the problem found in the investigation. Thus, a finding of no fault would be stated as such in the report and no requirements would be made of the center. The Department would accept any response the center might wish to make to be included with the report and might require a plan of correction as outlined in Section 5.8. The center also has the option to appeal the findings of the Department through the administrative due process outlined in Section 16. The Director should have the discretion of notifying a center of a complaint prior to investigation to allow for situations where the notification itself would jeopardize the investigation.

Proposed: No change

13. Comment: One commenter had serious disagreement with the Department's reports on compliance reviews or client complaints being made public without a response from the affected center being included.

Response: Section 5.9 complies with the Freedom of Information Act (West Virginia Code, Chapter 29B) which requires the Department to treat reports as public information, with certain exceptions. Complaints and associated reports are held confidential pending completion of an investigation if necessary to protect the integrity of the complaint investigation. Other routine reports are construed to be public information from the time of completion. The Department will include center responses and plans of corrections if they have been received at the time of a request for information but cannot withhold the report pending a center response. Safeguards to protect clients are incorporated in the regulation.

Proposed: No change

14. Comment: The new provision of Section 7.2.5 requiring the center to carry liability and other insurance is an important and necessary requirement and should be left as it is.

Response: This was added to an earlier draft.

Proposed: No change

15. Comment: Inasmuch as the Department of Health has developed a "Continuum of Care Plan" under the E.H. v. Matin plan, services required to meet that plan should receive priority.

Response: Services are mandated by the Department in contracts with comprehensive mental health/mental retardation centers. A variety of other centers which are not mandated to provide a variety of services will be seeking a license under these rules.

Proposed: No change

16. Comment: I found it very surprising that the regulations would begin mandating the use of only master's level therapists. This process is very unfair and very inefficient in a state such as West Virginia which has a number of people who have been providing direct services for a very long time, usually under supervision and who are extremely skilled. In fact, this

is the sort of "input-oriented" quality assurance that has been proven time and again to be ineffective and has very little impact on the output--namely, quality of patient care.

Response: The reviewer appears to misunderstand Section 9.1.4 which mandates treatment provided by or under the supervision of a master's level therapist with the exception of skill training by or under the supervision of a registered nurse or a bachelor's degree in a human service, education, or health field.

Proposed: No change

17. Comment: Section 9.3 -- Treatment Plan should require that the individual program plan for each client be implemented by those persons who developed the plan. For clients admitted to residential facilities, the plan should be developed within three days of admission.

Response: A change appears unnecessary. As a practical matter centers do not have sufficient staff to allow some staff to develop treatment plans for other staff. The Hartley Plan calls for an initial treatment plan to be developed within three days of admission to be followed with an interim plan within seven days which is finalized within 30 days. The rule has a provision similar to the initial plan in Section 9.2.2.(d) which is required within five days of admission. The treatment plan is similar to the interim plan and is required within seven days with finalization within 30 days.

Proposed: No change

18. Comment: Providers of services to clients/patients mandated by Hartley vs Matin need to provide emergency services consistent with the Hartley Plan (Section 9.4).

Response: The requirements for emergency services are for minimum physical and treatment safety and apply only to a center which has an emergency service. The rule requires less than the Hartley Plan, but is not inconsistent with it. Comprehensive centers covered by the continuum of care section of the Hartley Plan are mandated to provide a comprehensive emergency service through contracts with the department.

Proposed: No change

19. Comment: I was extremely disappointed to still see a stress on separate "services" and "programs" for drug and alcoholism populations being mandated. The present proposed regs, when coupled with the definitions, effectively maintain the necessity to have a substance abuse department. Again, I would stress that this is the prescription of means when that is inappropriate for licensing regulations; instead, there should be a stress on prescription of ends. As alternate language, I would suggest the following: "All behavioral health service providers will be required to show a capacity to provide outpatient, training, counseling, prevention, and aftercare/continuity of care services to drug and alcohol abusers in their service area."

Response: Section 9.5 does not mandate any center to have a separate alcohol and drug abuse service; however, if a center does have a separate

service, the requirements of 9.5.1 apply. It is understood by the Department that some centers have generic outpatient services which work with a variety of clients including alcohol and drug abuse. Section 9.5 does not apply to this type of service.

Proposed: No change

20. Comment: Section 9.6, Management of Inappropriate Behaviors, is a vast improvement over the original draft of this rule. In addition to the requirements contained in this section, however, there should be a specific requirement that under no conditions will the administering of electric shocks be used as aversive conditioning.

Response: The Department feels there are adequate safeguards in the rules to protect clients from any unnecessary use or type of aversive conditioning. In addition to client or guardian approval, there must be evidence of the good faith use of alternative measures and approval by the Human Rights Committee, at least one third of which is consumers. There is no known use of electric shocks by community centers presently.

Proposed: No change

21. Comment: Section 9.8.4 conflicts with the right to refuse treatment as set forth in the Department of Health policy in 2.01.01 of the Hartley Plan. This section should be rewritten to reflect the absolute right of a client to refuse treatment.

Response: Section 9.8.4 was intended to reflect the duty staff have to intervene immediately to protect the client or others from harm without denying a client's right to refuse treatment. The non-substantive change proposed here clarifies this immediate duty and eliminates the apparent inconsistency. The change also eliminated some redundancy between 9.8.4 and 9.8.5 by combining the two items. Subsequent sections have been re-numbered.

Proposed: ~~9.8.4. If the client is immediately dangerous or unobtrusive methods do not work, staff may intervene with more obtrusive methods without consent but only to the extent necessary to control the emergency.~~

~~9.8.5 If the client continues to be out of control and a threat to self or others, seclusion or restraints may be used without consent until the crisis is resolved or the client is transported to an inpatient facility. Such seclusion or restraints shall not be used for a period that exceeds three (3) hours.~~

Section 9.8.4 If the client is immediately dangerous to himself or herself or to others and less restrictive methods do not work, staff may intervene with more intrusive methods until the crisis is resolved or the client is transported to an inpatient facility. Seclusion or restraints may be used as an extreme resort if necessary to control the emergency. Such seclusion or restraints shall not be used for a period that exceeds three (3) hours.

22. Comment: Section 9.8 Psychiatric Emergency, should be rewritten to prohibit the use of seclusion and restraint (both mechanical and chemical) in managing the behavior of developmentally disabled persons. The only

exception to this should be that restraint, to the extent that it is allowed under the standards set forth by the Accreditation Council for Services for Mentally Retarded and Other Developmentally Disabled Persons (ACMRDD), should be permitted.

Response: This section allows the use of seclusion and restraints only when the client loses control and acts in a manner that is dangerous to himself or herself or to others in order to protect the client or others. This is the same provision the ACMRDD standards allow for the application of restraints. The center must make a determination of the appropriateness of seclusion or restraints based on safety. Additional restrictions on this determination for the developmentally disabled are unnecessary.

Proposed: No change

23. Comment: A dynamic quality assurance program should be required. This program will help toward accreditation and certification. Most importantly it is a guarantee of the quality of services being provided to clients. The quality assurance program in this section is inadequate. It should correspond to that required by The Joint Commission on Accreditation of Hospitals.

Response: This comment relates to the earlier issue of assuring minimum physical and treatment safety via licensing vs assuring treatment efficiency and effectiveness through a costly quality assurance program. The Department feels that these are sufficient requirements to evaluate treatment effectiveness in Section 9.9.

Proposed: No change

24. Comment: Section 10.12 is too restrictive of the client's right to receive his records. It should be written to affirmatively state that client's records shall be released with the written consent of the client to all the persons listed in Sections (a) - (e).

Response: Section 10.12 is constructed to define circumstances in which a client's record may be released. Chapter 16, Article 29, Section 1 of the West Virginia Code, enacted by the 1983 Legislature, places some restrictions on the right of record access, specifically relevant here: "(a) In the case of a patient receiving treatment for psychiatric or psychological problems, a summary of the record shall be made available to the patient, his authorized agent or authorized representative following the termination of the treatment program." This statute does not require the restriction of access, but it does appear to permit such restriction. The regulation is constructed permissively in order to avoid conflict with this new law. Regulations are required to be consistent law.

25. Comment: Section 10.15 should be rewritten to reflect the fact that indigent clients have a right to receive copies of their records without payment. See Section 2.01.01 of the Hartley plan and Adams v. Prester Center for Mental Health Services, Civil Action No. 83C16 (Circuit Court of Lincoln County, West Virginia).

Response: These regulations will apply to centers, programs and clients for whom Hartley standards are not necessarily relevant, as discussed earlier. Additionally, Chapter 16, Article 29 of the Code, cited above, allows health care providers reimbursement for reasonable expenses incurred in copying records. Adams v. Prestera was decided prior to the enactment of this new law; is not a decision of the West Virginia Supreme Court of Appeals; and appears not to have general applicability because of the unique facts of the case in question. The Department believes that the rule may not make the provision of copies of records to indigent persons without payment mandatory. The Department would, of course, be pleased to see the voluntary adoption of such a policy by centers.

Proposed: No change

26. Comment: Section 12.1.4 should be rewritten to conform with the right to refuse treatment policy as is established by Section 2.01.01 of the Hartley plan. Community behavioral health problems should not be allowed to override the client's right to refuse treatment any more than the state psychiatric facilities should be allowed to do so.

Response: This is also a clarification of the duty of staff to intervene in an emergency situation vs. the client's right to refuse treatment (see discussion of Section 9.8.4 above).

Proposed: 12.1. Basic Rights - Each client shall have:

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.~~

27. Comment: Section 12.1.6 is good; however, it should also reflect the fact that restraint and seclusion may not be used on developmentally disabled persons.

Response. This relates to the issue discussed in Section 9.8 above. Restraint or seclusion may be used on any client who is out of control and acting in a manner dangerous to himself or herself or to others.

Proposed: No change

28. Comment: Section 12.3 omits the provision of an earlier draft which guarantees every client and guardian the right to know what medication the client is taking, the dosage, the purpose of the medication and possible side effects. Such knowledge is necessary if the client is to give informed consent to the treatment. This section should be added and should be made consistent with the informed consent section of Section 2.01.01 of the Hartley plan.

Response: The provision of the earlier draft was not omitted but moved to Section 11.1.9.

Proposed: No change

29. Comment: Section 12.4.5 conflicts with the provisions of the policies established in the Hartley plan. The Hartley plan limits the duration of any restraint on communication by mail and telephone to three days at a maximum. Section 12.4.5 as written here, is far more restrictive of resident's right to communicate than the restrictions placed on residents of the state's psychiatric hospitals. This section should be rewritten to track the policy as set forth in the Hartley plan. Similarly, Section 12.4.6 should be rewritten.

Response: The standard is somewhat more flexible in that it does not require a renewal of such restrictions if the duration is longer than three days. The Department feels that the standard is adequately protective for a general licensure rule. (See earlier comments for general discussion of correspondence of these rules with Hartley.)

30. Comment: Section 12.4 should also contain a provision that no child under the age of 18 shall be housed in a residential center licensed to serve adults.

Response: Section 12.4.1 requires a center to house individuals based on similar age and activity levels unless a client needs special protection. It may be more appropriate to house a 17 year old with 18 and 19 year olds than with 12 and 13 year olds. The rule as written recognizes this distinction.

Proposed: No change

31. Comment: Section 12.8, Violation of a Client's Rights, is improved over the earlier draft; however, Section 12.8.2 should provide a specific time period. I would suggest five days.

Response: Five days may not be adequate to complete an investigation of a suspected violation of client rights if key staff are not available because of days off including holidays and leave and other factors. Section 12.8.2 requires the investigation to be immediate and the report to the Human Rights Committee within a reasonable period of time to allow for these potential difficulties in completing a full investigation.

Proposed: No change

32. Comment: The maximum number of residents in a group facility for the mentally ill or mentally retarded should be limited to eight persons. This is the maximum number of residents that will be permitted in any of the facilities developed in connection with the Hartley plan, and any number larger than that is far too big to provide a home-like residence.

Response: Section 14.3 allows ten (10) clients which permits the development of group homes with eight (8) regular and two (2) emergency or respite care beds. Eight is not a number that has universal agreement, although it is recognized larger numbers at some point do lead to institutional effects. It is true the Department does not intend to fund the development of group homes for more than eight beds in connection with the Hartley plan.

Proposed: No change

33. Comment: Section 14.7.7 is written in far too restrictive a manner. Many of the mentally ill and mentally retarded persons who have been residents of the state institutions are hepatitis carriers, and Section 14.7.7 as written would discourage community facilities from allowing any hepatitis carriers to reside there. The spread of hepatitis can be easily controlled by maintaining appropriate hygienic and sanitary conditions, and there is no need to isolate a hepatitis carrier merely because he is a carrier.

Response: This section was written to protect others in a group home who should be protected from communicable diseases. The use of isolation techniques as approved by a physician does not refer to a specific set of isolation techniques, but rather allows for selection of those methods appropriate to the situation. In some situations, sterilization or separation of dishes and household linens is a sufficient isolation technique. Full isolation is not specifically mandated.

Proposed: No change

34. Comment: There should be no residential centers accommodating more than ten persons as currently indicated in Section 14.10.11.1.

Response: There are specific exceptions which allow more than ten clients in a residential center, such as the fellowship homes or public inebriate shelters in Section 14.12. Also, a center may have several cottages which house less than ten but if the meals are prepared in a central area, this Section applies.

Proposed: No change

35. Comment: As outlined in Section 14.12.3(e), treatment plans for persons admitted to this type of substance abuse facility should be developed within three days of admission. This is the maximum permissible time for the preparation of and initial program plan development under the Hartley plan.

Response: This concern is similar to the one discussed for Section 9.3 above. These alcohol treatment centers must also meet the initial evaluation conditions in Section 9.2.2.

Proposed: No change

36. Comment: Section 14.12.4: Community residences for alcohol and drug abuse clients should be required to be located in an area that is accessible to public transportation. Otherwise, residents' ability to obtain employment will be hindered.

Response: Appropriate access to transportation is a general requirement for residential centers in Section 14.4.

Proposed: No change

37. Comment: Section 15 Penalties, should contain a provision making it mandatory for the director to suspend or revoke the license of any center found to have physically or mentally abused a client.

Response: The Director should have the discretion to determine whether an incident of abuse is an isolated incident with appropriate disciplinary action by the center or indicative of inappropriate conduct on the part of the center.

Proposed: No change