

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #2

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JUN 30 4 09 PM '99

OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

Division of Health

AGENCY: Department of Health and Human Resources TITLE NUMBER: 64

RULE TYPE: Legislative; CITE AUTHORITY WV Code §§27-9-1 & 27-17-3  
and 27-1A-4(g) in conjunction with 27-1A-6(6) and -7.

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 11

TITLE OF RULE BEING PROPOSED: Behavioral Health Centers Licensure

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 30, 1999 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

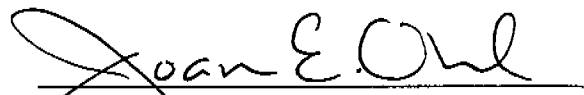
Beth Marquart, Director, Regulatory Development

Department of Health & Human Resources

Capitol Complex - Building 3, Room 265

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Joan E. Ohl, Secretary

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$10.40

**BRIEF SUMMARY OF THE RULE**  
**BEHAVIORAL HEALTH CENTERS LICENSURE**

**64CSR11**

**Summary:** This proposed legislative rule repeals and replaces the existing behavioral health licensure rule. The new rule contains sections on application and enforcement; state administrative procedures; governance; health and safety; consumer services; consumer rights; substance abuse services; and penalties. The purpose of this replacement is to update and clarify the licensure standards to meet the expanded variety of service providers.

**For further information contact:** John M. Wilkinson, Director, Office of Health Facility Licensure and Certification, Bureau for Public Health, Department of Health and Human Resources, telephone (304) 558-0050, State Capitol Complex, Building 3, Room 550, Charleston, West Virginia 25305.

Copies of the proposed rule may be purchased from the Administrative Law Division of the Office of the Secretary of State, State Capitol Complex, Building 1, Suite 157K, Charleston, West Virginia 25305-0771, phone (304) 558-6000.

## **STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE PROPOSED RULE**

### **BEHAVIORAL HEALTH CENTERS LICENSURE**

#### **64CSR11**

The current rule was written and adopted in 1984. Minor changes to allow for child care agencies to be licensed were adopted in 1990. The number of behavioral health centers established and licensed since the initial rule has grown from 16 to 82. The variety of services has drastically expanded from some residential services and outpatient for the chronically mentally ill, developmentally disabled, and substance abuse to a myriad of provider types and services, i.e., partial hospitalization, crisis residential, children's residential services, care management and early intervention. In assessing compliance for many of these services, it has been difficult to adapt the current rule. With the advent of managed care for the behavioral health system, it is vital for the state to have a rule which is drafted in up-to-date language, includes provisions that address all components of the various services offered by providers and protects the health and safety of the residents of West Virginia.

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title:       Licensure of Behavioral Health Centers. 64CSR11

Type of Rule:     Legislative                             Interpretive                             Procedural

Agency:         Division of Health  
                     Department of Health and Human Resources

Address:         Building 3, Capitol Complex  
                     Charleston, W. Va. 25305

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs & Alterations					
Equipment					
Other					
Revenue					

2. Explanation of above estimates.

The Department anticipates that the costs of the licensure program will not be affected by the revised rule.

3. Objectives of this rule:

This proposed amended legislative rule rewrites and replaces the existing behavioral health licensure rule. The new rule contains sections on application and enforcement; state administrative procedures; department reports and records; governance; health and safety; consumer services; consumer rights; substance abuse services; and penalties. The purpose of the revision is to update and clarify the licensure standards. The current rule is more than fourteen (14) years old.

**4. 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.**


None.

**C. Economic Impact on Citizens/Public at Large.**

None.

**Date:**

**Signature of Agency Head or Authorized Representative**

  
Joan E. Ohl, Secretary  
Department of Health and Human Resources

## QUESTIONNAIRE

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: June 30, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Division of Health

FROM: (Agency name, Address & Phone No.) Department of Health and Human Resources

State Capitol Complex, Building 3, Room 265, Charleston, WV 25305

Telephone: (304) 558-5598

LEGISLATIVE RULE TITLE: Behavioral Health Centers Licensure, 64CSR11

1. Authorizing statute(s) citation: WV Code §§ 27-9-1 and 27-17-3 and

27-1A-4(g) in conjunction with 27-1A-6(6) and -7.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 30, 1999

b. What other notice, including advertising, did you give of the hearing?

The proposed rule will be distributed to all licensed behavioral health centers and the:

WV Assoc. for Behavioral Healthcare Providers; Coalition of Independent Behavioral

Health Service Providers; WV Alliance for the Mentally Ill; WV Child Care Association;

and WV Mental Health Consumers Assoc.

c. Date of Public Hearing(s) or Public Comment Period ended:

July 30, 1999

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached N/A No comments received N/A

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing (be exact):

N/A

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule (please type):

Beth Marquart, Director, Office of Regulatory Development

Department of Health and Human Resources

Building 3, Room 265, Capitol Complex

Charleston, West Virginia 25305

(304) 558-5598 FAX: (304) 558-6051 bethmarquart@wvdhhr.org

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule (please type):

V. Sue Cater, Director

Behavioral Health Program

Department of Health and Human Resources

Capitol Complex Building 3, Room 550

Charleston, West Virginia 25305 (304) 558-0050

3. 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:

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

description of the issues to be decided.

N/A

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b. Date of hearing or comment period:

N/A

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

N/A

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d. Attach findings and determinations and reasons:

Attached N/A

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**64CSR11**

**TITLE 64  
LEGISLATIVE RULES  
DIVISION OF HEALTH**

**SERIES 11  
BEHAVIORAL HEALTH CENTERS LICENSURE**

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**FOR PUBLIC COMMENT**

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TITLE 64  
LEGISLATIVE RULES  
DIVISION OF HEALTH

SERIES 11  
BEHAVIORAL HEALTH CENTERS LICENSURE

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TITLE 64  
LEGISLATIVE RULES  
DIVISION OF HEALTH

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OFFICE OF THE SECRETARY OF STATE

SERIES 11  
BEHAVIORAL HEALTH CENTERS LICENSURE

**§64-11-1. General.**

1.1. Scope. -- This rule establishes general standards and procedures for the licensure of behavioral health services and programs. This rule should be read in conjunction with the definitions in W. Va. Code § 27-1-1 et seq. and the provisions of W. Va. Code §§ 27-9-1 and 27-17-1 et seq. The W. Va. Code is available in public libraries and on the Legislature's webpage, <http://www.legis.state.wv.us/>.

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

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal and Replacement of Former Rule. -- This legislative rule repeals and replaces "Licensure of Behavioral Health Centers," 64CSR11, effective April 6, 1990.

**§64-11-2. Application and Enforcement.**

2.1. Application. This rule applies to a center, as defined by this rule, that offers services to individuals with mental illness, mental retardation, behavioral disability, developmental disability or addiction, as defined in §§27-1-2, -3 and -11, and 27-17-1(a) and (b), or offers preventive services for these disabilities.

2.2. Enforcement. This rule is enforced by the secretary of the department of health and human resources.<sup>1</sup>

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<sup>1</sup>The department of health and human resources (DHHR) was created by the Legislature's reorganization of the executive branch of state government in 1989, and the department of health was renamed the division of health and made a part of the DHHR (W. Va. Code §5F-1-1 et seq.). Administratively within the DHHR, the bureau for public health through its commissioner carries out the public health functions of the division of health.

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### §64-11-3. Definitions.

#### 3.1. Abuse. --

3.1.a. Physical Abuse. -- Any physical motion or action (hitting, slapping, punching, kicking, pinching, etc.) by which bodily harm or trauma occurs. It includes use of corporal punishment as well as the use of any restrictive, intrusive procedure to control inappropriate behavior for purposes of punishment. Physical abuse includes, but is not limited to:

3.1.a.1. Unnecessary or improper use of physical restraint;

3.1.a.2. Placement in seclusion without proper orders or cause;

3.1.a.3. Use of unnecessary force;

3.1.a.4. Slapping, kicking, punching, pinching or hitting;

3.1.a.5. Inappropriate physical horseplay;

3.1.a.6. Inappropriate removal from a treatment program, restriction of communications or withdrawal of privileges for punitive reasons;

3.1.a.7. Withholding of meals;

3.1.a.8. Corporal punishment of any kind; or

3.1.a.9. Sexual abuse, physical advances, caressing, sexual intercourse or kissing.

3.1.b. Psychological Abuse. -- Includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation, sexual coercion, intimidation, whereby individuals suffer psychological harm or trauma.

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

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

3.1.c.2. Threatening tones in speaking;

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

3.1.c.4. Making sexual innuendo.

3.2. Administrator. -- The person responsible for carrying out the the governing body's policy and the day-to-day operation of the center.

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

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

3.5. Behavioral Health Services. -- Any inpatient, residential or outpatient service for the care and treatment of persons with mental illness, mental retardation, behavioral disability, developmental disability or addiction, as defined in §§27-1-2, -3 and -11, and 27-17-1(a) and (b), or offers preventive services for these disabilities.

3.6. Behavioral Intervention Plan. -- A written plan whose outcome is to teach adaptive behaviors and reduce or extinguish maladaptive behaviors in order to allow the individual to function successfully in the environment.

3.7. Center. -- An entity that provides behavioral health services, except for:

3.7.a. Hospitals governed by Division of Health rule, "Hospital Licensure," 64CSR12;

3.7.b. Twenty-four (24) hour inpatient services located within a general or psychiatric hospital. These services are licensed under Division of Health rule, "Hospital Licensure," 64CSR12;

3.7.c. Nursing homes governed by Division of Health rule, "Nursing Home Licensure," 64CSR13;

3.7.d. Personal care homes governed by Division of Health rule, "Personal Care Home Licensure," 64CSR14;

3.7.e. Residential board and care homes governed by Division of Health rule,

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"Residential Board and Care Homes", 64CSR65;

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

3.7.g. Specialized family care homes under the supervision of the West Virginia department of health and human resources;

3.7.h. Self help groups;

3.7.i. Information and referral services;

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

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

3.8. Civil Rights. -- The rights of personal liberty guaranteed by the Constitutions of the United States and the State of West Virginia, by federal and state statutes and by case law.

3.9. Consumer. -- An individual receiving treatment or services in or from the center.

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

3.11. Corporal Punishment. -- The application of painful stimuli to the body in an attempt to terminate behavior or as a penalty for behavior but not including aversive procedures.

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

3.12.a. Abuse;

3.12.b. Neglect;

3.12.c. Death due to any cause;

3.12.d. Attempted suicide;

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

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

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- 3.12.g. Any major involvement with law enforcement authorities;
- 3.12.h. Injury that requires hospitalization or results in permanent physical damage;
- 3.12.i. Life-threatening reaction because of a drug or food;
- 3.12.j. A serious consequence resulting from an apparent error in medication or dietary administration;
- 3.12.k. Extended and unauthorized absence of a consumer that exceeds his or her treatment plan provision for community access; or
- 3.12.l. Removal of a consumer from either residential or program services without the consent of a consumer or his or her legal representative.
- 3.13. Detoxification. -- The process of eliminating the toxic effects of drugs and alcohol from the body.
- 3.14. Discharge. -- The termination of a consumer's affiliation with the center.
- 3.15. Discharge Planning. -- The organized process of identifying the approximate length of stay and the criteria for exit of a consumer from the current service, and less restrictive alternatives for a later date. Discharge planning begins upon admission to the center's services and includes provision for appropriate follow-up services.
- 3.16. Documentation. -- A written record relating to compliance with this rule.
- 3.17. Emergency Procedures. -- Procedures necessary to control severely aggressive or destructive behaviors that place a consumer or others in imminent danger of physical harm when the timing of those behaviors reasonably could not have been anticipated.
- 3.18. Functional Analysis. -- An assessment process for gathering information that can be used to build an effective behavioral intervention plan.
- 3.19. Goal. -- An expected result or condition that is specified in a statement of relatively broad scope, and provides guidance in establishing intermediate objectives toward its attainment.
- 3.20. Governing Body. -- A person or persons with the legal authority and responsibility to set policy and oversee the operations of the center.
- 3.21. Human Rights Committee. -- A specially constituted committee or committees whose

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primary function is to assist the center in the promotion and protection of a consumer's rights, and to review, approve and monitor individual programs designed to manage inappropriate behaviors and other programs that are intrusive or involve risks to a consumer's protection and rights.

### 3.22. Informed Consent. -- The written verification:

3.22.a. That a consumer has either the capability of exercising his or her rights and making decisions or has limitations in his or her abilities in the decision making processes;

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

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

3.23. Interdisciplinary Team. -- A group including a consumer or his or her legal representative, and representatives from the disciplines and services that design a consumer's treatment plan.

3.24. Legal Representative<sup>2</sup>. -- A person or agency with legal authority to exercise some degree of control over a consumer's affairs; namely, one of the following that is the most appropriate to the decision to be made:

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

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

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

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

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

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

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

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

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

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

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

3.25. Mechanical Supports. -- Devices used to support or align proper body position.

3.26. Medication Error. – Occurs with:

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

3.26.b. The administration of a drug:

3.26.b.1. Without a physician's order;

3.26.b.2. In the wrong dosage;

3.26.b.3. In the incorrect form;

3.26.b.4. By the incorrect method; or

3.26.b.5. That is incorrect itself.

3.27. Neglect. -- Failure to provide goods and services necessary for the consumer to avoid physical or psychological harm. This includes the inappropriate application of a behavior intervention.

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

3.29. Partial Hospitalization. -- An outpatient treatment program that provides individual and group activities, diagnostic, therapeutic and rehabilitative services specified in a treatment plan, as ordinarily provided in a comprehensive, psychiatric, inpatient program in a hospital.

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

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

3.32. Private Practice. -- The individual or group practice of a healing art or behavioral health profession by professionals licensed under State law.

3.33. Procedures. -- The methods by which policies are implemented.

3.34. Program. -- A system of services designed to address the treatment needs of consumers.

3.35. Protective Device. -- Any appliance such as a brace, pad, helmet, covering, bandage, etc., that is used to aid in the healing of an injury.

3.36. Psychotropic Drugs -- Medications prescribed by physicians to reduce depression, anxiety, and other manifestations of mental or emotional disturbance.

3.37. Quality Assurance. -- A program designed to objectively monitor and evaluate the quality and appropriateness of consumer services and identify methods to improve services and resolve problems.

3.38. Residential Treatment Facility. -- A structure in which is provided an inpatient, interdisciplinary, psychotherapeutic treatment program on a twenty-four (24) hour-a-day basis for severe behavioral, anxiety, affective, impulse control, chemical dependency and other mental or emotional disorders. This definition includes, but is not limited to, group residential facilities as defined in W. Va. Code §27-17-1(c).

3.39. Restraint. -- A temporary behavior control intervention for reducing or eliminating inappropriate behavior.

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3.39.a. Chemical Restraint. -- The use of medications for behavior control.

3.39.b. Physical Restraint. -- Any manual method or mechanical device for behavior control that restricts free movement. Examples of manual methods include therapeutic or basket holds and prone or supine containment. Examples of mechanical devices include arm splints, posey mittens, helmets and straight jackets. Excluded are physical guidance and prompting techniques of brief duration and mechanical supports.

3.40. Seclusion. -- When a consumer is placed alone in an enclosed space, with doors that a consumer cannot open from inside, for his or her protection or the protection of another.

3.41. Secretary. -- The secretary of the State department of health and human resources or his or her designee.

3.42. Semi-Independent Living Facility. -- An apartment or home that houses consumers with disabilities, providing staff as needed.

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

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

3.45. Substance Abuse. -- Pattern of psychoactive substance misuse indicated by at least one of the following:

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

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

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

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

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

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

3.48. Treatment. -- A broad range of planned habilitative services, including diagnostic

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evaluation, counseling, medical, psychiatric, psychological, training, education, and social service care, that are provided to enable a consumer to meet identified goals and objectives.

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

3.50. Volunteer. -- A person who provides services for no direct financial remuneration, and who meets the center's employment qualifications for health, safety and training.

### **§64-11-4. State Administrative Procedures.**

#### 4.1. General Licensure Provisions.

4.1.a. Before establishing, operating, maintaining or advertising within the State of West Virginia, a center shall first obtain from the secretary a license authorizing the operation.

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

4.1.c. A license is valid for the center named in the application and is not transferable.

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

#### 4.1.e. License Application.

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

#### 4.1.e.2. Application Submission.

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

4.1.e.2.B. Renewal applications shall be received by the secretary not less than sixty (60) days prior to the expiration of the current license.

4.1.e.2.C. Amended license applications shall be received by the secretary under the following circumstances:

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4.1.e.2.C.1. A change in the geographic location of a service or facility;

4.1.e.2.C.2. A change that increases the intensity of services at a location (e.g., home-based to day program); or

4.1.e.2.C.3. A change in bed capacity.

4.1.e.2.D. An application for an initial or renewal license shall identify the governing body, administrator and senior management of the center.

4.1.e.2.E. After a complete application with required fee for a renewal license has been received, the existing license shall not expire until the new license has been issued or denied.

### 4.1.e.3. Issuance.

4.1.e.3.A. Neither an initial, renewal or a provisional license shall be issued unless an inspection has been made.

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

4.1.e.3.B.1. An initial six (6) month license shall be issued to centers establishing a new program or service for which there is insufficient consumer participation to demonstrate substantial compliance with this rule;

4.1.e.3.B.2. A provisional license shall be issued when a center seeks an amended or a renewal license, and a center is not in substantial compliance with this rule, but does not pose a significant risk to the rights, health and safety of a consumer. It shall expire not more than six (6) months from date of issuance, and not be consecutively reissued, unless the provisional recommendation is that of the state fire marshal.

4.1.e.3.B.3. A renewal license shall be issued when a center is in substantial compliance with this rule, and shall expire not more than two (2) years from date of issuance.

4.1.e.3.B.4. The secretary may grant a waiver or variance to the provisions of this rule if its application clearly would be impractical and if any alternate arrangements are not detrimental to the health or safety of the consumers or employees of the center. The secretary may provide consultation in obtaining compliance with this rule.

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4.1.e.3.C. The center shall notify the secretary within thirty (30) days after the name of the center is changed, and a license with the new name will not be issued until the license is renewed.

### 4.2. Construction and Renovation.

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

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

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

4.2.d. Residential treatment facilities shall be located as conveniently as possible with access to necessary services.

### 4.3. Inspections.

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

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

4.3.b.1. Observation of service delivery;

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

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

4.3.b.4. Interviews with consumers, staff and administrators.

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

4.3.d. Inspections include every service and location operated by the center.

4.3.e. The center shall comply with any reasonable requests from the secretary to have

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access to the service, staff, consumers (with their permission), and records.

4.3.f. Within ten (10) days of completion of an inspection, the secretary issues a report.

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

### 4.4. Complaint Investigation.

4.4.a. Any person may file a complaint with the secretary alleging violation of applicable laws or rules by a center. A complaint shall state the nature of the complaint and the center by name.

4.4.b. The secretary may conduct unannounced inspections of centers or services involved in a complaint and any other investigations necessary to determine the validity of a complaint.

4.4.c. At the time of the investigation the investigator shall notify the person responsible for the center's operation or person in charge of the location involved in the complaint the reason for the complaint.

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

4.4.e. The secretary shall provide to the complainant upon request a description of the corrective action the center is required to take and of any disciplinary action the secretary will take.

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

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

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

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

### 4.5. Plans of Correction.

4.5.a. Within ten (10) days after receipt of the inspection report, the center shall submit to the secretary for approval a written plan to correct all deficiencies that are in violation of this rule. The plan shall specify:

4.5.a.1. Action taken or procedures proposed to correct the deficiencies and prevent their reoccurrence;

4.5.a.2. Date of completion of each action taken or to be taken; and

4.5.a.3. Signature of the administrator.

4.5.b. The secretary shall approve, modify or reject the proposed plan of correction in writing.

4.5.c. When the secretary modifies or rejects a plan of correction, the secretary shall state the reasons.

4.5.d. When the secretary rejects a plan of correction, a revised plan shall be submitted within ten (10) days.

4.5.e. The secretary shall require an immediate correction if a violation severely risks the health or safety of a consumer or other persons.

4.5.f. The secretary determines if corrections have been made.

### 4.6. Reports and Records.

4.6.a. The secretary shall keep on file a report of any inspection or investigation.

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

4.6.c. Information in reports or records is available to the public except:

4.6.c.1. As specified in this section regarding Complaint Investigations;

4.6.c.2. Information of a personal nature from a medical or personal file; and

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4.6.c.3. Information required to be kept confidential by state or federal law.

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

### **§64-11-5. Governance.**

#### 5.1. Operating Authority.

5.1.a. The center has evidence of the source of its operating authority, e.g. certificate of incorporation, partnership agreement.

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

#### 5.2. Governing Body.

5.2.a. The center shall have a governing body that sets policies, defines services, guides development and ensures the accountability of the center.

5.2.b. The governing body evaluates implementation of policies.

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

#### 5.3. Administration.

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

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

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

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

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

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

5.3.d.3. The process to evaluate the effectiveness of the governing body;

5.3.d.4. The prevention of a conflict of interest between a board member and the center; and

5.3.d.5. Quarterly meetings with minutes recorded.

### 5.4. Financial.

5.4.a. The center operates on an annual budget approved by the governing body.

5.4.b. The center's cost accounting system shall provide data that supports the calculation of costs of service delivery based upon actual or potential revenues.

5.4.c. The center receives, disburses, and accounts for its funds in accord with sound financial practices and generally accepted accounting principles.

5.4.d. The center shall be audited at least annually by an independent certified public accountant.

5.4.e. The center shall have insurance coverage to include general, professional and vehicular liability and property damage.

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

5.4.g. All money earned by a consumer is used for the sole benefit of that consumer.

5.4.h. The center shall allow a consumer or his or her legal representative to use his or her personal funds.

5.4.i. The center does not commingle a consumer's funds with the center's funds or with the funds of any person other than another consumer.

5.4.j. If the center handles consumer funds in excess of twenty-five dollars (\$25) per consumer and in excess of five hundred dollars (\$500) for all consumers per month, the center shall obtain a bond in an amount approved by the secretary sufficient to cover all consumer

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accounts, and the amount shall not be less than two thousand five hundred dollars (\$2,500). When the amount of any bond is insufficient to adequately protect the funds of consumers, the center shall obtain an additional bond in such amount as necessary to adequately protect the funds of consumers.

### 5.5. Center Responsibility.

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

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

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

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

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

5.5.b.4. That decisions made about care are based solely on the diagnostic and treatment needs;

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

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

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

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

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

5.5.f. The center shall implement written policies and procedures for the utilization of volunteers.

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

5.5.h. When a consumer is a threat to self or others, the center shall comply with its written policies and mandatory reporting laws.

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

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

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

5.5.i.3. The recipients; and

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

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

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

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

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

5.5.l. The center shall develop and revise policies for effective service delivery and protection of consumer rights and shall provide a copy of these policies to all new personnel.

5.5.m. The center shall implement a policy pertaining to employees with communicable diseases.

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

5.6. Personnel.

5.6.a. The center shall provide an adequate number of qualified personnel during all

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hours of operation to support the functions of the center and ensure the provisions of quality care.

5.6.b. The center shall not employ individuals with a conviction of, or prior history of, abuse, neglect or mistreatment.

5.6.c. Direct service staff shall be competent, responsible persons eighteen (18) years of age or older.

5.6.d. For all staff and volunteers, the center shall maintain a personnel record that includes:

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

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

5.6.d.3. References;

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

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

5.6.d.6. Employee performance evaluations.

5.6.e. For all professional and para-professional staff who have regular contact with consumers, the center shall conduct Criminal Identification Bureau screening.

5.6.f. The center shall provide to an employee, or to his or her designee, access to his or her personnel record.

### 5.7. Staff Training.

5.7.a. Beginning on the first day of employment, staff shall be oriented and trained on treatment policies and procedures, consumer rights and the use of emergency procedures, such as crisis intervention and restraints.

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

5.7.c. Employees and providers shall be trained in the proper management of consumers with seizures or behavioral disorders prior to, or within ten (10) days after, being

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assigned to work with individuals with these types of disorders. Fully trained staff shall be present until newly hired staff are fully trained.

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

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

### 5.8. Requirements for Residential Staff.

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

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

5.8.a.2. Assurance that the center shall transfer to an appropriate acute care facility, a consumer who poses an imminent physical danger to themselves or others, or provide adequate coverage to manage a consumer at the residential facility.

### 5.9. Human Rights Committee.

5.9.a. The center shall maintain a human rights committee to:

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

5.9.a.2. Report activities and recommendations, if any, at least annually to the governing body;

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

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

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

5.9.a.6. Ensure that aversive procedures are used only with the written consent of a

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consumer or his or her legal representative.

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

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

### 5.10. Transportation Services.

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

5.10.a.1. Proper maintenance of vehicles;

5.10.a.2. Adequate passenger supervision;

5.10.a.3. Appropriate passenger restraining systems; and

5.10.a.4. Licensure of drivers.

### 5.11. Quality Assurance.

5.11.a. The center shall monitor and evaluate service quality and effectiveness and make program improvements when indicated.

## §64-11-6. Health and Safety.

### 6.1. General.

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

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

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

6.1.d. The center shall evaluate the likelihood of exposure to blood borne pathogens for

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all persons likely to come in contact with blood.

6.1.e. The center shall have a written plan in case of fire, medical emergencies, natural disasters and other life-threatening situations.

6.1.f. The center shall post by the telephone, emergency telephone numbers for the fire department, local police and on-call staff, and capable consumers shall be instructed on how to use them.

6.1.g. The center's services shall comply with all applicable legal requirements.

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

### 6.2. Fire Code.

6.2.a. The center shall have evidence that facilities rented, owned or used regularly for services are in full compliance with applicable fire safety codes.

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

### 6.3. Requirements for Physical Environment.

#### 6.3.a. Water Supply.

6.3.a.1. All water supply systems shall comply with the applicable rules of the department of health and human resources.

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

#### 6.3.b. Sewage Disposal.

6.3.b.1. All facilities shall be served by an approved public sewage system or by a sewage disposal system that has been approved by the secretary according to the design standards and rules of the department of health and human resources.

### 6.4. Structures, Grounds, Equipment.

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6.4.a. All structures, grounds, and equipment shall comply with applicable building codes and health, fire and safety requirements.

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

### 6.5. Lighting, Ventilation, Heating.

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

6.5.b. The following shall be prohibited:

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

6.5.b.2. Unprotected open heaters.

### 6.6. Requirements for Group Homes, Residential Treatment Facilities and Emergency Shelters (24 Hours).

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

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

6.6.c. Space shall be arranged in consideration of the occupants' clinical needs.

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

6.6.e. Furnishings shall be homelike and personalized.

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

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

6.6.h. A facility shall provide safe, comfortable and clean lavatories, bathtubs and

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showers, equipped with hot and cold running water and a mixing faucet to ensure a water temperature not to exceed one hundred ten (110) degrees Fahrenheit.

6.6.i. A sufficient number of safe, private bathrooms shall be available and accessible.

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

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

6.6.l. Solid waste disposal shall comply with the applicable provisions of the state law and rules.

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

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

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

6.6.p. Dietary services, when provided, shall:

6.6.p.1. Meet or exceed national nutritional standards;

6.6.p.2. Be planned with the documented assistance of a dietitian; and

6.6.p.3. Provide well-balanced meals and snacks according to posted menus.

6.7. Consumer Grouping.

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

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

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

6.7.b. Emergency shelters, group homes and residential treatment facilities shall be community-based and may be locked, or the perimeters of their locations may be secured, when

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the following apply:

6.7.b.1. The residents are adjudicated and are not status offenders;

6.7.b.2. The residents are in need of protection; and

6.7.b.3. The residents are a danger to self or others.

### 6.8. Consumer Records.

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

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

6.8.b.1. Identification data;

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

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

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

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

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

6.8.b.7. Legal representative documents;

6.8.b.8. Court orders; and

6.8.b.9. A record of any signed and dated physician's orders.

### 6.9. Records Management.

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

6.9.b. Consumer records shall be retained for a minimum of five (5) years following discharge. In the case of minors, records shall be retained until five (5) years after the consumer's eighteenth birthday.

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

6.9.c.1. In a proceeding under W. Va. Code §27-5-4 to disclose the results of an involuntary examination made pursuant to W. Va. Code §§27-5-2, 27-5-3 and 27-5-4;

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

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

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

6.9.c.5. To direct care staff of the facility involved with treatment, or internal review purposes, applicable of a consumer's record shall be made available.

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

6.9.e. Confidentiality of records relating to a consumer's treatment for alcoholism or drug abuse shall be subject to the more protective of: Title 42, Code of Federal Regulations, Chapter I, Subchapter A, Part 2; or this subsection.

6.9.f. The secretary shall have full access to a consumer's records as needed in administering state and federal requirements.

### **§64-11-7. Consumer Services.**

7.1. Program Description.

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

7.1.b. When multiple service providers are involved in a consumer's treatment plan, clear, written procedures will be established and made available to staff.

7.1.c. Supervisors shall be persons with a master's degree in human services or a health related field and two (2) years post-master's degree experience in the delivery of family services,

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except for skills training which may be done by a registered nurse or a person with a bachelor's degree in human services or education.

### 7.2. Assessment and Planning.

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

7.2.b. Intake documentation shall include all relevant preliminary diagnostic, social, medical and legal information, and shall be signed and dated by the responsible staff person.

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

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

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

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

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

### 7.2.h. Diagnoses shall be:

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

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

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

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### 7.3. Treatment Plan.

7.3.a. A consumer shall have a written treatment plan that considers a consumer's needs and preferences.

7.3.b. The treatment plan shall be developed within seven (7) days and implemented within thirty (30) days of intake. When a service is less than thirty (30) days, the initial assessment and treatment plan shall be developed within a shorter time frame in accordance with a consumer's needs.

7.3.c. The methods implemented shall be appropriate to a consumer's identified needs.

7.3.d. When warranted the treatment plan shall address behavior management specific to a consumer's needs.

7.3.e. The treatment plan shall include:

7.3.e.1. Identification of the treatment plan participants, which include a consumer, his or her legal representative, provider and service plan participants, and documentation of the extent of their involvement. If a consumer is unable or unwilling to participate, with the reason documented in writing, planning can be done without his or her participation;

7.3.e.2. A consumer's written consent, evidenced by his or her signature, or that of his or her legal representative, for the treatment specified;

7.3.e.3. Goals and Objectives;

7.3.e.3.A. Specific goals shall be based on assessments and improve or maintain the mental health and optimal adaptive functioning of the individual; and

7.3.e.3.B. Measurable objectives shall be related to the goals, have an expected achievement date and include expected outcomes for discharge;

7.3.e.4. A description of the services, including outside services, provided to a consumer and directed primarily toward achievement of the expected outcomes, and with what frequency the services shall be provided.

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

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7.3.g. The center shall ensure that:

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

7.3.g.2. Educational services for minors in residential programs are made promptly available;

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

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

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

7.4. Treatment Plan Review.

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

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

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

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

7.4.b.3. Crisis points; and

7.4.b.4. Transfer between services.

7.4.c. Written consent by a consumer, or his or her legal representative shall be obtained and recorded in the treatment plan.

7.5. Consumer Discharge.

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

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

7.5.b.1. The reasons for discharge;

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

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

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

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

### 7.6. Behavior Intervention.

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

7.6.b. The center shall develop and implement policies and procedures, such as restraints, seclusion and time-out, for the management of behaviors that are socially or personally nonproductive. All behavior intervention plans shall:

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

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

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

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

7.6.c. For a consumer for whom a behavior intervention plan is appropriate, the treatment plan shall specify the rationale, the behavioral objective and the methods to be used in treatment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 7.7. Critical Incidents and Crisis Management.

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

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

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

### 7.8. Emergency Medical and Psychiatric Services.

7.8.a. The center shall maintain a system for emergency service provisions that ensures:

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

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

7.8.a.3. Adequate recording of the emergency and follow-up.

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

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

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

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

### 7.10. Medication Services.

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

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

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

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

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

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

### 7.11. Medication Management.

7.11.a. The center shall give a consumer the least amount of medication possible to ensure that he or she is not unnecessarily or excessively medicated;

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

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

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

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

### 7.12. Supportive Services for Persons in Semi-Independent Living Facilities.

7.12.a. In semi-independent living facilities, the center shall provide supportive

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services based on treatment plans.

### 7.13. Group Homes and Residential Treatment Services.

7.13.a. The service shall have rules of conduct that address the activities listed in this rule, that include provisions for personal possessions, and that are available upon request.

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

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

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

7.13.e. Staff in group homes for the mentally ill shall refer a consumer for ongoing mental health service and assist a consumer in keeping appointments and participating in treatment programs. Documentation of referrals shall be kept in a consumer's record.

### 7.14. Residential Treatment Services for Minors (24 Hours).

Programs and services for minors are child-centered and family-focused with integrated therapeutic and educational interventions that respect the child's developmental process. Programs and services for minors recognize the central importance of the child's family relationships in the treatment process and shall involve, to the extent possible, parents or caretakers in the intake and treatment planning process, implementation and evaluation.

7.14.a. Services shall have policies and procedures that describe:

7.14.a.1. Type of service or program;

7.14.a.2. Treatment modalities available; and

7.14.a.3. The level of family involvement expected.

7.14.b. The discharge process includes: child and family involvement, personnel responsible for discharge decision and provisions for aftercare.

### 7.15. Shelter Services for Minors.

7.15.a. The shelter shall meet basic emergency residential needs of a child in a

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community-based, open facility that ensures a safe living environment and provides an organized program of activities and counseling based on the intake assessment of the child's needs, interests and skills.

### 7.16. Partial Hospitalization Programs.

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

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

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

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

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

### 7.17. Staffing for Partial Hospitalization Programs.

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

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

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

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

### 7.18. Educational Programs.

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

7.18.a.1. An education director and staff who meet the state requirements of the department of education; and

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

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

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

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

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

### **§64-11-8. Consumer Rights.**

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

#### 8.1. Basic Rights.

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

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

8.1.a.2. The right to treatment and services in the least restrictive, most appropriate and potentially most effective setting;

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- 8.1.a.3. The right to an individualized treatment plan as defined under this rule;
- 8.1.a.4. The right to ongoing informed participation in the treatment plan process;
- 8.1.a.5. The right to refuse treatment at any time;
- 8.1.a.6. The right to a legal representative when unable to act on his or her own behalf;
- 8.1.a.7. The right to be free from involuntary experimentation;
- 8.1.a.8. The right to freedom from restraint or seclusion, except as provided in this rule;
- 8.1.a.9. The right to a humane treatment environment in which personal dignity and self-esteem are promoted;
- 8.1.a.10. The right to confidentiality of records, as provided in this rule;
- 8.1.a.11. The right to access his or her own consumer records in accordance with state law;
- 8.1.a.12. The right to assert grievances, orally or in writing, with respect to the infringement of all rights, including the right to have all grievances considered in a fair, timely and impartial procedure;
- 8.1.a.13. The right of access to an available advocate in order to understand, exercise and protect his or her rights;
- 8.1.a.14. The right to be informed in advance of any charges for services,;
- 8.1.a.15. The right to all available services without discrimination because of race, religion, color, sex, sexual orientation, disability, age, national origin, or marital status;
- 8.1.a.16. The right to exercise his or her civil rights;
- 8.1.a.17. The right to referral, as appropriate, to other providers of behavioral health services;
- 8.1.a.18. The right to be free from physical, verbal, sexual or psychological abuse or punishment;

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8.1.a.19. The right to be free from unnecessary or excessive medication;

8.1.a.20. The right to medication that is not used as punishment, for the convenience of staff, as a substitute for programming, or in quantities that interfere with the treatment program;

8.1.a.21. The right to be free from uncompensated labor, except for consumers in residential facilities who perform housekeeping tasks; and

8.1.a.22. The right to be informed orally, in writing and in appropriate language and terms, of the rights described in this section;

8.1.a.23. A residential consumer shall have:

8.1.a.23.A. The right to be housed with consumers of the same approximate ages, developmental levels and social needs;

8.1.a.23.B. The right to unimpeded access to his or her attorney or religious advisor;

8.1.a.23.C. The right to constant access to his or her personal possessions unless contraindicated by treatment needs; and

8.1.a.23.D. The right to private communication with others by mail, in person and by telephone.

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

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

### 8.2. Violation of Consumer Rights.

8.2.a. A consumer, an employee, or any other individual may make a complaint to the center. A supervisor shall report to the administrator within twenty-four (24) hours regarding all

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violations, or suspected violations, of a consumer's rights, except in the case of physical abuse for which immediate notification shall be made.

8.2.b. The administrator shall initiate a thorough investigation within twenty-four (24) hours after receiving a report of a life-threatening complaint, and within three (3) business days for other complaints. Within a reasonable time period the administrator shall provide a written report to the human rights committee of his findings and of the actions taken to prevent further occurrences. A consumer or consumers shall be identified by case number only.

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

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

### 8.3. Serious Injury or Death Reports.

8.3.a. The center shall investigate any incident that results in serious injury or death, report it to appropriate authorities and to the secretary, and keep a written report on it.

## §64-11-9. Substance Abuse Services.

### 9.1. Public Inebriate Shelter Services.

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

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

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

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

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

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

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security reasons.

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

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

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

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

### 9.2. Detoxification Services.

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

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

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

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

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

### 9.3. Residential Substance Abuse Services.

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

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

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

### **§64-11-10. Penalties.**

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

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

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

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

10.1.d. The center has failed or refused to submit reports or make records available as requested by the secretary; or

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

10.2. If a license has been revoked, the secretary may stay the effective date of revocation by no more than ninety (90) days if the center can show that the stay is necessary to ensure appropriate placement of consumers.

### **§64-11-11. Administrative Due Process.**

11.1. Any person aggrieved by an order or other action by the secretary based on this rule, or W. Va. Code §§27-9-1 or 27-17-1 et. seq., may request in writing a hearing by the secretary in accordance with the Division of Health rule, "Rules of Procedure for Contested Case Hearings and Declaratory Rulings," 64CSR1, a copy of which may be obtained from the Secretary of State.