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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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SECRETARY OF STATE

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December 14, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: V. Sue Cater
Health & Human Resources
Capitol Complex
Building 3, Room 550

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Behavioral Health Centers Licensure, 64CSR11**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED



ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Health

Subject: Behavioral Health Centers Licensure, 64CSR11

PERTINENT DATES

Filed for public comment: June 30, 1999
Public comment period ended: July 30, 1999
Filed following public comment period: August 6, 1999
Filed LRMRC: August 6, 1999
Filed as emergency: N/A

Fiscal Impact: None

OFFICE OF THE CLERK
VIRGINIA DEPARTMENT OF HEALTH
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ABSTRACT

This proposed legislative rule repeals and replaces the existing Behavioral Health Licensure rule. The rule was originally filed in 1984 with the exception of minimal changes made in 1990, it has not been updated since then. The new rule discusses applications and enforcement; it details licensure requirements, inspections, the complaint process and what records and reports need to be kept. It also discusses the operation and administration of centers, staff training, quality assurance and human rights. It deals with the health and safety requirements for centers and their residents, and the provision of consumer services. It explains consumer rights and details services for substance abuse centers.

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 explains application of the rule and its enforcement. The rule applies to specific centers which offer services either on an inpatient or outpatient basis to individuals with mental illness, mental retardation, behavioral disabilities, developmental disabilities, or addiction.

SCANNED



Section 3 is the definition section. Counsel has suggested that some of the definitions need to be revised because they refer to W. Va. Code sections rather than defining terms that are used in the rule.

Section 4 is entitled state administrative procedures. It sets forth the application process for licensure and provides certain requirements which must be met by an applicant including time limits for filing and acting on applications, when renewals can be issued or when license applications can be amended.

This section also provides that the Secretary is to inspect new construction and renovations to centers prior to the work actually being done. Residential treatment centers are to be inspected yearly. All other behavioral health centers are to be inspected at least once every two years. The inspections include such things as observation of service delivery, review of life safety and environment of the center, review of clinical and administrative records as well as interviews with consumers, staff and administrators.

After an inspection, if a center is found to be out of compliance with any of the requirements of this rule or statute, the Secretary will provide them with written notification of these deficiencies and allow them ten days to file a plan of correction. The Secretary can also grant a variance for certain deficiencies if necessary and appropriate. If the Secretary rejects the plan of correction, the plan must be redesigned and resubmitted within ten days. The Secretary also has the authority to modify the plan of correction and require that it be fulfilled. This section also sets forth the requirements for investigation of complaints.

Section 5 sets forth the requirements for governing bodies and the administration of centers. Each center is required to have a governing body to set policies, develop a mission statement, define services, guide the development and ensure the accountability of the centers. The administration of each center must define the structure of each center and the lines of responsibility and authority. The administrator of each center must develop an operation plan including a mission statement, program goals and description of services provided.

This section also sets forth the financial requirements for centers and provides that there should be no conflict of interest with members of the governing body and the center. The center is responsible for clearly defining the population to be served and for informing potential consumers and referral sources of the



center's capacities, availability of services and the means required for payment of services.

Each center must develop a code of ethics for the operation of the center and must assure consumer rights, privacy and confidentiality. Each center must also develop a grievance process and assure that each consumer has the right to file a grievance in accordance with established procedures. Each center is required to periodically review and revise their policies to assure effective and efficient delivery of services and protection of consumers' rights. Centers are to assure that an adequate number of qualified personnel are at the center during hours of operation. Centers are not to employ individuals convicted of abuse or neglect. Staff members are to be trained in all areas of operation including an orientation program regarding treatment policies and procedures, consumer rights and use of emergency procedures at each center. Each center must establish a human rights committee. This committee will hold meetings, review activities and approve and monitor individual behavior plans to assure the appropriateness of treatment in behavior therapies for each patient. At least one third of the human rights committee members must be consumers and no more than one third shall be staff members of the center.

This section also requires centers that provide transportation for consumers to assure proper maintenance of vehicles and adequate passenger supervision. Centers must develop a quality assurance process and must provide written plans or an outline setting forth how quality assurance and quality improvement will be obtained.

Section 6 outlines the general health and safety requirements which must be met in order to be a licensed behavioral health care facility. This section governs such things as fire codes, water supplies, requirements for the physical environment, sewage disposal, lighting, ventilation and heating for each center. It also sets forth the requirements for group homes and residential treatment facilities such as the requirements for consumer's bedrooms including their furniture and fixtures, bathroom facilities, food service and who may live with whom. This section also sets forth the requirements for maintaining consumer records and assuring that consumer records are kept in the strictest of confidence.

Section 7 sets forth the requirements for consumer services. Centers must provide a program description that accurately describes the services to be provided. In the case of multiple service providers, each service provider's responsibilities for the particular consumer must be set forth in writing. Each center must have a formal intake process which accurately assesses and plans



for appropriate treatment for each consumer. Each consumer must have a diagnosis written in standard terminology based upon accepted professional standards of examination and a factual description of the consumer's symptoms and problems. Each consumer must have a written treatment plan that considers the consumer's needs, problems, preferences and available treatment options. The assessment of individual consumers must include statements of goals and objectives. Each center must ensure that the consumer is involved in his or her treatment planning and service delivery to the fullest extent possible. Treatment plans must be reviewed at least every 90 days by an interdisciplinary team unless otherwise specified in the plan. However, each treatment plan must be reviewed at least once every 180 days. A review or revision of a treatment plan must occur when significant events such as admission, transfer, discharge, crisis or major changes in the consumer's condition occur. Discharge planning must follow the treatment plan. A written discharge summary must be included in the consumer's record within 30 days of discharge. The plan must provide a final evaluation summary, the reasons for discharge, the consumer's status and condition at discharge, and where available, a plan for care after discharge and follow-up.

Program and direct care staff must be trained in behavior management including methods of de-escalating volatile situations, the use of nonphysical techniques in such situations, and to deal appropriately with aggressive or out of control behavior. Each center must develop and implement policies and procedures for the use of physical, medical or mechanical restraints. Any restraint must be used based on the functional analysis of the behavior and include positive programming to teach the consumer more effective and appropriate behavior. Each center must ensure that their program does not provide adverse stimuli such as corporal punishment or the use of electric shock devices. A center may not engage in behavior interventions that involve withholding food or water or that inflict physical or psychological pain.

Each center must have policies to ensure that medical and psychiatric emergency services are available to its consumers on a 24 hour a day basis. Each center must develop a process for the administration, storage and accountability of all medications utilized at the facility. Each center must note changes in a consumer's condition including adverse reactions as a result of any medications provided. Each center must provide for medication management including provision of locked storage facilities for medication that is not administered by consumers to themselves.

Subsection 7.13, 7.14 and 7.15 provide additional requirements for residential treatment services for



minors and adults such as shelter services for minors and partial hospitalization programs to assure that the different needs of 24-hour care facilities are met.

Section 8 sets forth basic consumer rights for persons receiving behavioral health treatment. These rights include such things as the right to treatment and services considering the individual's needs in the least restrictive environment, the right to legal representation, the right to be free from involuntary experimentation, the right to freedom from restraint or seclusion unless certain conditions are met and the right to be free from physical, verbal, sexual or psychological abuse or punishment. This section seeks to assure that centers respect the rights and personal liberties of consumers while acknowledging that these rights and liberties may be limited when it is clinically appropriate and clearly justified, in writing, to do so.

Any person may file a complaint if they believe a consumer's rights are being violated. Once a complaint has been filed, the administrator of the center must initiate a formal investigation within 24 hours of receiving the report, if it is a life-threatening situation, and within three business days for all other complaints. The center must make a notation of the incident and the effect of the incident on the consumer's illness or treatment in the consumer's record. If a consumer disagrees with the determinations of the administration or if the decision is not made in a timely manner, the consumer may appeal the decision to the governing body of the center, the state licensure agency, the West Virginia Advocates or any other legal recourse.

Section 9 sets forth the specific requirements for centers providing substance abuse services. Such centers are required to have trained personnel screen consumers to determine the need for medically monitored detoxification or referral to acute medical care facilities. Once a consumer is admitted to the center, he or she must be monitored at least every fifteen minutes for the first four hours following admission and each hour thereafter. Public inebriate shelter service providers may not discharge a consumer unless the committing authority has approved the release or until his or her blood alcohol count is below .05, and there is no observable indication of intoxication. Persons receiving detoxification services must receive a physical examination and screening during intake to determine the need for medical services. In addition, a physician must be available for medical consultation 24 hours per day, seven days per week. The shelter must provide counseling designed to motivate the consumer in the treatment process and give emotional support during the withdrawal phases. Centers providing residential substance abuse services must have a



physician available for medical consultation 24 hours per day, seven days per week and must ensure the availability of onsite nursing staff to address consumer's medical needs.

Section 10 is the penalty section; it sets forth the statutory options available to the Secretary when a center does not meet the requirements of this rule. These options include revocation or suspension of a license, an order for an admissions ban or a reduction in consumer census or in bed capacity for residential programs.

Section 11 sets forth the administrative due process available to centers who are aggrieved by an order of the Secretary.

AUTHORITY

Statutory authority: W.Va. Code, §27-9-1 and §27-17-3, which provide as follows:

§27-9-1.

No hospital, center or institution, or part thereof, to provide inpatient, outpatient or other service designed to contribute to the care and treatment of the mentally ill or mentally retarded, or prevention of such disorders, shall be established, maintained or operated by any political subdivision or by any person, persons, association or corporation unless a license therefor shall be first obtained from the director of health. The application for such license shall be accompanied by a plan of the premises to be occupied, and such other data and facts as the director may require. He may make such terms and regulations in regard to the conduct of such hospital, center or institution, or part thereof, as he may think proper and necessary. He, or any person authorized by him, shall have authority to investigate and inspect such hospital, center or institution, or part thereof; and the director of health may revoke the license of any such hospital, center or institution, or part thereof, for good cause



after reasonable notice to the superintendent or other person in charge thereof.

§27-17-3.

(a) No group residential facility shall be established, maintained or operated unless a license therefor shall be first obtained from the director of health, except that a group residential facility for behaviorally disabled juveniles shall be deemed to satisfy all requirements of this section by obtaining a license from the commissioner of human services. The application for such license shall contain such data and facts as the director may require. The director may promulgate reasonable regulations for the conduct of such facilities, including, but not limited to, a statement of the rights of patients in group residential facilities for the mentally and physically impaired to ensure the adequate care and supervision of such patients, and shall have the authority to investigate and inspect any such facility, and may revoke the license of any such facility for good cause after notice and hearing.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.



III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

Yes. There are some differences between this rule and the Consumer Rights rule which was drafted by another division within the Department of Health and Human Resources. The agency is working to resolve the differences.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has suggested technical modifications.

