

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

2007 JUL 27 11:00 AM

SECRETARY OF STATE

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

AGENCY: DHHR Office of Health Facility Licensure & Certification TITLE NUMBER: 64

RULE TYPE: Behavioral Health Centers License CITE AUTHORITY: W. Va. Code §§ 27-9-1, 27-17-3, 27-1A-4(g), 27-1A-6(6) & 7

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11

TITLE OF RULE BEING AMENDED: Behavioral Health Centers Licensure

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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 27 July 2007 AT 12:00 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Dr. Rose Lowther-Berman  
John Wilkinson  
BPH-Office of Health Facility Licensure  
and Certification  
1 Davis Square, Suite 101  
Charleston, WV 25301-1799

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

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL.

## **BRIEF SUMMARY OF THE RULE**

### **BEHAVIORAL HEALTH CENTERS LICENSURE RULE**

#### **64CSR11**

This repeals and replaces the behavioral health center licensure rule with the effective date July 1, 2000. It sets forth the requirements for behavioral health centers to be licensed in the state of West Virginia.

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

**BEHAVIORAL HEALTH CENTERS LICENSURE RULE**

**64CSR11**

The behavioral health center licensure rule has not been updated since July 1, 2000. The proposed rule brings the licensing requirements for behavioral health centers in line with current practice and current federal Centers for Medicare and Medicaid Services and state Bureau for Medical Services practices.



**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

Revenue estimate for SFY2009: \$250 per license - \$10 per license received under old rule = \$240 per license increase X 56 behavioral health centers = \$13,440; 342 beds X \$25 per bed = \$8,550; Civil Monetary Penalties: 31 facilities X \$1,000 per facility = \$31,000 + 46 facilities X 8 days beyond plan of correction deadline X \$50 per day = \$18,400 . (\$13,440 + \$8,550 + \$31,000 + \$18,400 = \$71,390 Total Additional Revenue)

Revenue estimate for SFY2010: \$250 per license - \$10 per license received under old rule = \$240 per license increase X 59 behavioral health centers = \$14,160; 704 beds X \$25 per bed = \$17,600; Civil Monetary Penalties: 10 facilities X \$1,000 per facility = \$10,000 + 10 facilities X 8 days beyond plan of correction deadline X \$50 per day = \$4,000 . (\$14,160 + \$17,600 + \$10,000 + \$4,000 = \$45,760 Total Additional Revenue)


**Memorandum**

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

[Empty box for memorandum content]

Date  
\_\_\_\_\_

Agency  
Department of Health and Human Resources

Authorized Representative  
  
Martha Yeager Walker  
Secretary

TITLE 64  
LEGISLATIVE RULE  
DIVISION OF HEALTH

2007 JUN 27 11:11 AM

SERIES 11  
BEHAVIORAL HEALTH CENTERS LICENSURE

SECRETARY OF HEALTH

**§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 "Behavioral Health Centers Licensure," 64CSR11, effective July 1, 2000.

1.6. Purpose. -- This rule is the basis for the licensing and approval of agencies, centers, and other entities providing behavioral health services for residents of West Virginia. Licenses are issued if the applicable rules and regulations are met. The purpose is to regulate the provision of behavioral health treatment for adults and children with behavioral, emotional, and/or developmental challenges caused by mental illness, developmental disabilities

addiction/substance abuse and traumatic brain injuries through the formulation, application, and enforcement of minimum licensing requirements.

**§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 disabilities, developmental disabilities or addiction, 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.

2.3. Applicability to Other Standards. When an individual receives care or treatment from a behavioral health center, state and federal requirements, accreditation standards applicable to the behavioral health center and the standards set forth in this rule apply. If there is a conflict between those requirements, accreditation standards and the standards specified in this rule, the more stringent standard applies, unless the federal standard must be met for the purposes of Medicare or Medicaid participation, then the federal standard prevails.

2.4. Exceptions.

2.4.a This rule shall not apply to the following:

2.4.a.1. Hospitals, Long Term Care Facilities, and Assisted Living Facilities regulated by the West Virginia Department of Health and Human Resources.

2.4.a.2. Entities operated by the state or federal government.

2.4.a.3. Specialized family care homes under the supervision of the West Virginia Department of Health and Human Resources;

2.4.a.4. Self help groups;

2.4.a.5. Information and referral services;

2.4.a.6. A private practice as defined in this rule;

2.4.a.7. Non-supervised apartment living quarters occupied by consumers of a Center; and

2.4.a.8. Any person providing uncompensated services to a family member.

### **§64-11-3. Definitions.**

#### 3.1. Abuse.

3.1.a. Physical Abuse. -- Any act or failure to act by an employee or staff of a behavioral health service that was knowingly, recklessly, or intentionally performed, or that was failed to be performed, and that caused, or is likely to cause pain, psychological harm, injury, or death to a consumer, including, but not limited to:

3.1.a.1. The rape or sexual assault of the consumer;

3.1.a.2. The striking of a consumer with a part of the body or with an object;

3.1.a.3. Shoving, pushing, pulling, tugging, or twisting any part of the consumer's body with fingers or nails;

3.1.a.4. Burning or sticking the consumer with an object;

3.1.a.5. Acts of retaliation even in response to a physical attack;

3.1.a.6. The use of excessive force when placing an individual in bodily restraints;

3.1.a.7. The use of physical or chemical restraints that is not in compliance with federal or State law; or

3.1.a.7. The use of corporal punishment as well as the use of any restrictive, intrusive procedure to control inappropriate behavior for purposes of punishment.

3.1.b. Psychological/Emotional Abuse. -- 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;

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. Advance Psychiatric Directive. -- Any instruction written and signed by a consumer, describing preferences in health care written when the consumer is competent and psychiatrically stable and implemented when the consumer is not able to make informed decisions in the absence of an advance psychiatric directive.

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

3.4. 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.

3.5. Approved Medication Assistive Personnel. -- The unlicensed facility employee or staff, who meets eligibility requirements, has successfully completed the required training and competency testing, and is considered competent by the facility's registered nurse to administer medications to consumers of the facility in accordance with W. Va. Code §16-50-1.

3.6. 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.

3.7. Behavioral Health. -- Mental health, developmental disabilities, or substance abuse.

3.8. Behavioral Health Services. -- Inpatient, residential or outpatient services for the care, training, and treatment of individuals with mental illness, developmental disabilities or substance abuse.

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

3.10. Center. -- An entity or organization that provides behavioral health services.

3.11. 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 law.

3.12. Consumer. -- An individual receiving treatment or services in or from the Center.

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

3.14. 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.

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

- 3.15.a. Abuse;
- 3.15.b. Neglect;
- 3.15.c. Death due to any cause;
- 3.15.d. Attempted suicide;
- 3.15.e. Behavior that will likely lead to serious injury or significant property damage;
- 3.15.f. Fire resulting in injury, relocation or an interruption of services;
- 3.15.g. Any major involvement with law enforcement authorities;
- 3.15.h. Injury that requires hospitalization or results in permanent physical damage;
- 3.15.i. Life-threatening reaction because of a drug or food;
- 3.15.j. A potential serious consequence resulting from an apparent error in medication or dietary administration;
- 3.15.k. Extended and unauthorized absence of a consumer that exceeds his or her treatment plan provision for community access; or
- 3.15.l. Removal of a consumer from either residential or program services without the consent of a consumer or his or her legal representative.

3.16. Detoxification. -- The process of eliminating the toxic effects of drugs and

alcohol from the body.

3.17. Discharge. -- The termination of a consumer's affiliation with the Center.

3.18. 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 if possible.

3.19. Documentation. -- A written record relating to compliance with this rule.

3.20. Employee -- Any person who performs personal services for the center in exchange for monetary compensation where such personal service, including the results to be accomplished as well as the details and the means by which the results are accomplished, are controlled and directed by the center in accordance with the provision of this rule.

3.21. 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.

3.22. Functional Analysis. -- A comprehensive assessment process that includes at least: an analysis of the problem behavior, a history of the problem, the antecedent, consequence of the behavior, and an hypothesis as to the function of the behavior.

3.23. 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.

3.24. Governing Body. -- A person or persons with the legal authority and responsibility to set policy and oversee the operations of the Center.

3.25. Human Rights Committee. -- A committee whose 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.

3.26. Independent Health Contractor - A licensed, certified, and/or registered health care provider who performs personal services for the center in exchange for monetary compensation, where the center has the right to specify the result to be accomplished by the work, but not the means and methods by which the result is accomplished.

3.27. Individual Support Plan. -- A written design based on the assessment of a consumer's needs and strengths that identifies problems, sets consumer-centered goals and objectives and describes all services, programs and activities currently required to support the achievement of the goals and objectives. See treatment plan.

3.28. Informed Consent. -- The written verification:

3.28.a. That a consumer has or does not have the legal capacity to give informed consent;

3.28.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

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

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

3.30. Legal Representative. -- 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:

3.30.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;

3.30.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;

3.30.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);

3.30.d. 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;

3.30.e. A surrogate decision-maker appointed pursuant to the West Virginia Health Care Decisions Act, W. Va. Code §16-30-8 et seq., or the West Virginia Do Not Resuscitate Act, §16-30C-1 et seq.,

within the limits set by the appointment;

3.30.f. 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;

3.30.g. 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;

3.30.h. A parent or guardian of a minor; or

3.30.i. 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.

3.31. Mechanical Supports. -- Devices used to support or align an individual's proper body position.

3.32. Medication Error. --

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

3.32.b. The administration of a drug:

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

3.32.b.2. In the wrong dosage;

3.32.b.3. In the incorrect form;

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

3.32.b.5. That is incorrect

itself.

3.33. Neglect. -- The failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable consumer including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services. Neglect may be repeated conduct or a single incident. Neglect includes, but is not limited to:

3.33.a. The failure to establish or carry out a consumer's Individual Support Plan or treatment plan that placed or may have placed a consumer at risk of injury or death;

3.33.b. A failure to provide adequate nutrition, clothing, or health care;

3.33.c. A failure to provide a safe environment;

3.33.d. A failure to follow written center policies and procedures which jeopardizes consumer health or safety; or

3.33.e. A failure to maintain sufficient, appropriately trained staff and employees.

3.34. 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.

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

3.36. 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.

3.37. Private Practice. -- The individual or group who practice a healing art or behavioral health profession and who hold(s) a license issued by a state health regulatory board as a prerequisite for such practice.

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

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

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

3.41. Psychiatric Emergency. -- An incident during which a consumer loses control and behaves in a manner that poses substantial likelihood of physical harm to himself or herself or to others.

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

3.43. 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.

3.44. Residential Facility. -- A structure in which is provided an interdisciplinary, therapeutic treatment program on a twenty-four (24) hour-a-day basis for behavioral health consumers

3.45. Restraint. -- A system or device to control a consumer, physically and/or behaviorally.

3.45.a. Chemical Restraint. -- The use of medication as a behavior control mechanism to substitute for seclusion or other restraint.

3.45.b. Physical Restraint. -- Any manual method or physical or mechanical device that the individual cannot remove easily, and that restricts the free movement of, normal functioning of, or normal access to a portion or portions of a consumer's body. Examples of manual methods include therapeutic or basket holds and prone or supine containment. Examples of mechanical devices include arm lap belts, side rails, splints, posey mittens, helmets, and straight jackets. Physical guidance and prompting techniques of brief duration and mechanical supports are excluded.

3.46. Seclusion. -- The placement of a consumer alone in a room or enclosed space with closed doors that a consumer cannot open from inside. Persons with a mental retardation/development disability diagnosis may not be secluded.

3.47. Secretary. -- The Secretary of the West Virginia Department of Health and Human Resources or his or her designee.

3.48. Self-Administration of Medications. -- The act of a consumer who is independently capable of reading and understanding the labels of drugs ordered by a physician in opening and accessing prepackaged drug containers, accurately identifying and taking the correct dosage of the drugs as ordered by the physician and the correct time and circumstances.

3.49. Self-Help Group. -- A group with the following components:

3.49.a. Mutual Help. -- All members who receive help also contribute help.

3.49.b. Member-owned and operated.

3.49.c. Members are peers, with the same problem or experience.

3.49.d. Members are volunteers.

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

3.51. Staff. -- Any person or persons who perform personal services for the center in exchange for monetary compensation where such personal services, including the results to be accomplished as well as the details and the means by which the results are accomplished, are controlled and directed by the center, regardless of whether monetary compensation is effect through the center's payroll system or the center's accounts payable system.

3.52. Substance Abuse. -- A pattern of psychoactive substance misuse indicated by at least one of the following:

3.52.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

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

3.53. 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.

3.54. 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:

3.54.a. Placing a consumer in a quiet corner of the room; or

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

3.55. Treatment. -- A broad range of planned habilitative and/or rehabilitative services, including diagnostic evaluation, counseling, medical, psychiatric, psychological, training, education, and other social/support services that are provided to enable a consumer to meet identified goals and objectives.

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

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

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

3.59. Waiver. -- A declaration that a certain regulation is inapplicable in a particular circumstance.

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

4.1. General Licensure Provisions.

4.1.a. The Center is responsible for compliance with this rule and other relevant federal and state laws.

4.1.b. The Center shall submit data to the Secretary as requested.

4.1.c. All licensed Centers must have a business certificate/license from the Secretary of State.

4.1.d. 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.e. If the Secretary determines not to issue a license as applied for, the applicant is notified.

4.1.f. A license is valid for the Center named in the application and is not transferable.

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

4.2. License Application.

4.2.a. The governing body shall ensure adequate resources to support the Center's services. If a new Center or an expansion of an existing Center, the governing body must demonstrate sufficient operating funds for at least six (6) months. Such demonstration may include reserves, line of credit, or history of adequate cash flow from an existing program to support a new program for six months.

4.2.b. An application shall identify all service locations and offices operated by the Center.

4.2.c. 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, along with a non refundable fee, and any additional information the Secretary may require.

4.2.d. Renewal applications shall be received by the Secretary not less than ninety (90) days prior to the expiration of the current license, along with a non refundable fee, and any additional information the Secretary may require.

4.2.e. Amended license applications are required by the Secretary under the following circumstances:

4.2.e.1. A change in the geographic location of a service or facility;

4.2.e.2. A change in bed capacity; or

4.2.e.3. Any extensive renovation or conversion of an existing facility costing in excess of \$5000.

4.2.f. There will be a \$500 penalty assessed from any Center that does not amend its license pursuant to this rule.

4.2.g. An application for an initial or renewal license shall identify the governing body, and administrator of the Center by name and home address.

4.2.h. An application shall be accompanied by the following:

4.2.h.1. Insurance coverage to include general, professional and vehicular

liability and property damage;

4.2.h.2. Evidence that the Center will be audited at least annually by an independent certified public accountant;

4.2.h.3. The annual budget approved by the governing body; and

4.2.h.4. Any policies or procedures created or amended since the last survey.

4.2.i. After a complete application with required fee for a renewal license has been received, according to Subsection 4.4.b., the existing license shall not expire until the new license has been issued or denied.

#### 4.3. Fees.

4.3.a. A nonrefundable application fee in the amount of \$100 for an initial or amended behavioral health license shall be paid at the time application is made for the license.

4.3.b. All direct costs for the initial licensure inspection shall be borne by the applicant and shall be received by the Secretary prior to the issuance of an initial license.

4.3.c. The license fee for renewal of a license shall be at the rate of \$250 plus \$25 per licensed bed, if any.

4.3.d. The Secretary may annually adjust the licensure fees for inflation based upon the consumer price index.

#### 4.4. Issuance.

4.4.a. An initial, renewal, or provisional license shall not be issued,

unless an inspection has been completed.

4.4.b. Following an application review, and onsite inspections and plans of correction, the Secretary shall, if there is substantial compliance with this rule, issue a license in one of three categories:

4.4.b.1. An initial six (6) month license shall be issued to a Center establishing a new program or service found to be in substantial compliance on initial review with regard to policy, procedure, organization, and recordkeeping regulations;

4.4.b.2. A provisional license shall be issued when a Center seeks a renewal license, and the 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 based on the provisional recommendation is that of the state fire marshal; or

4.4.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. A license may be issued for any duration up to two (2) years at the discretion of the Secretary.

4.4.c. The Secretary may provide consultation and technical assistance in obtaining compliance with this rule.

4.4.d. The Center shall notify the Secretary within thirty (30) days after the name of the Center is changed and apply for license renewal.

#### 4.5. Construction and Renovation.

4.5.a. For new construction, renovations, and alterations, a Center shall submit to the secretary for review, complete construction drawings and specifications for the Center's construction project which alters a floor plan, impacts life safety, or requires approval under W. Va. Code §16-2D-1 et seq. prior to beginning work on the project. An architect or engineer registered to practice in West Virginia shall prepare and sign the drawings and specifications including architectural, life safety, structural, mechanical, and electrical drawings and specifications.

4.5.b. Prior to starting any renovations, a Center shall complete an infection control and safety risk assessment and shall develop a plan to control exposure of consumers, employees, staff, and the public. This plan shall be implemented prior to and during construction phases.

#### 4.5.c. Site Selection.

4.5.c.1. The site of any new Center shall, except in circumstances approved by the Secretary, be located in relation to a center of population, close to where consumers live, where competent medical consultation is readily available and where employees and staff can be recruited and retained.

4.5.c.2. There shall be adequate drainage, electricity, telephone, sanitation, water, transportation, and other necessary facilities available on or near the site.

4.5.c.3. Local building codes and zoning restrictions shall be observed. Where local codes or regulations permit lower standards than required by this rule, the standards contained in this rule shall take

precedence.

4.5.c.4. Site conditions shall comply with the relevant sections of the current edition of "The Guidelines for Design and Construction of Hospital and Healthcare Facilities" as recognized by the American Institute of Architects Academy of Architecture for Health.

4.5.c.5. A Center shall request in writing an inspection of a proposed site and obtain approval for construction from the Secretary before beginning construction.

4.5.c.6. The Secretary shall inspect new locations for all residential facilities and additions to existing residential facilities prior to the architect's beginning work on final drawings and specifications.

#### 4.6. Inspections.

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

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

4.6.b.1. Observation of the service delivery milieu;

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

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

4.6.b.4. Interviews with consumers, employees, staff and/or administrators.

4.6.c. Each licensed Center shall be inspected at least once every two (2) years, except for residential facilities that are

inspected at least once a year.

4.6.d. A licensed Center shall be inspected ninety (90) days prior to the expiration of its license, at a minimum.

4.6.e. If a licensed Center is accredited by an accreditation body, it shall supply copies of all relevant accreditation reports to the licensing body within ten (10) days of receipt.

4.6.f. Inspections shall include every licensed location operated by the Center, if feasible.

4.6.g. The Center shall comply with any reasonable requests from the Secretary to have access to the service, staff, employees, consumers (with their permission), and records.

4.6.h. Within fifteen (15) working days of completion of an inspection, the Secretary shall issue a report.

4.6.i. Based on a Center's previous substantial compliance with this rule, an onsite inspection is not always required for issuance of an amended license.

4.6.j. The Center may contest any finding by the Secretary or oversight body. Such disagreement must be supported by documentation or other credible evidence. Appeals of citations must be filed in writing with supporting documentation and may be followed if necessary by an informal meeting for the purposes of dispute resolution should either party desire.

#### 4.7. Complaint Investigation.

4.7.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.

4.7.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.

4.7.c. At the time of the investigation, the investigator shall notify the administrator or person in charge of the location involved in the complaint and the general reason for the complaint, without identifying the complainant.

4.7.d. Within fifteen (15) 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.

4.7.e. The Secretary shall provide to the complainant a determination of whether the complaint was substantiated. The secretary may provide to the complainant a description of the corrective action the Center is required to take and of any disciplinary action the Secretary will take.

4.7.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.

4.7.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.

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

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

#### 4.8. Reports and Records.

4.8.a. The Secretary shall keep on file a report of any inspection or investigation.

4.8.b. A report shall specify the deficiency and the provision of the rule it violates, and describe the precise data that supports such a deficiency.

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

4.8.c.1. As specified in Subsection 4.7. of this rule;

4.8.c.2. Information of a personal nature from a consumer or personnel file; and

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

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

#### 4.9. Plans of Correction.

4.9.a. Within ten (10) working 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, unless a variance is requested by the Center and granted by the Secretary. The plan shall specify:

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

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

4.9.a.3. Signature of the administrator or his or her designee.

4.9.b. The Secretary shall approve, modify or reject the proposed plan of correction in writing. Modifications may be made by the Center in conjunction with the Secretary.

4.9.c. The Secretary shall state the reasons for rejection or modification of any plan of correction.

4.9.d. When the Secretary rejects a plan of correction, a revised plan shall be submitted within ten (10) working days upon receipt of the rejection. The Secretary may issue a directed plan of correction if the revised plan submitted by the Center is not approved.

4.9.e. The Center shall immediately correct a violation that severely risks the health or safety of a consumer or other persons.

4.9.f. The Secretary may determine if corrections have been made.

4.9.g. The Center shall make the results of surveys, inspections, and investigations as well as plans of correction

available for examination in a place readily accessible to consumers and shall post a notice of their availability.

#### 4.10. Waivers.

4.10.a. The Secretary may grant a waiver or variance to a provision of this rule if its application clearly would be impractical and if any alternate arrangements are not detrimental to the health, well-being, or safety of the consumer of the entity or Center

4.10.b. All waivers shall be in writing.

4.10.c. No waiver may be granted for an issue involving the health or safety of consumers or that violates any state or federal statute.

4.10.d. A waiver shall be granted with each licensure renewal.

### **§64-11-5. Management and Administration.**

#### 5.1. Operating Authority.

5.1.a. The Center has documentation of the source of its operating authority, e.g., certificate of incorporation, partnership agreement, prominently displayed.

5.1.b. The Center and all of its service locations shall prominently display a current license, except in residential 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, develops a mission statement, defines services, guides

development and ensures the accountability of the Center

5.2.b. The governing body shall evaluate and ensure implementation of its policies.

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

5.2.d. The governing body members must:

5.2.d.1. Receive an orientation to the governing body, to the responsibilities of membership, and to the Center's organization, mission, and history;

5.2.d.2. Receive a current manual that specifies the member's fiduciary and other responsibilities to the organization;

5.2.d.3. Be instructed as to federal and state rules of confidentiality;

5.2.d.4. Receive annual reports from management;

5.2.d.5. Maintain minutes and records generated from all meetings, if the governing body is more than one person;

5.2.d.6. Hold quarterly meetings at a minimum;

5.2.d.7. Maintain comprehensive policies and procedures that include governing body-approved policy statements each of which shall include effective dates and most recent dates of revision;

5.2.d.8. Ensure that the comprehensive policies and procedures

shall be available to all staff in all programs;  
and

5.2.d.9. Ensure that the Center complies with all laws related to fiscal accountability and governance.

### 5.3. Administration.

5.3.a. The governing body shall appoint an administrator.

5.3.b. The governing body shall evaluate the administrator's performance in writing at least annually.

5.3.c. The administrator shall define structure and lines of authority for the Center.

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

### 5.4. Conflicts of Interest.

5.4.a. The Center shall have a policy which defines and prohibits conflicts of interest.

### 5.5. Fiscal Protections.

5.5.a. The Center shall purchase insurance including, but not limited to: general liability, workers' compensation, professional liability, automotive liability, and malpractice.

5.5.b. The Center shall ensure that all employees who sign checks, handle cash or contributions, or manage consumer funds, are bonded or that the Center maintains insurance coverage to cover potential losses at no cost to the consumer.

5.5.c. A Center that provides transportation for consumers served as part of a service shall maintain adequate vehicular insurance coverage.

5.5.d. All insurance policies shall be at a financial level adequate to cover the Center in case of accident or suit. All bonding policies shall be adequate to replace the aggregate of funds managed by the Center.

### 5.6. Consumer Funds.

5.6.a. The governing body shall establish policies and operational procedures that comply with legally applicable requirements regarding the protection of consumer's assets under the control of the Center.

5.6.b. 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 for each consumer's funds. The Center shall provide to a consumer at least monthly and upon request, a statement of his or her account.

5.6.c. All money earned by a consumer shall be used for the sole benefit of that consumer.

5.6.d. Centers shall allow a consumer or his or her legal representative to use his or her personal funds.

5.6.e. Centers shall not commingle a consumer's funds with the Center's funds or with the funds of any person other than another consumer.

5.6.f. If a Center handles consumer funds in excess of \$25 per consumer and in

excess of \$500 for all consumers per month, the Center shall obtain a bond in an amount approved by the Secretary sufficient to cover all consumer accounts, and the amount shall not be less than \$2500. 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.

#### 5.7. Center Responsibility.

5.7.a. Centers shall clearly define 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.

5.7.b. Centers shall develop and implement a code of ethics that includes, but is not limited to those provisions covered in Section 10 of this rule.

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

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

5.7.e. Centers shall not discriminate in any matter of employment on the basis of race, color, national origin, ancestry, religion, disability or gender, or any other category protected by applicable law.

5.7.f. If the Center uses volunteers, it shall implement written policies and procedures for the utilization of volunteers.

5.7.g. The Center shall ensure that all allegations of neglect or abuse, as well as

injuries of unknown sources, are reported immediately to the administrator or to other officials in accordance with state law.

5.7.h. Except as permitted 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:

5.7.h.1. Specific information to be released;

5.7.h.2. The time-period in which this consent is in effect;

5.7.h.3. The recipients;

5.7.h.4. The purpose of the release;

5.7.h.5. The date on which the release is signed;

5.7.h.6. The event or condition upon which the authorization expires; and

5.7.h.7. Information as to how and when the authorization can be revoked.

5.7.i. The Center shall protect the confidentiality of a consumer by prohibiting:

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

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

5.7.j. Except in cases of abuse, neglect or exploitation in which the Center has responsibility to report to protective

services, a consumer or his or her legal representative shall be the primary source of information about the consumer's service needs.

5.7.k. The Center shall have and periodically review and revise policies for effective service delivery and protection of consumer rights and shall provide a copy or make a copy of these policies available to all new employees.

5.7.l. The Center shall implement a policy pertaining to communicable diseases affecting consumers, employees, and staff.

#### 5.8. Relationships with Other Providers.

5.8.a. If the Center arranges externally or contractually for the provision of services, the Center shall have a written agreement or contract, which specifies:

5.8.a.1. Roles and responsibilities of the Center and the external entity;

5.8.a.2. Documentation required of the external entity with timelines for provision of such documentation;

5.8.a.3. Services to be provided and timelines for such service delivery;

5.8.a.4. Provision of liability or malpractice insurance either by the Center or external entity;

5.8.a.5. Procedures for the exchange of information;

5.8.a.6. Consumers to be served;

5.8.a.7. Terms of payment;

5.8.a.8. Assurances that the

external entity adheres to state and federal requirements governing the provision of the contracted services; and

5.8.a.9. There shall be evidence that the procedures are mutually agreeable to both the Center and the external entity.

5.8.b. The Center shall maintain a record on each independent health contractor who provides direct services to Center consumers, including:

5.8.b.1. Job description for the service(s) provided;

5.8.b.2. Identifying information and emergency contacts;

5.8.b.3. Verification of education;

5.8.b.4. Verification that the independent health contractor meets all criteria for the position as stated in the job description;

5.8.b.5. Records of orientation and current training as required for full time independent contractors or the documented lack of need for such training;

5.8.b.6. Performance evaluations;

5.8.b.7. References;

5.8.b.8. Criminal background check;

5.8.b.9. Verification of nurse aide abuse registry and national sex abuse registry check, if applicable; and

5.8.b.10. An Adult Protective Services and Child Protective Services

background check.

5.8.c. Multiple Service Providers.

5.8.c.1. If a Center serves consumers who are also served by another Center or Centers, there shall be a written agreement or memorandum of understanding between the Center delineating the responsibilities and functions of each.

5.8.c.2. There shall be evidence that the procedures are mutually agreeable to both Centers.

5.8.c.3. A Center shall not refuse to provide services to a consumer on the basis that the consumer is being served by another agency.

5.9. Personnel.

5.9.a. The Center shall have policies that address unemployment and workers' compensation.

5.9.b. The Center shall provide an adequate number of qualified personnel during all hours of operation to support the functions of the Center and ensure the provisions of quality care.

5.9.c. Criminal background checks covering all fifty (50) states shall be completed for all staff, employees, and independent health contractors, within thirty (30) days of hiring. Organizational policy shall prohibit employment of staff, employees, or independent health contractors who have a history of conviction for:

5.9.c.1. Abduction;

5.9.c.2. Any violent felony

crime including, but not limited to, rape, sexual assault, homicide, felonious physical assault, or felonious battery;

5.9.c.3. Child/Adult abuse or neglect;

5.9.c.4. Crimes which involve the exploitation of a child or an incapacitated adult;

5.9.c.5. Domestic battery or domestic assault;

5.9.c.6. Felony arson;

5.9.c.7. Felony or misdemeanor crime against a child or incapacitated adult which causes harm;

5.9.c.8. Felony drug related offenses within the last the ten (10) years;

5.9.c.9. Felony DUI within the last the ten (10) years;

5.9.c.10. Hate crimes;

5.9.c.11. Kidnapping;

5.9.c.12. Murder/Homicide;

5.9.c.13. Neglect or abuse by a caregiver;

5.9.c.14. Pornography crimes involving children or incapacitated adults;

5.9.c.15. Purchase or sale of a child; and

5.9.c.16. Sexual offenses including, but not limited to, incest, sexual abuse, or indecent exposure.

5.9.d. The Center shall have

evidence that staff and employees directly serving consumers are not listed on the National Sex Abuse Registry and the Nurse Aide Abuse Registry for West Virginia and the state in which the staff or employee resides, if available.

5.9.e. For all employees, the Center shall maintain a personnel record that includes:

5.9.e.1. The job description and application;

5.9.e.2. Identifying information and emergency contacts;

5.9.e.3. References;

5.9.e.4. Verification of education for employees;

5.9.e.5. Verification that the employee meets all criteria for their position as stated in the job description;

5.9.e.6. Orientation and training records; and

5.9.e.7. Employee performance evaluations.

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

#### 5.10. Personnel Training.

5.10.a. Beginning on the first day of employment, professional and direct care employees shall begin orientation and training on treatment policies and procedures, consumer rights and the use of emergency procedures, such as crisis intervention and restraints. Training shall be kept current.

5.10.b. As part of employee orientation, all direct care employees and staff shall be trained in first aid, infectious disease control, cardiopulmonary resuscitation and Heimlich maneuver. These shall be kept current.

5.10.c. Employees and staff providing services to consumers shall be trained in the proper care of the consumers to whom they will be providing services (including special needs, health, and behavioral health needs) prior to, or within ten (10) days after being assigned to work with the individual. Fully trained staff shall be available until newly hired staff are fully trained.

5.10.d. The Center shall have a training and development program that allows employees to improve their knowledge, skills and abilities.

5.10.e. Staff and employees 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.

5.10.f. All professional employees, professional independent health contractors, and consultants of the Center shall be in compliance with applicable State professional licensure requirements.

5.10.g. Specialized Personnel Requirements.

5.10.g.1. Employees and staff providing direct care to consumers shall be eighteen (18) years of age or older and capable of performing the duties assigned.

5.10.g.2. Employees who are hired as mental health or substance abuse professionals must be either fully

credentialed to practice mental health or substance abuse treatment or actively working on becoming fully credentialed to practice mental health or substance abuse treatment.

5.10.g.3. Staff and employees who are hired to provide mentally retarded/developmentally disabled waiver services shall be fully credentialed in compliance with state mentally retarded/developmentally disabled waiver standards.

5.10.g.4. Approved medication assistive personnel shall meet all the criteria specified in "Medication Administration by Unlicensed Personnel," 64CSR60.

#### 5.11. Records Management.

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

5.11.b. Consumer records shall contain information essential to the services or treatment and include, but not be limited to:

- 5.11.b.1. Identification data;
- 5.11.b.2. Applicable social and medical information;
- 5.11.b.3. A summary of the assessment process;
- 5.11.b.4. A record of all evaluations;
- 5.11.b.5. Treatment plans and special treatment procedures;
- 5.11.b.6. Documentation of

ongoing services provided;

5.11.b.7. Legal representative documents;

5.11.b.8. Court orders; and

5.11.b.9. A record of any signed and dated physician's orders prescribed by the Center's physician.

5.11.c. The Center shall ensure timely access to consumer records at all times.

5.11.d. Consumer records shall be retained for a minimum of six (6) years following discharge. In the case of minors, records shall be retained until six (6) years after the consumer's eighteenth birthday.

5.11.e. Consumer records shall be released without written consent as follows:

5.11.e.1. In a proceeding to disclose the results of an involuntary civil commitment;

5.11.e.2. In a proceeding to disclose the results of an involuntary examination;

5.11.e.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;

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

5.11.c.5. For treatment or internal review purposes, to employees of the mental health facility where the

consumer is being cared for or to other health professionals involved in treatment of the consumer;

5.11.c.6. To the medical examiner's office and child and adult protective services during an open investigation; and

5.11.e.7. As provided under the Privacy Rule of the Federal Health Insurance Portability and Accountability Act of 1996, 45 CFR §164.506 for thirty (30) days from the date of admission to a mental health facility if: (i) the Center makes a good faith effort to obtain consent from the consumer or legal representative prior to disclosure; (ii) the minimum information necessary is released for a specifically stated purpose; and (iii) prompt notice of the disclosure, the recipient of the information, and the purpose of the disclosure is given to the consumer or legal representative.

5.11.f. 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.

5.11.g. No consent or authorization for the transmission or disclosure of confidential information is effective unless it is in writing and signed by the patient or by his or her legal representative.

5.11.h Every person signing an authorization shall be given a copy.

5.11.i. The Secretary shall have full access to a consumer's records as needed in administering state and federal requirements.

5.11.j. The Center shall ensure that

records, including service and organizational records, are safe from destruction by fire, water, loss, or other damage, and from unauthorized access.

## 5.12. Quality Assurance.

5.12.a. The Center shall have and implement a systems review of the appropriateness and effectiveness of consumer services, which includes peer review/document review, health and safety review of all facilities, and a review of the outcomes, including an analysis of the results of treatment plan reviews and of reports by the human rights committee.

## **§64-11-6. Health and Safety.**

### 6.1. Transportation Services.

6.1.a. When transportation is provided for consumers, the Center shall maintain adequate insurance coverage.

6.1.b. Employees and staff transporting consumers in their own vehicles as a part of their duties shall provide the Center with evidence that they are insured in case of automobile accident.

6.1.c. The Center shall have and follow written policies and procedures for:

6.1.c.1. Proper maintenance of vehicles;

6.1.c.2. Adequate passenger supervision;

6.1.c.3. Appropriate passenger restraining systems;

6.1.c.4. Licensure of drivers; and

6.1.c.5. Provision of first-aid kits in each vehicle.

## 6.2. Physical Environment.

### 6.2.a. General.

6.2.a.1. The provisions of this section shall apply to all behavioral health facilities. A behavioral health site licensed prior to the effective date of this rule shall be maintained in accordance with applicable standard of practice as referenced in Section 11 of the 2001 edition of the Guidelines for Design and Construction of Hospital and Healthcare Facilities as recognized by the American Institute of Architects Academy for Health.

6.2.a.2. The Center shall implement programs in an environment that is safe, accessible, sanitary, and appropriate for the needs of the consumers.

6.2.a.3. The following documents are adopted as construction, equipment, physical facility, and related procedural standards for all new construction and any additions, alterations, renovations, or conversions of existing buildings.

6.2.a.3.A. The Center shall meet Section 11, Psychiatric Facilities, in the current edition of the Guidelines for Design and Construction of Hospital and Healthcare Facilities as recognized by the American Institute of Architects Academy for Health, where applicable.

6.2.a.3.B. The Center shall comply with the state building code, which is the current edition of the International Building Code.

6.2.a.3.C. The Center shall comply with the guidelines set forth in the Americans with Disabilities Act (28 CFR Part 36) 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.a.4. The Center shall provide adequate housekeeping, laundry, maintenance, storage, and other administrative support functions required to carry out its services.

6.2.a.5. The Center shall have procedures for infection control, emergency preparedness to identify, monitor, reduce and eliminate health and safety risks.

6.2.a.6. The Center shall evaluate the likelihood of exposure to blood borne pathogens for all persons likely to come in contact with blood.

6.2.a.7. The Center shall have written procedures to deal with fire, medical emergencies, natural disasters and other life-threatening situations.

6.2.a.8. The Center shall post by the telephone in all direct care and residential service locations, emergency telephone numbers for the fire department, local police and on-call employees, and capable consumers shall be instructed on how to use them.

6.2.a.9. A standard first-aid kit shall be readily accessible at all times at each site.

### 6.2.b. Fire Code.

6.2.b.1. The Center shall have evidence that facilities rented, owned or

used for services are in full compliance with applicable rules of the West Virginia State Fire Commission.

6.2.b.2. The Center shall conduct quarterly fire drills in its residential and daytime group setting locations, some of which shall be held during rest or sleeping periods.

6.2.b.3. The Center shall have fire extinguishers reviewed by a qualified professional annually.

6.2.c. Requirements for Residential Facilities and 24 Hour Residential Treatment Services.

6.2.c.1. For construction occurring after the enactment of this rule, bedrooms shall provide a minimum of one hundred (100) square feet of floor space per person for one (1) person occupancy and a minimum of eighty (80) square feet of floor space per person for two (2) person occupancy. There shall be a maximum of two (2) persons per bedroom.

6.2.c.2. Each consumer 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.

6.2.c.3. Each room shall be arranged in consideration of the consumer's clinical needs.

6.2.c.4. Each room shall be arranged and equipped to preserve the dignity, comfort, and privacy of consumers.

6.2.c.5. Each bedroom shall be directly accessible from a corridor or common use activity room and have an

exterior window. Each bedroom shall have windows covered for privacy.

6.2.c.6. Furnishings shall be homelike and personalized and maintained in good condition.

6.2.c.7. There shall be separate storage areas for items including: foodstuffs, utensils, work materials and cleaning supplies, clothing, linens, and medicines.

6.2.c.8. 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.

6.2.c.9. There shall be a sufficient number of accessible, safe, comfortable and clean lavatories, bathtubs and 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. The minimum number of bathrooms is calculated at a minimum of one per ten consumers.

6.2.c.10. Solid waste storage shall be sufficient to contain all solid waste in a safe and sanitary manner.

6.2.c.11. Solid waste, including garbage and refuse, shall be removed from the premises weekly, or more often, if necessary.

6.2.c.12. Grounds and structures shall be maintained free of insects and rodents of public health significance.

6.2.c.13. Food shall be stored, prepared and served in a sanitary manner.

6.2.c.14. Food services, when provided, shall:

6.2.c.14.A. Meet or exceed national nutritional standards;

6.2.c.14.B. Be planned with regularly documented assistance of a dietitian including dietitian approved menus, or catered; and

6.2.c.14.C. Provide three well-balanced meals and snacks. Exceptions may be approved by the Secretary.

6.2.c.15. All employees involved in the preparation or serving of food to consumers shall hold a current Food Handler's Card issued by the West Virginia Department of Health and Human Resources.

6.2.c.16. Use of paper and/or throw-away plates, beverage containers and utensils are to be limited and not used in day-to-day meal service.

6.2.c.17. A minimum of an emergency three (3) day supply of food sufficient for all consumers provided food services shall be maintained.

6.2.c.18. Each site shall have an emergency operations plan in effect for managing the consequences of power failures, natural disasters, and other emergencies that would interrupt normal operations or affect the Center's ability to provide care.

#### **§64-11-7. Consumer Services Standards - General.**

##### 7.1. Applicability.

7.1.a. General Consumer Services Standards apply to all licensed Centers.

##### 7.2. Program Description.

7.2.a. Each program shall have a written description that shall include:

7.2.a.1. A description of the population to be served;

7.2.a.2. A description of the types of services offered; and

7.2.a.3. Exclusion criteria.

7.2.b. The Center shall admit only those consumers whose service needs are consistent with its service description, to whom services are available, and for which staffing levels and types meet the needs of the consumers to be served.

7.2.c. The Center shall assure that all services provided shall be based on each consumer's identified needs.

##### 7.3. Consumer Screening.

7.3.a. The Center shall maintain written documentation of each screening performed, including:

7.3.a.1. Date of initial contact;

7.3.a.2. Name, age, and gender of the individual;

7.3.a.3. Address and phone number, if applicable;

7.3.a.4. Presenting needs or situation to include psychiatric/medical problems, current medications and history of medical care;

7.3.a.5. Name of screening employee or independent health contractor;

7.3.a.6. Method of screening;  
7.3.a.7. Screening recommendation; and  
7.3.a.8. Disposition of individual referral.

7.3.b. The Center shall retain documentation for each screening. For individuals not admitted, documentation shall be retained for two (2) years. Documentation shall be included in the individual's record, if the individual is admitted.

#### 7.4. Consumer Admission.

7.4.a. A consumer or his or her legal representative shall sign a written consent for the Center's services prior to treatment.

7.4.b. The consumer or his or her legal representative shall sign verification that he/she was informed in writing of his/her rights as contained in Section 10 of this rule upon admission.

7.4.c. Upon admission, the consumer or his or her legal representative shall sign verification that he/she was informed in writing that he/she may contact the Office of Health Facility Licensure and Certification if they are unsatisfied with any aspect of their treatment. This information shall include the address, phone number, and fax number for such contact.

7.4.d. The Center shall have a formal intake process that assesses a consumer using its criteria for admission and only admits a consumer who meets those criteria.

7.4.c. Intake documentation shall include all relevant preliminary screening, diagnostic, social, medical and legal

information, and shall be signed and dated by the person completing the intake.

#### 7.5. Consumer Discharge.

7.5.a. Discharge planning shall be based on consumer needs.

7.5.b. A written discharge summary shall be entered in a consumer's record within thirty 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, when available, for care after discharge and for follow-up; and

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

#### 7.6. Critical Incidents.

7.6.a. The Center shall maintain a system for critical incident reporting and tracking and demonstrate that it uses the system to protect the rights, health, and safety of consumers.

7.6.b. The Center shall classify each incident as:

7.6.b.1. An allegation of abuse and/or neglect;

7.6.b.2. A critical incident; or

7.6.b.3. An incident requiring monitoring and follow-up.

7.6.c. The Center shall investigate all incidents. When multiple Centers or agencies are involved in an investigation, the investigation may be cooperative. This shall not negate the timelines for investigation.

7.6.d. Allegations of abuse and/or neglect shall be reported immediately to the following entities:

7.6.d.1. Adult Protective Services, Institutional Investigative Unit, or Child Protective Services, as applicable;

7.6.d.2. The Office of Health Facility Licensure and Certification;

7.6.d.3. The guardian/health care surrogate, if any;

7.6.d.4. Any advocate identified in the consumer record; and

7.6.d.5. The administrator or designee.

7.6.c. The Center shall have and implement investigative policies and procedures that comply with the Office of Health Facility Licensure and Certification Guidelines for Incidents.

7.6.f. If the findings and actions of a Center following an investigation are unfavorable, insufficient, or not forthcoming within the timelines specified in Subsection 7.6.e. of this rule, the affected consumer or his or her legal representative may appeal to the grievance process of the Center, the State licensure body, an advocate, or other appropriate resource, including an attorney. Consumers shall be informed of the appeal

process in writing.

7.6.f.1. The final order by the Secretary after a hearing before the State licensure body shall be binding upon the parties, unless appealed in accordance with W. Va. Code §§29A-5 and 29A-6.

## 7.7. Medical Information.

7.7.a. The Center shall maintain a health history and emergency medical information for all consumers.

7.7.a.1. The health history shall include:

7.7.a.1.A. Allergies and symptomatology;

7.7.a.1.B. Recent medical complaints and conditions;

7.7.a.1.C. Chronic conditions and duration;

7.7.a.1.D. Communicable diseases and treatment;

7.7.a.1.E. Disabilities or restrictions on physical activities, if any, and any adaptive equipment needed;

7.7.a.1.F. Past serious illnesses, serious injuries, and hospitalizations;

7.7.a.1.G. Current or past drug usage including alcohol, prescription and nonprescription medications, illicit drugs, and current treatment, if any;

7.7.a.1.H. Sexual health and reproductive history;

7.7.a.1.I. Routine laboratory

reports and communicable disease screening as recommended by the Centers for Disease Control and Prevention; and

7.7.a.1.J. Immunization history and records.

7.7.a.2. The health history shall be completed as a part of the screening process.

7.7.a.3. The emergency medical information shall include:

7.7.a.3.A. The current name, address, and phone number of the consumer's primary care physician, and any recently seen specialists;

7.7.a.3.B. The current name, address, and phone number of any relative, legally authorized representative, or other person to be notified;

7.7.a.3.C. Current Medical insurance information, if any;

7.7.a.3.D. Currently prescribed medications and over the counter medications used by the consumer and diagnostic rationale for their use;

7.7.a.3.E. Medication and food allergies and reactions;

7.7.a.3.F. Any history of substance abuse;

7.7.a.3.G. Significant medical problems;

7.7.a.3.H. Significant communication problems, any communicative devices used; and

7.7.a.3.I. Advance directives,

if any.

7.7.b. Current emergency medical information shall be readily available to employees or contractors wherever services are provided.

7.8. Medical and Psychiatric Emergency Management.

7.8.a. The Center shall have policies and procedures for handling medical and psychiatric emergencies that ensure:

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

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

#### **§64-11-8. Consumer Services Standards - Specific.**

8.1. Applicability.

8.1.a. Specific Consumer Services Standards apply to a licensed Center only if the specific service is provided by the Center.

8.2. Assessment and Planning.

8.2.a. The Center shall document and implement an assessment policy. The policy shall define how assessments will be documented.

8.2.b. The Center shall conduct an assessment to identify an individual's strengths, preferences and needs, in these areas, as applicable: physical, medical, behavioral, functional, and social abilities. The assessment shall address:

8.2.b.1. Onset/duration of problems;

8.2.b.2. Social/behavioral/developmental/family history;

8.2.b.3. Employment/vocation/educational background;

8.2.b.4. Previous interventions/outcomes;

8.2.b.5. Financial resources and benefits;

8.2.b.6. Health history and current medical care needs;

8.2.b.7. Legal status, including guardianship, commitment and representative payee status, and relevant criminal charges or convictions, probation or parole status;

8.2.b.8. Daily living skills;

8.2.b.9. Social/family supports;

8.2.b.10. Housing arrangements; and

8.2.b.11. Ability to access services.

8.2.c. Frequency of assessments:

8.2.c.1. A preliminary assessment shall be done prior to admission;

8.2.c.2. The preliminary assessment shall be updated and finalized during the first thirty (30) days of service and prior to completing the individualized support plan;

8.2.c.3. Longer term assessments may be included as part of the individualized services plan. The Center shall document the reason for assessments requiring more than thirty (30) days; and

8.2.c.4. Reassessments shall be completed when there is a need based on the medical, psychiatric or behavioral status of the individual and at least annually.

8.2.d. The Center shall make and document reasonable attempts to obtain previous assessments.

8.2.e. Assessment documentation:

8.2.e.1. Initial assessments shall be entered in a consumer's record within five working days of intake interview;

8.2.e.2. Diagnoses shall be:

8.2.e.2.A. 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

8.2.c.2.B. Based upon accepted professional standards of examinations and factual description of a consumer's symptoms and problems.

8.2.e.3. When additional evaluations and assessments are completed, recommendations for treatment and training shall be entered in a consumer's record.

8.2.f. Individual Support Plan.

8.2.f.1. The Center shall develop

a preliminary individual support plan for the first thirty (30) days.

8.2.f.2. A preliminary individual support plan shall be developed and implemented within twenty-four (24) hours of admission and shall continue in effect until the individual support plan is developed or the individual is discharged, whichever comes first.

8.2.f.3. Centers providing short-term services must develop and implement a policy for the development of individual support plans within a time frame consistent with the expected length of stay of consumers.

8.2.f.4. The individual support plan shall include:

8.2.f.4.A. The consumer's needs and preferences;

8.2.f.4.B. Relevant psychological, behavioral, medical, rehabilitation and nursing needs, as indicated by the assessments;

8.2.f.4.C. Individualized strategies and methods, including the frequency of services needed and staffing levels required;

8.2.f.4.D. The behavior intervention plan, if applicable;

8.2.f.4.E. Identification of the treatment plan participants and documentation of their participation;

8.2.f.4.F. Descriptions and dates of the assessments on which the individual support plan goals and objectives are based;

8.2.f.4.G. Specific goals to improve or maintain the mental health and optimal adaptive functioning of the individual;

8.2.f.4.H. Measurable objectives related to the goals and expected achievement dates;

8.2.f.4.I. At least one (1) objective per goal shall identify the expected outcome of the goal for the consumer;

8.2.f.4.J. A description of all services, including services provided by other Centers, provided to a consumer and directed primarily toward achievement of the expected outcomes; and

8.2.f.4.K. The physician notes, as part of the treatment plan, including the consumer's current medications, dosages, and diagnoses related to the use of these medications, and the rationale for changes or continuation of psychotropic drug regimens.

8.2.f.5. The individual support plan shall be developed by an interdisciplinary team consisting of:

8.2.f.5.A. Representatives of the Center(s) serving the consumer;

8.2.f.5.B. The consumer;

8.2.f.5.C. The consumer's legal representative, if any;

8.2.f.5.D. Other persons as determined by the consumer; and

8.2.f.5.E. Other service agencies such as schools, as applicable.

8.2.g. Support Plan Review.

8.2.g.1. A review or revision shall occur at significant times including, but not limited to:

8.2.g.1.A. Admission, transfer, and discharge from a Center's services;

8.2.g.1.B. Changes in the living arrangements of a consumer;

8.2.g.1.C. Major changes in a consumer's condition; and

8.2.g.1.D. Crisis points including, but not limited to hospitalization.

8.2.g.2. There will be a support plan review at least every three hundred sixty-five (365) days.

8.2.g.3 Each review shall summarize the amount of treatment or training provided, document progress towards the objectives, identify problems that impeded progress, and provide a decision to continue the same plan or to modify it.

8.3. Assessment and Planning for Limited-Outpatient Clinic Services.

8.3.a. When a consumer is receives only medication management and/or individual therapy from the Center, the assessment and planning process is simplified, as follows:

8.3.a.1. Assessment, following screening, shall be limited to the service of medication management and/or therapy as needed;

8.3.a.2. Initial assessments shall

be entered into a consumer's record within five (5) working days of the intake interview;

8.3.a.3. Diagnoses shall be:

8.3.a.3.A. 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

8.3.a.3.B. Based upon accepted professional standards of examinations and factual description of a consumer's symptoms and problems;

8.3.a.4. Documentation of consumer progress:

8.3.a.4.A. Consumer progress shall be reviewed at each treatment juncture and shall be documented in the case note; and

8.3.a.4.B. The case note shall include the presenting problem, the results of the treatment juncture, and a plan for future treatment.

8.3.b. In the event that the consumer's needs require additional services, the assessment and planning process will follow Subsection 8.2 of this rule.

8.4. Residential Services.

8.4.a. Emergency Medical and Psychiatric Services in Residential Facilities.

8.4.a.1. The Center shall ensure the availability of a physician for medical consultation twenty-four (24) hours per day, seven (7) days per week.

8.4.a.2. 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.

8.4.a.3. The Center shall assure that the onsite employees have immediate access to treatment and medical information in a consumer's records in the case of an emergency.

8.4.a.4. 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.

#### 8.4.b. Licensed Residential Facilities.

8.4.b.1. Centers providing residential services shall either provide or arrange for the provision of appropriate medical care. The Center shall define instances when it shall provide or arrange for appropriate medical and dental care and instances when it shall refer the consumer to appropriate medical care.

8.4.b.2. A physical examination by a qualified practitioner shall be administered or obtained within thirty (30) days of admission to a licensed residential site. This physical may be completed prior to admission, but cannot be more than (60) sixty days old. For Title XIX MR/DD Waiver, if the consumer has a valid (within the current year) Waiver annual physical evaluation, a nursing assessment conducted

within thirty (30) days of admission shall be accepted in lieu of a repeat physical examination.

8.4.b.3. The physical examination for placement in a residential service shall include:

8.4.b.3.A. General physical condition (history and physical);

8.4.b.3.B. Evaluation for communicable diseases;

8.4.b.3.C. Recommendations for further diagnostic tests and treatment, if appropriate; and

8.4.b.3.D. The date of the examination and the signature of the qualified practitioner.

8.4.b.4. The Center shall have rules of conduct for consumers to follow while in residence.

8.4.b.5. The consumers shall be provided foods that promote healthful living, following a menu developed by a registered dietitian. This menu shall be reviewed at least annually by a registered dietitian.

8.4.b.6. Onsite employees shall ensure that each consumer receives training and practice good habits in personal care, hygiene, and grooming.

8.4.b.7. Consumers who require twenty-four (24) hour staffing shall not be left unattended during normal sleeping hours.

8.4.b.8. Consumers shall be referred for ongoing mental health services and shall be assisted in keeping appointments and participating in treatment

programs. Documentation of referrals shall be kept in the consumer's record.

#### 8.4.c. Public Inebriate Shelters.

8.4.c.1. Trained employees or staff shall screen a consumer to determine his or her need for medically monitored detoxification or for referral to acute medical care.

8.4.c.2. 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:

8.4.c.2.A. A documented evaluation of a consumer;

8.4.c.2.B. Documentation of vital signs including the blood alcohol count, taken every four hours; and

8.4.c.2.C. Documentation of any changes in withdrawal symptoms.

8.4.c.3. 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 security reasons.

8.4.c.4. 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.

8.4.c.5. If a consumer leaves the shelter prior to being discharged, the referring court and the sheriff's office shall be notified.

8.4.c.6. The shelter shall inform

a consumer of alternative services and, upon a consumer's request, assist in arranging follow-up appointments.

8.4.c.7. The shelter shall submit recommendations to the court as required for the disposition of publicly inebriated individuals.

8.4.c.8. If the shelter is located in a building housing another agency or program, the shelter shall have:

8.4.c.8.A. A separate entrance; and

8.4.c.8.B. A separate bathroom and shower facilities for the sole use of shelter consumers.

#### 8.4.d. Detoxification Services.

8.4.d.1. The Center shall perform a physical examination and screening at a consumer's intake to determine the need for medical services.

8.4.d.2. A physician shall be available for medical consultation twenty-four (24) hours per day, seven (7) days per week.

8.4.d.3. During the withdrawal process, qualified employees shall maintain contact with a consumer regarding the consumer's detoxification protocol.

8.4.d.4. 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.

8.4.e. Residential Substance Abuse Services.

8.4.e.1. The Center shall ensure the availability of onsite nursing staff sufficient to address the assessed medical needs of a consumer.

8.4.e.2. The Center shall maintain policies and procedures to handle contraband substances brought into the group residential facility.

#### 8.5. Medical Management.

8.5.a. The Center shall develop and implement a written policy for the provision of adequate medical care.

8.5.b. Centers providing residential or inpatient services shall either provide or arrange for the provision of appropriate medical and dental care for residential consumers. A Center providing other services shall define instances when it shall provide or arrange for appropriate medical care and instances when it shall refer the consumer to appropriate medical and dental care.

#### 8.6. Medical Equipment.

8.6.a. The Center shall develop and implement a policy on the maintenance and use of medical equipment, including personal medical equipment and devices. There shall be timeframes for preventative maintenance and cleaning.

#### 8.7. Medication Services.

8.7.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.

8.7.b. All orders for medications shall be reviewed at least every ninety (90) days by the physician.

8.7.c. Psychotropic drugs shall be ordered only as part of the treatment plan and with documentation of the diagnosis and the specific behaviors that indicate a need for the medication and the rationale for its choice.

8.7.d. All medications shall be administered in compliance with the physician's order.

8.7.e. All medications shall be administered only by persons authorized by state law.

8.7.f. Medication errors, as defined by this rule, and adverse drug reactions shall be reported immediately to the physician.

8.7.g. Medication errors shall be monitored and tracked in accordance with the Office of Health Facility Licensure and Certification Behavioral Health Program Guidelines for Incidents and the "Medication Administration by Unlicensed Personnel" rule, 64CSR60.

8.7.h. An individual medication administration record of all medications received and refused by each consumer shall be kept.

8.7.h.1. This record shall include the signature and job title of all employees or staff administering medications.

8.7.h.2. This record shall include any errors in the administration process.

8.7.h.3. This record shall include notation of any missed medications and the

reason for the omission, including refusals.

#### 8.8. Medication Management.

8.8.a. The Center shall note in the consumer record any changes in a consumer's condition, including adverse reactions, as a result of receiving a medication.

8.8.b. A consumer to the extent capable shall administer his or her own medication. All consumers receiving medication management shall be assessed to determine the extent of self medication capability. This assessment shall be completed with any significant change in self administration skills and at least annually.

8.8.c. The Center shall provide double-locked storage for all medications.

8.8.d. Medication and food items shall not be stored in the same container or area.

8.8.e. The Center shall have evidence of written informed consent from a consumer, or his or her legal representative, about the medication(s) prescribed: the dosage, purpose, possible side effects, effects of not taking the medication; and about alternate treatments and their effects.

8.8.f. The Center shall promptly dispose of discontinued drugs, outdated drugs, and drug containers with worn, illegible, or missing labels according to the applicable regulations of the West Virginia Board of Pharmacy.

#### 8.9. Behavior Intervention.

8.9.a. Program and direct care employees and staff shall be trained in

behavior management, including methods of deescalating volatile situations and of using nonphysical techniques in such situations, to deal appropriately with aggressive or out of control behavior.

8.9.b. The Center shall ensure that all interventions for "predictable" problem behaviors are based on a functional analysis of the behavior.

8.9.c. Once a problem behavior has been identified, the functional analysis shall be completed within twenty (20) calendar days. The development of formal interventions, based on the functional analysis, shall occur within fifteen (15) days of the completion of the functional analysis and its rationale and shall be clearly identified in the behavioral intervention plan. If the functional analysis determines that the behaviors are a symptom of psychosis (hallucinations, delusion, etc.), then a Behavior Intervention Plan is not required. However, the interdisciplinary team must objectively monitor the symptoms in order to evaluate the effectiveness of the intervention employed.

8.9.d. The behavior intervention plan shall:

8.9.d.1. Include positive programming to teach the consumer adaptive, more effective behavior;

8.9.d.2. Ensure that a consumer does not discipline another;

8.9.d.3. Ensure that seclusion and physical restraints are used only as a last resort and used only as long as necessary to manage behavior; and

8.9.d.4. Include a mechanism of data collection/measurement that allows

an objective measurement of progress toward the behavioral outcome.

#### **§64-11-9. Consumer Protections.**

##### 9.1. Human Rights Committee.

9.1.a. The Center shall maintain a human rights committee to:

9.1.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;

9.1.a.2. Report activities and recommendations, if any, at least annually to the governing body, or a standing committee of the governing body;

9.1.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;

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

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

9.1.a.6. Ensure that aversive procedures are used only with the written consent of a consumer or his or her legal representative.

9.2. 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.

9.3. At least one-third of the committee members shall be consumers or consumer legal representatives and no more than one-third shall be employees of the Center.

9.4. Ensure that the members have training in confidentiality in order to review consumer records.

#### **§64-11-10. Consumer Rights.**

##### 10.1. General Consumer Rights.

10.1.a. A consumer shall have rights protected and promoted including, but not limited to, the following general rights:

10.1.a.1. The right to be informed orally and in writing in appropriate language and terms, of the rights described in this section. The Center shall have the consumer or his or her legal representative sign and date an acknowledgement of receipt of rights information as part of the intake process. The acknowledgement shall become a part of the consumer's record;

10.1.a.2. The right to be informed of this rule. Upon request, the Center shall provide a consumer or his or her legal representative a copy of this rule;

10.1.a.3. The right not to be discriminated against because of the receipt of behavioral health services;

10.1.a.4. The right to exercise his or her civil rights, except as abrogated by court order or for the reasons provided in this rule; and

10.1.a.5. The right to all available services without discrimination

because of race, religion, color, sex, sexual orientation, disability, age, national origin or marital status.

10.1.b. A consumer shall have the following additional rights:

10.1.b.1. The right to a legal representative when unable to act on is or her own behalf;

10.1.b.2. The right to access an advocate in order to understand, exercise and protect his or her rights;

10.1.b.3. The right to access his or her own consumer records in accordance with state law;

10.1.b.4. The right to be informed in advance of any charges for services;

10.1.b.5. The right to be free from physical, verbal, sexual or psychological abuse or punishment, and neglect;

10.1.b.6. The right to appropriate referrals to other licensed Centers;

10.1.b.7. The right to be free from retaliation;

10.1.b.8. The right to be free from humiliation; and

10.1.b.9. The right to be free from financial or other exploitation.

10.1.c. A residential or day services consumer shall have the following rights:

10.1.c.1. The right of a consumer to be served with other consumers

of similar age and need, unless otherwise specified in the consumer's Individual Support Plan or treatment plan;

10.1.c.2. The right to privacy and the right to move about freely, unless his or her safety or the safety of others is threatened;

10.1.c.3. The right to unimpeded access to his or her attorney, advocate or religious advisor;

10.1.c.4. The right to constant access to his or her personal possessions, unless contraindicated by treatment needs. The reason for the restriction shall be clearly documented in the consumer's record and approved by the treatment team and human rights committee prior to implementation. The treatment team shall periodically reevaluate the need for continuation of the restriction;

10.1.c.5. The right to unimpeded private communication by any means with whomever a consumer chooses, except as specified in Subsection 10.10 of this rule;

10.1.c.6. The right not to be deprived of any right as punishment or for clinical reasons, except when an incident occurs related to the exercise of a right, the right may be deprived for clinical reasons, but only for as long as is necessary to permit correction of a situation. The restriction and the clinical reasons for it shall be clearly documented in the consumer's record and shall be approved by the human rights committee prior to implementation; and

10.1.c.7. The right of a consumer receiving care and treatment to receive it in accordance with accepted behavioral health and medical practice standards.

10.2. Advance Psychiatric Directive Rights.

10.2.a. A consumer with psychiatric or mental health needs has a right to an advance psychiatric directive prepared at a time when the individual has not been adjudged to be incompetent. Any advance psychiatric directive written and signed by a consumer may be withdrawn at any time verbally or in writing.

10.2.b. A consumer has the right to be informed by the Center of the availability and applicability of an advance psychiatric directive and to receive education and assistance from the Center in preparing such a document.

10.2.c. A consumer has the right to refuse to create an advance psychiatric directive.

10.2.d. A consumer with an advance psychiatric directive has the right to have it entered into his or her clinical record at the Center at which he or she is receiving or may receive care or treatment.

10.2.e. An advance psychiatric directive shall be honored, unless:

10.2.e.1. It is withdrawn verbally or in writing by a consumer;

10.2.e.2. The Center lacks sufficient resources; or

10.2.e.3. A professional employee member of the Center believes that the directive would endanger the consumer's life or be dangerous to others.

10.2.f. A consumer has the right to be informed of the Center's reason for not honoring his or her advance psychiatric

directive.

10.2.g. Nothing in this section should be interpreted to prevent any individual with behavioral health needs from entering into an advance directive related to preferences in health care or conduct of business.

10.3. Informed Consent Rights.

10.3.a. The Center shall have the consumer or his or her legal representative sign a general consent to receive treatment.

10.3.b. In order for a consumer to give informed consent for care or treatment, the Center shall inform him or her of the following:

10.3.b.1. The rights provided under this rule;

10.3.b.2. The nature of his or her condition and the treatment proposed;

10.3.b.3. Any reasonable alternative treatments available;

10.3.b.4. That consent for any part of treatment may be withdrawn at any time in writing or verbally to a member of the treatment staff. Revocation of consent shall be documented on the consent form, and further treatment shall not be provided except as authorized in an emergency;

10.3.b.5. The reason for taking a proposed medication, including the likelihood of the consumer's condition improving or not improving without the proposed medication;

10.3.b.6. The type, dosage, including the use of PRN (as needed) orders, the method of administration (oral or

injection), and the duration of taking the proposed medication; and

10.3.b.7. The common side effects, any side effects probable with the particular consumer, and additional side effects that may occur when taking the proposed medication longer than three months.

10.3.c. In the absence of written consent, if treatment is provided to a consumer, he or she or his or her legal representative has the right to documentation of the precipitating causes for providing the treatment.

10.3.d. The procedures outlined in this section shall not apply to those individuals who:

10.3.d.1. Need life-saving medication for chronic medical conditions, such as diabetes or heart disease; or

10.3.d.2. Have been taking medications prior to admission and have not refused to continue the medication, even though they may not be able to give informed consent.

10.3.e. A consumer has the right to be free from unnecessary or excessive medication.

#### 10.4. Right to Treatment.

10.4.a. A consumer has the right to treatment in the least restrictive, most appropriate and potentially most effective setting possible and that supports a consumer's personal liberty and result in positive outcomes to the maximum extent possible.

10.4.b. A consumer has the right to

treatment that is provided humanely in an environment that affords them full protection of their rights and promotes personal dignity and self-esteem.

10.4.c. A consumer has the right to treatment by sufficiently trained and competent employees and staff capable of implementing the consumer's individual support plan or treatment plan.

10.4.d. A consumer has the right to employee and staff to consumer ratios sufficient for adequate protection and supervision.

10.4.e. A consumer has the right to periodic evaluations related to his or her needs while an active consumer of a behavioral health service.

10.4.f. A consumer has the right to treatment based on diagnosis and assessment of their needs.

10.4.g. A consumer has the right to treatment based on a treatment plan that identifies immediate needs and interventions and responsibility for implementing the plan.

10.4.h. A consumer has the right to have treatment plans updated as his or her needs change.

10.4.i. A consumer has the right to participate in the development of his or her individual support plan or treatment plan and any revisions. The consumer or his or her legal representative shall sign and date to give consent for the individual support plan or treatment plan and any revisions.

10.4.j. A consumer has the right to have a copy of his or her individual support plan or treatment plan.

10.4.k. A consumer has the right to have present at any treatment planning or discharge planning meeting representatives of all disciplines providing treatment to the consumer and any other individual, including this consumer's case manager, advocate and family members.

10.4.l. A consumer has the right to have all treatments administered recorded in his or her record.

10.4.m. A consumer who resides in an inpatient behavioral health facility has the right to outdoor exercise and activity programming conforming with the "Behavioral Health Client Rights," 64CSR59, §§14.1-14.3.

#### 10.5. Right to Refuse Treatment.

10.5.a. As a participant in the program planning process, a consumer has the right to object to or refuse any aspect of the individual support plan or treatment plan.

10.5.b. If informal discussion and negotiation do not resolve differences, a consumer's right to object to or refuse treatment shall be recognized as legitimate, and shall be responded to in accordance with the provisions of the Center's consumer grievance procedure.

10.5.c. A consumer who has refused psychotropic medications or other recommended therapy or treatment has the right to have an agreed-upon effective alternative treatment offered, and it shall be provided if the consumer consents and if within the scope of the Center's practice.

10.5.d. A consumer has the right to orally refuse medication or other treatment that overrides prior written consent, except

in emergency situations in which it is documented that the absence of medication or other treatment would be harmful to the consumer or others.

#### 10.6. Right to Refuse Research and Experimental Treatment.

10.6.a. A consumer or his or her legal representative has the right to refuse to participate in or be subjected to research or experimental treatment. Participation by a consumer shall require voluntary, informed and written consent, and an opportunity for consultation with independent specialists.

#### 10.7. Rights Regarding Seclusion and Restraints.

10.7.a. A consumer has the right to freedom from seclusion and restraints, unless the restraints are documented as clinically necessary and all other less restrictive measures have been exhausted. Seclusion or restraint shall cease as soon as clinically possible.

10.7.b. A consumer with a diagnosis of mental retardation or another developmental disability has the right not to be secluded or restrained, but time-out procedures may be used when they have been developed specifically for the consumer as part of an authorized behavioral support or management plan and described in the consumer's treatment plan.

10.7.c. A consumer has the right to not have seclusion or restraint used as punishment. Seclusion or restraint may be used only as a last resort as an emergency measure to control imminent destructive behavior that is a threat to a consumer or to others or to prevent injury to a consumer or others.

10.7.d. A consumer has the right to not have physical restraints used as punishment or as a convenience of employees.

10.7.c. A consumer has the right for drugs or medications to not be used as punishment, as a convenience of employees, as a substitute for adequate staffing, or as a substitute for an individualized programming or treatment.

#### 10.8. Right of Confidentiality.

10.8.a. A consumer has the right to have all information about his or her diagnosis and treatment kept confidential.

10.8.b. A consumer shall have the right to confidentiality in accordance with federal regulations (42 CFR Part 2) and the Health Insurance Portability and Accountability Act of 1996;

10.8.c. Confidential information includes, but is not limited to:

10.8.c.1. Information obtained during diagnosis or treatment, including the fact that an individual is or has been a consumer;

10.8.c.2. Information provided by a consumer or his or her family for purposes related to diagnosis or treatment;

10.8.c.3. Information provided by the treatment staff;

10.8.c.4. Diagnoses, opinions or remarks made by treatment staff that relate to a consumer's treatment;

10.8.c.5. Advice, instructions, or prescriptions issued in the course of diagnosis or treatment; and

10.8.c.6. Any record of a consumer's treatment.

10.8.d. Confidential information does not include:

10.8.d.1. Information which does not identify a consumer;

10.8.d.2. Information from which a person acquainted with a consumer would not recognize the consumer; and

10.8.d.3. Encoded information from which there is no possible means to identify a consumer.

10.8.c. A consumer has the right to have information relating to his or her treatment disclosed only:

10.8.e.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 or §27-5-3;

10.8.e.2. In a proceeding under W. Va. Code §27-6A-1 et seq. to disclose the results of an involuntary examination made pursuant to those provisions;

10.8.e.3. Pursuant to a court order;

10.8.c.4. To the attorney of the consumer, whether or not in connection with pending judicial proceeding;

10.8.e.5. To agencies requiring information necessary to make payments to or on behalf of the consumer pursuant to contract or in accordance with law, provided that only such information shall be released to third-party payers as is required to certify

that covered services have been provided;

10.8.e.6. To protect against a clear and substantial danger of imminent injury by a consumer to self or another; and

10.8.c.7. For internal review purposes of the Center, to the treatment employees, to other health professionals involved in a consumer's treatment, on the consumer's request to anyone designated, or in compliance with applicable federal law, within the meaning of W. Va. Code §27-5-9(e) and/or §27-5-9(3)(i).

10.8.f. A consumer has the right to be informed about the limits of confidentiality in this rule.

10.9. Consent for Disclosure of Confidential Information.

10.9.a. A consent for the disclosure of confidential information shall be in writing and signed by the consumer or by his or her legal representative. A consumer who signs a consent has the right to a copy of the consent.

10.9.b. A consumer shall not be denied treatment on the basis of refusing to provide consent to disclose confidential information, except when and to the extent disclosure is necessary for treatment, or for the substantiation of a claim for payment for treatment from a source other than the consumer.

10.10. Right to Unrestricted Communication.

10.10.a. A consumer has the right to unimpeded and private communication by any means with whomever a consumer chooses, except as specified in this rule.

10.10.b. A consumer's right to communication, except for that with his or her legal representative, attorney or religious adviser, may be restricted or denied if authorized by the treatment team for a specified time not to exceed thirty (30) days, after which time the restriction may be reviewed and reinstated.

10.11. Rights Regarding Labor, Earnings and Funds.

10.11.a. A consumer has the right not to be required to perform uncompensated labor that involves the operation and maintenance of the Center, but may voluntarily perform it with compensation in accordance with the requirements of relevant State and federal requirements.

10.11.b. A consumer shall not suffer consequences for refusing to perform uncompensated labor for the Center.

10.11.c. A consumer may perform vocational training tasks that do not involve the operation and maintenance of the Center when the assignment:

10.11.c.1. Is an integrated part of a consumer's individual support plan or treatment plan;

10.11.c.2. Has been approved as a program activity by the treatment staff; and

10.11.c.3. Is supervised by an employee or staff person.

10.11.d. A consumer has unlimited access to his or her funds except as provided by state law, or by regulations promulgated by the Social Security Administration.

10.12. Additional Rights of Juveniles.

10.12.a. A consumer under the age of eighteen (18) has the right to be housed separately from emancipated consumers over the age of eighteen (18), except in the case of unusual circumstances where a juvenile over the age of sixteen (16) is developmentally similar to the adults with whom the juvenile will reside and the treatment team and legal representative approve of the arrangement.

10.12.b. A consumer under the age of eighteen (18) has the right to an education.

10.12.c. A consumer under the age of eighteen (18) has the right to appropriate contact and communication with his or her family members, unless restricted by the West Virginia Department of Health and Human Resources for good reason when the juvenile is in the legal custody of the West Virginia Department of Health and Human Resources.

10.12.d. A consumer under the age of eighteen (18) has the right to be informed about behavior expectations for the protection of others.

10.12.e. All other rights under this rule apply to consumers under the age of eighteen (18).

10.13. Right of Advocacy and Grievance Procedure.

10.13.a. A consumer has the right to be informed of and receive a written copy of the Center's grievance procedure.

10.13.b. A consumer or another person acting on a consumer's behalf has the right to file a grievance, orally or in writing,

with the Center concerning any alleged violation of the rights afforded by this rule.

10.13.c. A consumer has the right to receive a reasonable and timely written decision from the Center.

10.13.d. A consumer or his or her legal representative has the right to a response to his or her grievance within fifteen (15) working days of its filing with the Center.

10.13.e. A consumer may, after receipt of the decision or lack of a timely decision on his or her grievance, request a hearing by the Secretary or bring action in circuit court against the Center.

10.13.f. A consumer has the right to withdraw his or her grievance at any time.

10.13.g. If the 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 has the right to appeal to the governing body of the Center, the State licensure body, an advocate or other appropriate resource, including an attorney.

10.13.h. A consumer has the right to pursue other relief even if he or she does not file a grievance.

10.13.i. A consumer has the right to report any reasonable suspicion of abuse or neglect to civil and criminal authorities in accordance with the applicable Adult Protective Services Act, W. Va. Code §9-6-1 et seq. or Child Protective Services act, W. Va. Code §49-6A-1 et seq., in addition to using the grievance procedure of the Center.

10.13.j. 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.

#### **§64-11-11. Penalties.**

11.11.a. The Secretary may deny the Center's application for licensure or licensure renewal; revoke or suspend a license; and/or order an admissions ban or reduction in consumer census for one or more of the following reasons:

11.11.a.1. The Secretary makes a determination that there has been a conviction for fraud or other illegal action;

11.11.a.2. The Center has violated federal, state, or local law relating to building, health, fire protection, safety, sanitation, or zoning;

11.11.a.3. The Center conducts practices that jeopardize the health, safety, well-being, or clinical treatment of a consumer;

11.11.a.4. The Center has refused to provide access to its location or records as requested by the Secretary; or

11.11.a.5. The Center has failed or refuses to submit reports or make records available as requested by the Secretary.

11.11.b. The Secretary may assess

civil monetary penalties for one or more of the following reasons:

11.11.b.1. Failure to submit a plan of correction in accordance with Subsection 4.9 of this rule, for which the civil monetary penalty shall be \$50 per each day the Center is delinquent; or

11.11.b.2. Failure to correct the following deficiencies, if cited in the previous licensure inspection, for which the civil monetary penalty shall be \$1000:

11.11.b.2.A. Subdivision 5.9.a, 5.9.b, 5.9.c and 5.9.d. regarding personnel;

11.11.b.2.B. Subsection 5.12 regarding quality assurance;

11.11.b.2.C. Subsection 6.2 regarding physical environment; or

11.11.b.2.D. Subsection 7.6 regarding critical incidents.

11.11.c. If a license has been revoked, the Secretary may stay the effective date of the revocation by no more than ninety (90) days, if the Center can show that the stay is necessary to ensure appropriate referral and placement of consumers.

#### **§64-11-12. Administrative Due Process.**

12.1. 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 "Rules of Procedure for Contested Case Hearings and Declaratory Rulings," 64CSR1, a copy of which may be obtained from the Secretary of State.