

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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FILED
1990 APR 27 11:30
STATE OF WEST VIRGINIA

NOTICE OF AN EMERGENCY RULE

AGENCY: Board of Health TITLE NUMBER: 64

CITE AUTHORITY: §27-9-1 and §27-17-3

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11

TITLE OF RULE BEING AMENDED: Licensure of Behavioral Health Centers

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: _____

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The behavior health center licensure rule presently requires Fire Marshal approval for licensure.

The Fire Marshal's Office issued the attached memorandum on February 2, 1990 to the effect that a shortage of available manpower left that Office no choice except to no longer survey any behavioral health center day program sites, day counseling centers, or other service delivery sites except residential centers of more than five (5) residents.

However, the centers must show evidence of current licensure in order to retain liability insurance coverage and in order to receive reimbursement through the Medicaid program for service delivery to clients.

The State Fire Marshal has advised the Division of Health to seek an emergency rule amendment eliminating the licensure fire safety requirement so that licensure and reimbursement may continue.

Taunja Willis Miller

Taunja Willis Miller, Secretary
Department of Health and Human Resources

Use Additional Sheets If Necessary.



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Building 3, Capitol Complex
Charleston, WV 25305

Gaston Caperton
Governor

April 20, 1990

The Honorable Ken Hechler
Secretary of State
State of West Virginia
State Capitol Building
Charleston, WV 25305

Dear Secretary Hechler:

The Licensure of Behavioral Health Centers rule is hereby approved for filing for public hearing and for emergency filing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Taunja Willis Miller".

Taunja Willis Miller, Secretary
Department of Health and
Human Resources

TWM/jpg

DATE: April 27, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Board of Health

EMERGENCY RULE TITLE: Licensure of Behavioral Health Centers

1. Date of filing: April 27, 1990
2. Statutory authority for promulgating the emergency rule: §27-9-1 and §27-17-3
3. Date of filing of proposed legislative rule: April 27, 1990
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Amends a current rule
5. Has the same or similar emergency rule previously been filed and expired?
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.
See filing notice

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

See filing notice

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See filing notice

[EMERGENCY]
TITLE 64

WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Licensure of Behavioral Health Centers

Series 11

1990

WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Licensure of Behavioral Health Centers

64 CSR 11

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[EMERGENCY]
TITLE 64
LEGISLATIVE RULES
BOARD OF HEALTH

SERIES 11
LICENSURE OF BEHAVIORAL HEALTH CENTERS

§64-11-1. General

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

1.2. Authority - §27-9-1 and §27-17-3. Related - §27-2A, §27-9, §27-17 and §8-24-50b.

1.3. Filing Date - April 27, 1990

1.4. Effective Date - April 27, 1990

1.7. Approval - These rules were approved by the State Board of Health on April 20, 1990.

§64-11-2. Supersession and Repeal of Former Regulations - These rules supersede and repeal Licensure of Behavioral Health Centers, West Virginia Board of Health Legislative Rules, 64 CSR 11, 1990.

§64-11-3. Application and Enforcement

3.1. Application - These rules shall apply to any political subdivision, person, persons, association, or corporation, whether for profit or not, which shall establish, maintain or operate a center, institution, or part thereof providing outpatient, residential or other services for the care and treatment of the mentally ill or mentally retarded or otherwise developmentally disabled or services contributing to the prevention of such disorders, except as identified herein in Section 3.2. These rules shall specifically apply to the following types of services and facilities: services less than three (3) hours per session, services of three (3) to (8) eight hours per session; twenty-four (24) hour residential treatment or training programs serving four (4) or more adult residents; and twenty-four (24) hour group residential facilities for developmentally disabled adults or children.

3.2. Section 5.10 of these rules shall apply to local authorities and to applicants for a license to operate a group residential facility.

3.3. Exceptions - These rules shall not apply to:

a) Hospitals governed by West Virginia Legislative Rule, Board of Health, Hospital Licensure, 64 CSR 12, 1987.

b) Twenty-four (24) hour inpatient services operated by a

center located within a general or psychiatric hospital. Such services shall be licensed under West Virginia Legislative Rule, Board of Health, Hospital Licensure, 64 CSR 12, 1987.

c) Nursing homes governed by West Virginia Legislative Rule, Board of Health, Nursing Home Licensure, 64 CSR 13, 1983.

d) Personal care homes governed by West Virginia Legislative Rule, Board of Health, Personal Care Home Licensure, 64 CSR 14, 1983.

e) Boarding homes;

f) Non-supervised apartment living quarters occupied by clients of the center;

g) Adult family care homes under the supervision of the West Virginia division of human services;

h) Self-help groups;

i) Information and referral services; or

j) Private practices in non-residential settings by licensed practitioners within the scope of their professional license or by other professions certified as follows: 1) social workers by the National Academy of Social Workers; 2) marriage counselors or family therapists certified by the American Association for Marriage and Family Therapy; or 3) addiction counselors certified by the West Virginia Association of Alcohol and Drug Abuse Counselors.

3.4. Enforcement - These rules shall be enforced by the director of the West Virginia division of health.

§64-11-4. Definitions

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

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

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

4.4. Behavioral Health Services - Those services intended to help individuals gain or regain the capacity to function adaptively in their environment, to care for themselves and their families, and to be accepted by society. This includes individu-

als with emotional or mental disorders, alcohol or drug abuse problems, and mental retardation or other developmental disabilities.

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

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

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

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

4.9. **Comprehensive Regional Mental Health or Mental Retardation Center** - A licensed non-profit center which receives designation as a comprehensive regional center from the health division. Such centers must comply with the requirements of the West Virginia Code and are additionally subject to contract compliance reviews by the health department regarding the provision for mandated and other services. A valid license under these rules is a minimum pre-requisite condition for such designation.

4.10. **Director** - The director of the West Virginia division of health or other employee acting on behalf of the director.

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

4.12. **Division** - The West Virginia division of health.

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

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

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

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

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

4.18. **Group Residential Facility** - See Residential Services.

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

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

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

4.22. **License** - The document issued by the division which indicates approval for the operation of a behavioral health center.

4.23. **Licensee** - A center duly licensed by the division to provide behavioral health services.

4.24. **Local Authority** - The county commission, governing board of a municipality, or planning commission or other body with zoning authority over the location of the proposed group residential facility.

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

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

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

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

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

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

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

4.32. **Residential Services (twenty-four hour)** - A community-based congregate type of housing established for people with similar needs, levels of independence, and ability. This definition includes, but is not limited to, group residential facilities as specifically defined in Section 2, Article 17, Chapter 27 of the West Virginia Code for purposes of identifying permitted zoning uses and restrictions. A group residential facility is defined as a facility which: "(1) Provides services and supervision for individuals who are developmentally disabled or behaviorally disabled; (2) is occupied as a residence by not more than eight individuals who are developmentally disabled and not more than three supervisors, or is occupied as a residence by not more than twelve individuals who are behaviorally disabled and not more than three supervisors; and (3) is licensed by the division of health or the division of human services."

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

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

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

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

care.

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

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

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

4.40. Treatment Plan - A written care plan, appropriate to meet the identified needs of the client, which specifies goals, activities and services determined through process of assessment. The treatment plan may be known by other names such as: individual program plan, individual service plan, individual education plan, individual program and development plan, individual rehabilitation plan.

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

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

4.43. Waiver - A declaration that a certain rule is inapplicable in a particular circumstance.

§64-11-5. State Administrative Procedures

5.1. General Licensing Provisions

5.1.1. No political subdivision, person, persons, association, or corporation shall establish, operate, or maintain within the State of West Virginia, a behavioral health center, or institution, or part thereof unless a license therefor has been obtained from the director.

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

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

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

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

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

5.1.7. Applications for initial or renewal license shall identify the individuals legally responsible for the operation of the center.

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

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

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

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

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

5.2. Construction, Renovation, Alterations

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

5.2.2. Centers in operation prior to the effective date of these regulations shall be required to institute modifications of

buildings where undue hazards to the health or safety of clients or staff exist.

5.3. Initial License

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

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

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

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

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

5.3.3. In the case of an application to operate a group residential facility the following information shall be submitted as part of the application for license:

(a) The location of the proposed facility by street address or other description of the property.

(b) Documentation that the facility is in compliance with the density and dispersal limits established for group residential facilities by Section 2, Article 17, Chapter 27 of the West Virginia Code, as follows: "Provided, that no more than one such facility may be located on the same block face in any municipality, or within twelve hundred feet, measured from front door to front door, in any area not within a municipality." Block face is an area one block in length which encompasses both sides of the same street. It is possible that more than one group residential facility could be located on a city block provided that not more than one is located on the same street since each street establishes another face. A sketch map will serve as documentation; on-site verification shall be accomplished by the division.

(c) A copy of the application submitted for any required zoning or occupancy permit or a statement that such application has been submitted or a statement that no such zoning or occupancy permit is required to be submitted for the proposed location.

(d) A statement identifying whether or not the facility is

to be located within a single family residential district, and additionally, if the service is to be located in a single family residential district.

(e) The name and address of the local authority as defined herein.

(f) The maximum number of residents to be served at any one time at this location.

(g) The nature of the disability or disabilities of the proposed residents.

(h) The number of supervisors who will occupy the facility.

5.3.5. The director shall issue an initial license if the applicant:

(a) is in compliance with or, in the case of proposed activities, supplies evidence of ability and intent to comply with these rules;

(b) has submitted a complete application and the application fee;

(c) Provided, however, that if the facility in question is a residential service which is proposed to be located in a zone or district restricted to single family residences, the director shall give due consideration to the results of any public hearing conducted under the provisions of Chapter 8, Article 24, Section 50b of the West Virginia Code and Section 10 of this rule prior to making the determination in Subsection 5.3.5(a) of this rule.

5.4. Renewal License

5.4.1. An applicant for a renewal license shall submit an application to the director on forms provided by the director not less than sixty (60) days and not more than one hundred twenty (120) days prior to the expiration date of the current license. A non-refundable fee of \$10 shall be included with the application.

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

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

5.5. Provisional License

5.5.1. A provisional license may be issued by the director

if: (a) a new center seeking initial licensure is not in full compliance with these rules; or (b) a center seeking relicensure does not fully comply with these rules.

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

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

5.6. Inspections

5.6.1. An on-site inspection of every center regulated pursuant to these rules shall be conducted no less frequently than once every two years except that in the case of twenty-four (24) hour community residential services, inspections shall be conducted no less frequently than once a year.

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

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

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

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

5.7. Complaint Investigation

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

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

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

5.7.4. The director shall notify the center's executive

director or the person in charge of the location involved in the complaint of the substance of the complaint only at the time of the investigation.

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

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

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

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

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

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

5.8. Plans of Correction

5.8.1. A center found on the basis of inspection or other investigation to have deficiencies in compliance with these rules shall develop a plan for correction of the deficiencies and shall submit such plan to the director within thirty (30) days of receipt of the report of the inspection or other investigation.

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

5.8.3. The plan of correction shall specify:

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

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

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

- (a) the adequacy of the actions and procedures taken or proposed to correct the deficiencies.
- (b) the seriousness of the violation;
- (c) the time proposed for implementing the correction; and
- (d) any other relevant factors.

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

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

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

5.9. Division Reports and Records

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

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

5.9.3. Reports and records related to these rules shall be treated as public information, except as specified herein regarding complaints, from the time they are received by or completed by the director, except that, before releasing a report or record

deemed public information, the director shall delete any information which could reasonably be expected to permit identification of a client and any information of a personal nature such as that kept in a medical, personal or similar file, or other information required to be kept confidential by state and federal law and rules and regulations. When an inspection report is released prior to the center's submission of or the director's review of a plan of correction, such fact shall be identified with the release.

5.9.4. The director shall provide copies of materials available for public information, upon written request, at a reasonable fee to cover the cost of materials, staff time, and equipment, according to law and division policy or regulation.

5.10. Public Hearings for Group Residential Facilities in Single-Family Residential Districts

5.10.1. Notice to Local Authorities; Objections; Request for Hearing; Scheduling Notices

5.10.1.1. When the initial application to operate a group residential facility in a district or zone limited to single-family residences is received, the director shall give written notice of the application to the local authority within whose jurisdiction the proposed facility lies within seven working days of the receipt of a complete application. The notice shall be sent by registered mail, return receipt requested: Provided, that this section shall not apply to renewal applications.

5.10.1.2. The notice of application shall contain:

- (a) The name of the applicant;
- (b) The location of the proposed group residential facility identified by street address or other description of the property;
- (c) The maximum number of residents to be served at any one time at this location;
- (d) The nature of the disability or disabilities of the residents;
- (e) Any other relevant and pertinent information.

5.10.1.3. The local authority shall have thirty days from receipt of the notice in which to file written objections or a written request for a hearing concerning the proposed group residential facility with the division.

5.10.1.4. The local authority may recommend an appropriate location for the conduct of the hearing at the time it files objections or a request for a hearing.

5.10.1.5. When the division is presented with a request for a hearing as described in Subsection 5.10.1.3 of this rule, or when objections have been lawfully filed, the director shall schedule a hearing within forty-five days and provide the local authority and the applicant with a notice of the hearing.

5.10.1.6. The notice shall contain:

(a) the date, time, and place of the hearing;

(b) the name of the facility; and

(c) a statement of any intent to appoint a hearing examiner as provided in Subsection 5.10.2.1 of this rule.

5.10.1.7. In addition, the director shall file notice of the hearing with the Secretary of State and may, in his or her discretion, cause notice to be published elsewhere.

5.10.2. Conduct of Hearings; Reports

5.10.2.1. The director may appoint a hearing examiner to conduct the hearing.

5.10.2.2. Any party with a real or perceived interest in the application for issuance of a license may attend the hearing and request an opportunity to speak.

5.10.2.3. Parties attending the hearing may choose to be represented by an individual of their choice, including an attorney at law.

5.10.2.4. The rules of evidence are not applicable to these hearings.

5.10.2.5. The hearing examiner shall convene the hearing, describe the purpose of the hearing and shall accept any exhibits, documentation or other written materials presented at the hearing.

5.10.2.6. The hearing examiner shall have the authority to determine the conduct of the hearing, in a fair and impartial manner, as follows:

(a) Place limits on the duration of the hearing;

(b) Set the order of those speaking at the hearing;

(c) Place limits on the length of time allotted to each person speaking at the hearing;

(d) Request of a speaker that comments be directed to matters relating to the issuance of a license to operate a group residential facility at the proposed location; and

(e) Otherwise take action to maintain an orderly hearing.

5.10.2.7. The hearing examiner shall provide a record of the hearing to the director within fifteen working days of the conclusion of the hearing.

5.10.2.8. The hearing examiner may include in the record and summary of the hearing his or her comments, observations, or recommendations relating to the hearing.

5.10.2.9. The record will include the names of those persons speaking at the hearing, a detailed summary of comments made, the facts presented at the hearing, and the opinions there expressed.

5.10.2.10. A copy of this record will be furnished at no cost to the local authority and to the applicant.

5.10.2.11. A copy of this record will be kept on file by the division and will be available to the general public for inspection. Any person interested in obtaining a copy of the record of the hearing may do so for the cost of copying and distribution.

5.10.2.12. The hearing may be continued from one day to another or adjourned to a later date or different location by announcement thereof at the hearing or by appropriate notice to the local authority and to the applicant.

§64-11-6. Governing Body

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

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

§64-11-7. Administration

7.1. Personnel

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

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

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

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

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

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

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

7.1.8. The center shall not discriminate in any matter of employment on the basis of race, color, national origin, ancestry, religion, physical handicap or sex and shall operate under written personnel policies and procedures that: (1) comply with federal and state laws and regulations; and (2) are available to each employee.

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

7.2. Management Practices

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

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

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

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

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

§64-11-8. General Physical Facility

8.1. Sanitation - All centers providing services must meet the following standards. Additional sanitation standards applicable to residential centers are listed in Section 14.

8.1.1. Water Supply

(a) All centers shall be provided with a potable water supply approved by the division.

(b) All water supply systems shall comply with the rules of the West Virginia board of health.

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

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

8.1.2. Sewage and Excreta Disposal

(a) All centers shall be served by an approved public sewage system or by a sewage disposal system that has been approved by the division according to the design standards and rules of the West Virginia board of health.

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

8.2. Food Service - Any center preparing or serving food to the public or in a residential center with modules, houses or cottages accommodating more than ten (10) persons shall comply with the West Virginia board of health food service sanitation rules. Standards for modules, houses or cottages serving ten (10) or less persons are given in Section 14.

§64-11-9. Client Services

Discussion

This section provides rules for treatment and services for

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

9.1. Client Services Generally

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

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

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

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

9.2. Diagnosis and Treatment

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

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

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

9.2.3. Based on information obtained during the intake interview, staff shall determine the need for and make recommendation for additional evaluations. These evaluations shall be entered in the record and may include the following:

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

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

9.2.5. When diagnoses are rendered, they shall be:

(a) written in standard nomenclature as provided in either the American Psychiatric Association's latest edition of the Diagnostic and Statistical Manual of Mental Disorders, the latest edition of the International Classification of Diseases or the latest Classification for Mental Retardation of the American Association for Mental Deficiency.

(b) substantiated by valid and reliable data based upon accepted professional standards of examinations and tests indicated by factual description of client's symptoms and problems.

9.3. Treatment Plan

9.3.1. There shall be a written plan of treatment for each client based on the initial evaluation of the client's treatment or training needs and the resources of the center. The plan shall be developed and implemented within seven (7) days of admission and finalized within thirty (30) days.

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

9.3.3. The treatment plan shall contain specific goals the

client is to achieve for improvement or maintenance of mental health or optimal adaptive functioning.

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

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

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

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

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

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

9.4. **Emergency Services** - When emergency services are provided, the center shall have written procedures which include at least the following:

(a) Specification of staff coverage and consultation on call;

(b) Instructions relative to contacting the client's physician, case manager, or family.

(c) Provision for communication with the nearest emergency medical service; hospital and police.

(d) Circumstances under which definitive care should not be provided and procedures which should be followed in referring an individual to a more appropriate facility.

9.5. **Additional Standards for Alcohol and Drug Abuse Out-patient and Prevention Services**

9.5.1. An alcohol and drug abuse outpatient and prevention

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

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

9.6. Management of Inappropriate Behaviors Discussion

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

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

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

9.6.3. When a time-out procedure is employed, the client's record shall document the fact that the situation from which the individual is removed for time-out provides consistent and positive reinforcement of desired, adaptive behaviors and that isolation was required to help the client reestablish self control.

9.6.4. When time-out procedures are utilized, a staff member shall monitor the client at all times and the client shall be returned to the situation from which they were removed as soon as they have regained control of their behavior. If the inappropriate behavior for which time-out is utilized occurs frequently, for example three (3) days in a week or three (3) weeks in a row, a treatment plan to manage the inappropriate behavior shall be designed. If time-out is utilized as a procedure in a treatment plan, maximum times for the use of time-out shall be included in the plan. When the maximum time exceeds fifteen (15) minutes, the plan shall be approved by the human rights committee prior to implementation.

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

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

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

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

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

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

9.6.9. Aversive conditioning shall be used only in those extreme, last-resort situations in which withholding it would be contrary to the best interests of the client because his or her behavior is dangerous to himself or herself or to other persons and is extremely detrimental to his or her development, and because of the individual's failure to respond to a variety of positive teaching procedures employed consistently and for a reasonable length of time. The dangerous or detrimental conditions and failure to respond shall be documented in his or her record.

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

- (a) Foods and other substances such as cigarettes that may be deleterious to health shall not be used as rewards unless it is documented that alternative rewards have been tried without success.

(b) Plans to manage inappropriate behavior shall not result in the denial of three nutritionally balanced meals per day.

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

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

9.7. Medical Emergency

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

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

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

9.8. Psychiatric Emergency

Discussion

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) a report of the incident;
- (b) staff actions and rationale for each method employed;
- (c) a continuing description of the client's response to staff actions;
- (d) all approvals by a physician, the executive director or his or her designee to utilize obtrusive measures;
- (e) seclusion checks and restraint reports at least every fifteen (15) minutes;

- (f) the resolution of the emergency; and
- (g) plans to continue services to the client.

9.9. **Evaluation of Client Services** - The center shall have and implement a systems review of the appropriateness and effectiveness of client services which includes an analysis of the results of treatment plan reviews and of reports by the human rights committee.

§64-11-10. Client Records

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

10.2. The client record for non-emergency services shall contain:

- (a) identification data including name, date of birth, address, and client's legal status;
- (b) appropriate social and medical history concerning the client;
- (c) a summary of the assessment process and treatment or training recommendations;
- (d) a record of any evaluations of the client;
- (e) treatment plans and updates including the date of the next review and documentation of the consent of the client for treatment;
- (f) a record of any signed and dated physicians orders;
- (g) complete report of any accidents, psychiatric emergencies, seizures, or illnesses occurring while the client is on the center's premises or engaged in center activities and treatment thereof;
- (h) a record of any medication administered as indicated in Sections 11.1.1 and 11.1.4;
- (i) copies of all consultation reports;
- (j) a record of any dietary modifications or nutritional needs;
- (k) a continuing record of treatment data, such as performance indicators, post-tests, or progress notes which include a summary of the treatment provided, progress toward goals, and immediate plans for continuing treatment;
- (l) treatment or discharge summary within thirty (30) days

of termination;

(m) communications pertinent to the well-being of the client; and

(n) the results of treatment and changes to the treatment plan.

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

10.3.1. For emergency telephone contacts:

(a) identification data relating to the client or individual making the contact, such as, family, friend, police;

(b) description of significant clinical data;

(c) response of professional taking the emergency call;

(d) record of recommendation made;

(e) specific instructions given for client;

(f) provisions for follow-up.

10.3.2. For walk-in emergencies:

(a) identification data including the client's legal status;

(b) the time of arrival, and the time of discharge;

(c) means of transportation to the emergency service;

(d) pertinent history including emergency care given prior to the arrival at the center;

(e) a description of significant clinical data;

(f) treatment plan;

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

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

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

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

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

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

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

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

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

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

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

10.11. Client records may be released without consent as follows:

(a) in a proceeding under Section 4, Article 5, Chapter 27 of the West Virginia Code to disclose the results of an involuntary examination made pursuant to Section 2, 3, or 4, Article 5, of Chapter 27 of the West Virginia Code;

(b) in a proceeding under Article 6-A of Chapter 27 of the West Virginia Code to disclose the results of an involuntary examination made pursuant thereto;

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

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

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

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

(a) the client;

(b) the attorney of the client;

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

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

(e) others obtaining such consent.

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

10.14. Nothing in these rules shall be construed to interfere with the right of the director to examine client records in the course of executing his or her responsibilities to administer these rules or other appropriate state and federal law or regulations.

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

§64-11-11. Ancillary Services

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

11.1. Drugs

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

11.1.2. All prescription medications administered to clients shall be authorized by written, dated, and signed order of a physician, or others authorized by law to prescribe medications.

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

11.1.4. Changes in the client's condition as a result of receiving the medication, including adverse reactions, shall be noted in the client's record.

11.1.5. Clients who are able to self-medicate shall do so. This provision shall include insulin injections. The center shall provide these clients secure areas in which to keep their medications, as needed.

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

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

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

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

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

11.1.11. Each prescription medication shall have a separate container showing at least: the individual's name, address, date

filled, physician, name of drug, dosage, route of administration, frequency and the amount or number of drugs dispensed, except for those medications administered by a physician or a registered nurse.

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

11.2. **Transportation Services** - Centers operating routine transportation services for clients shall have written policies and procedures pertaining to:

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

§64-11-12. Client's Rights

Discussion

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

12.1. Basic Rights - Each client shall have:

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

12.1.2. The right to an individualized, written treatment plan to be developed promptly after admission; treatment based on the plan; periodic review and reassessment of needs, and appropriate revisions of the plan including a description of the services that may be needed for follow-up.

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

12.1.4. The right to refuse treatment.

12.1.5. The right not to have to participate in experimen-

tation in the absence of the client's informed, voluntary, written consent; the right to appropriate protections associated with such participation; and the right and opportunity to revoke such consent.

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

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

12.1.8. The right to confidentiality of records.

12.1.9. The right to access, upon request, to his or her own client records in accordance with state law.

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

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

12.1.12. The right of access to a qualified advocate in order to understand, exercise, and protect his or her rights.

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

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

12.1.15. The right to exercise his or her civil rights, including but not limited to, the right to register and vote at elections, the right to acquire and dispose of property, execute instruments, enter into contractual relationships, to marry and obtain a divorce, to hold professional or occupational or vehicle operator's licenses, unless he or she has been adjudicated incompetent in a separate proceeding pursuant to Article 11, Chapter 27 of the Code of West Virginia, and the county commission has made a specific finding that such individual is incompetent to exercise the specific right or category of rights.

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

12.2. **Rights Devolving to Committee or Guardian** - In the case of a person adjudicated incompetent according to West Virginia law, certain of these rights may devolve to the committee

or guardian, if so specified by the court or county commission.

12.3. Medications

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

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

12.4. Client's Rights in a Residential Center

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

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

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

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

12.4.5. The right of a resident to communicate by mail and telephone or to visit with persons of his or her choice may be limited if each limitation is situation specific and essential to prevent the resident from violating a law or to prevent substantial and serious physical or mental harm to or exploitation of the resident. Such limitation shall be approved by the executive director or his or her designee and shall not last longer than is necessary to achieve the goals of the limitation.

12.4.6. A resident may be prevented by a center from telephoning an individual who has complained to the center of harassment by the resident and has requested the resident be prevented from calling him or her in the future.

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

12.4.8. Any limitation adopted under the authority of this subsection, the date it shall expire and the justification for

its adoption shall be promptly noted in the client's record.

12.5. Client's Labor

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

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

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

12.6. Experimental Research

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

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

12.6.3. Experimental research shall be in full compliance with the principles of the current statement on the use of human subjects for research by the American Association on Mental Deficiency, and with the principles for research involving human subjects required by the United States department of health and human services.

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

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

12.7. Human Rights Committee

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

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

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

12.8. Violation of a Client's Rights

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

12.8.2. The executive director shall initiate a thorough investigation within twenty-four hours after receiving a report of a complaint. A written report shall be given within a reasonable period of time to the human rights committee of his or her findings and actions taken to preclude a repetition of such violations, or suspected violations, relative to the specific clients involved, or any other clients. The client shall be identified by case number only.

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

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

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

§64-11-13. Three to Eight (3-8) Hour Services

Discussion

A three to eight (3-8) hour service provides an environment where the client's treatment or training plan is typically carried out in a group setting. The primary purposes of the scheduled activities in this environment are to develop new skills, restore former skills, or maintain attained skills for the clients. Size of the group, staff-to-client ratio, client's

length of stay and degree of supervision required in the service depend upon the client's need for service.

13.1. Applicable Regulations

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

13.2. Policies and Procedures

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

13.2.2. The center shall have policies and procedures pertaining to the client's leisure time such as physical fitness and recreation.

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

13.3. Emergencies, Physical Health, and Daily Living

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

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

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

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

13.4. Domestic Animals

13.4.1. Dogs, cats, or other domestic animals shall be appropriately confined and maintenance of animals shall be consistent with applicable local ordinances.

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

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

§64-11-14. Twenty-four (24) Hour Community Residential Services

14.1. **Applicable Regulations** - Centers providing twenty-four (24) hour residential services shall meet the regulations in this section in addition to the regulations listed in Sections 6, 7, 8, 9, 10, 11, and 12.

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

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

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

14.5. Treatment Plans

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

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

14.6. Policies and Procedures

14.6.1. The residence shall have rules of conduct which address the activities listed in these regulations and includes provisions for personal possessions. These rules shall be available to the residents, staff, resident's family, guardian or advocate.

14.6.2. Procedures shall be established to ensure that residents receive funds due them and to protect the resident's funds. A center which handles money for clients shall make an accounting of all receipts and disbursements to the client at least quarterly.

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

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

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

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

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

14.7. Emergencies and Physical Health

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

14.7.2. Emergency telephone numbers for fire department, local police, and on-call staff shall be posted by the telephone and capable clients shall be instructed in their usage. All regular residential staff shall receive training in emergency first aid and emergency care. This training shall occur as part of their orientation and shall include yearly CPR certification, Heimlich's maneuver, and first aid practices at least every two years.

14.7.3. Staff shall ensure that each resident has access to adequate wholesome food of quality and quantity to meet the recommended daily dietary allowance (recommended by the food and nutrition board of the national research council) for specific nutrients. This requirement shall not apply to shelters for public inebriates.

14.7.4. Each resident remaining in the residence beyond thirty (30) consecutive days must receive an initial physical examination by a physician or a nurse practitioner working from physician-approved protocols at the expense of the client or guardian. If an individual had been examined in the past six months, this report is acceptable when verified by the physician. The examination is to include a CBC, TB skin test,

urinalysis, VD screening, hepatitis screening, and immunizations, when necessary. When an individual does not receive a physical examination prior to admission, the individual's record must indicate the circumstances for not receiving the examination and plans for obtaining the examination.

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

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

14.7.7. A resident while affected with any disease in a communicable form, or while a carrier of such disease, or while affected with boils, infected wounds, sores or a respiratory infection shall not associate with other residents when there is a likelihood of such person transmitting the disease to the other residents and no person known or suspected of being infected with any such disease or condition shall be employed in such area or capacity. Isolation techniques may be utilized with affected clients with physician approval. (While having a common cold would not be grounds for discharging or transferring a resident, when in doubt of the seriousness of the cold, a physician should be consulted.)

14.7.8. The staff shall notify the executive director immediately of any known or suspected case of communicable disease and any outbreak of intestinal disorder occurring within the residence.

14.7.9. Staff shall take the necessary steps to be informed of State public health laws and state board of health regulations relative to the reporting and control of communicable diseases and shall comply in full with the laws and regulations.

14.7.10. In the event of an outbreak of a highly infectious disease, a residence shall, upon the orders of the director, be immediately closed to the public.

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

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

14.8. Daily Living

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

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

14.8.3. Staff shall follow written procedures which contribute to the development of residents' skills in selecting foods to meet their specific nutritional needs and promote healthful living throughout life.

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

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

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

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

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

14.10.1. Buildings, Grounds, Equipment

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

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

(c) Floors, walls and ceilings shall be of easily cleanable construction and all floors, walls, ceilings and attached appurtenances, fixtures and equipment shall be kept clean and in good repair.

(d) Carpeting shall not be used in bathrooms, nor in food preparation or dishwashing areas.

14.10.2. Lighting, Ventilation, Heating

(a) All rooms shall have approved ventilation either by natural or mechanical means.

(b) A general illumination level of not less than ten foot candles shall be provided and maintained and a minimum of forty foot candles shall be available at specific areas such as work areas, kitchen and dishwashing areas, laundry rooms and bathrooms.

(c) Each center shall be equipped with approved heating devices capable of maintaining a temperature of at least 64°F at floor level in all applicable rooms.

(d) Heating equipment shall conform to AGA, U.L., Inc., American National Standards Institute or other nationally recognized standards.

(e) Gas and oil-fired heating devices shall be properly vented to the outside air.

(f) Unprotected open-faced heaters are prohibited.

14.10.3. Bedrooms

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

(b) Beds shall be separated from other beds by at least two feet, provided, that this provision shall not preclude the use of bunk beds as long as the requirements of (a) above are met.

(c) Each occupant of a residential center shall be provided a separate bed and bedding. Cots and rollaway beds are not acceptable. All mattresses shall be provided with mattress pad and covers. Other furnishings appropriate to the length of stay and needs of the residents shall be provided.

(d) Bedding shall be kept clean and in good repair and each bed shall be furnished with freshly laundered bed linens at least once per week or more often, if necessary.

(e) Beds shall not be placed in corridors, living rooms, kitchens, dining rooms, basements, attics, or any area not commonly used as a bedroom or in any area accessible only by a ladder or folding stairs or through a trapdoor.

(f) Each occupant shall be provided with his or her own hand and bath towels, washcloth and toothbrush. Clean towels and washcloths shall be provided to each occupant at least once a week or more often, if needed.

14.10.4. Storage Area

(a) Approved storage facilities shall be provided for, but not limited to, the following items: foodstuffs, utensils, work materials, cleaning supplies, clothing, linens, medicines and

toxic materials.

(b) Poisons and other potentially hazardous items shall be kept in a secure place behind a locked door except this rule shall not preclude use of these materials by clients who have been trained to use them safely.

14.10.5. Sanitary Facilities

(a) Lavatories, bathtubs and showers shall be provided with hot and cold running water under pressure, and shall be equipped with mixing faucets or tempered water.

(b) Water temperature at the lavatory, bathtub or shower faucet outlet shall not exceed 115° F.

(c) Spring-loaded faucets and combination faucet-fountains are prohibited.

(d) Bathtubs and their fixtures shall be kept clean and maintained in good repair.

(e) Bathrooms shall have moisture resistant non-absorbent floor and walls.

(f) Each residential center shall provide for each six occupants or fraction thereof at least one bathroom containing a minimum of one commode, one lavatory and one bathtub or shower.

(g) Residential centers accomodating both sexes shall provide for privacy in sanitary facilities and residences with more than six residents shall provide separate bathrooms for each sex.

14.10.6. Solid Waste

(a) All garbage and refuse shall be stored in approved water-tight and vermin-proof containers, and such containers shall be kept clean and free of accumulations of residue.

(b) Solid waste containers shall be provided in sufficient number and capacity to properly store all solid waste.

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

(d) A concrete platform or a metal rack shall be required for outside storage of solid waste containers.

(e) When approved municipal or private solid waste disposal service is not available, the staff shall dispose of the solid waste in accordance with the applicable provisions of the state law and regulations governing the management of solid waste.

14.10.7. Plumbing

(a) All plumbing shall meet the requirements of local plumbing codes or ordinances, or in the absence thereof, the National Plumbing Code.

(b) Cross connections and potential back-siphonage situations are prohibited.

14.10.8. Insect and Rodent Control

(a) Grounds, buildings and structure shall be maintained free of insect breeding areas, rodent harborages and infestations of insects and rodents of public health significance.

(b) All exterior openings of buildings and structure shall be effectively screened or insects and rodents excluded by other effective means.

(c) All exterior doors shall be close-fitting and screen doors or doors used in lieu thereof shall be self-closing.

(d) Only those insecticides and rodenticides approved by the division shall be used in a residential center.

14.10.9. Laundry

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

(b) Soiled laundry shall be stored in non-absorbent easily cleanable covered containers or disposable plastic bags.

(c) Soiled and clean laundry shall not be stored or placed in the same container or on a common table or shelf.

(d) Washing machines shall be installed so that no back-siphonage possibilities exist.

(e) Common laundry (such as towels and washcloths, bed clothes, mattress pads and covers, kitchen towels and dish cloths) after washing shall be mechanically dried at a temperature of 160°F. or higher until dried or a chemical sanitizer may be added to the rinse water and the laundry air-dried.

(f) Laundry for clients affected with communicable diseases shall be cleaned and kept separate from other laundry.

14.10.10. Domestic Animals

(a) Dogs, cats or other domestic animals shall be appropriately confined in a residential facility.

(b) Wild, dangerous or obviously ill animals are prohibited.

(c) Animals and their quarters shall be kept in a clean condition at all times.

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

14.10.11. Food Service

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

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

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

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

(3) Food contact utensils and equipment shall be of approved material, easily cleanable construction and in good repair.

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

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

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

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

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

14.11. Residential Centers for Alcohol and Drug Abusers

14.11.1. Applicable Regulations - Residential centers for

alcohol and drug abusers shall comply with the regulations listed in Section 14 in addition to those listed in Sections 6, 7, 8, 9, 10, 11, and 12.

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

(a) A detoxification center may be located within a general hospital or may be a free-standing center if affiliated with licensed centers and programs providing elements of care for mental disorders.

(b) Detoxification centers shall be under the supervision of a physician and staffed with a competent administrator, adequate professional and nonprofessional personnel to provide accepted standards of safe client care.

(c) The nursing service shall be under the direction or supervision of a licensed registered nurse.

(d) A treatment plan shall be developed for clients admitted to detoxification centers coordinating the medical, nursing and after-care elements of planned treatment.

(e) The detoxification center shall provide counseling services to clients by counselors with training and demonstrated ability in aiding clients to recognize the nature of their illness and the importance of a continuing program of after-care, treatment, and rehabilitation.

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

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

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

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

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

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

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

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

(a) The residence shall provide a comprehensive program for the rehabilitation of the individual in a homelike atmosphere which shall include, but not be limited to:

- (1) residential care;
- (2) guidance;
- (3) appropriate physical fitness routines established for each individual in accordance with age or physical problem limitations;
- (4) supervision;
- (5) personal services relating to those areas of individual adjustment which enable the person to move to independent living in normal surroundings; and
- (6) individual recovery plans.

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

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

(d) The center staff shall be under the direction of a manager, or director with background, education, experience and demonstrated ability commensurate with responsibilities of the position.

14.11.5. **Public Inebriate Shelters** - Public inebriate shelters which provide a place of custody and evaluation of incapacitated alcoholics shall comply with the following:

- (a) Toilet and bathing facilities shall be readily avail-

able to each occupant and provide a reasonable degree of privacy (enclosed tub or shower and separate, enclosed toilet facility).

(b) Each occupant must be provided with a bed, clean sheets, blankets, etc., unless there is a written medical order to remove such items as suicide precautions.

(c) There must be provision for regular surveillance at not less than fifteen minute intervals.

(d) There must be evidence of provision for medical care on at least an emergency basis.

(e) The area must be free of physical hazards.

(f) An effort shall be made to provide as normal a living arrangement as possible within the facility, consistent with custody and security requirements and with the condition of the person being sheltered.

(g) There shall be screening by trained personnel for the need for medical detoxification and procedures to move the client to medical care if needed.

(h) The shelter shall arrange for follow-up counseling and other services for each client.

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

§64-11-15. Penalties

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

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

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

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

§64-11-16. Administrative Due Process

16.1. An applicant for a license or a licensee or any other person aggrieved by an order or other action by the director pursuant to these regulations or to chapter 27, articles 2A or 9 of the West Virginia Code of 1931, as amended, shall have the opportunity for a hearing by the director, upon written request to the director in a manner prescribed in and by the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, West Virginia Department of Health Procedural Rules, 64 CSR 1 1983.

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

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

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

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

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

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

(b) notify the licensee and his attorney of record, if any, of the action, by certified mail, return receipt requested.

(c) enter an order showing satisfactory compliance, dismissing the complaint, if the licensee meets the requirements of the order; and

(d) upon entering the second order, under this section, the director shall notify the licensee and his attorney of record, if any, by certified mail, return receipt requested.

§64-11-17. Severability - The provisions of these rules are declared to be severable. If any provisions of these rules shall be held invalid, the remaining rules shall remain in effect.

STATE OF WEST VIRGINIA



WALTER SMITTLE III
State Fire Marshal
L. DARL CROSS
Deputy State Fire Marshal

GASTON CAPERTON
Governor

STATE FIRE MARSHAL
CHARLESTON, W. VA. 25305

2100 WASHINGTON STREET, E.
PHONE: (304) 348-2191

TO: Ron Scaggs, Acting LSC Coordinator
Dept. of Health, H.F.L.C.S.

FROM: Joe Leake, Deputy Fire Marshal *jle*

DATE: February 2, 1990

SUBJECT: Behavioral Health Facilities Inspections

Effective immediately by policy of the State Fire Commission, the State Fire Marshal's Office will inspect ONLY those Behavioral Health Facilities that provide sleeping accommodations for more than five (5) residents. This change is due to budget reductions and the recent hiring restriction.

cc: John Russell, Coordinator of MH/MR Programs
L. Darl Cross, Chief Deputy Fire Marshal

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE June 4, 1990
ADMINISTRATIVE LAW DIVISION

June 4, 1990

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Board of Health

RULE: Amendments, Series 11; Licensure of Behavioral Health Centers

DATE FILED AS AN EMERGENCY RULE: April 27, 1990

DECISION NO. 8-90

Following review under WV Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
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STATE OF WEST VIRGINIA

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Special Assistant

(Plus all the volunteer
help we can get)

DECISION

EMERGENCY RULE DECISION
(ERD 8-90)

AGENCY: Board of Health

RULE: Amendments, Series 11, Licensure of Behavioral Health Centers

FILED AS AN EMERGENCY RULE: April 27, 1990

- par. 1 Board of Health (Board) has filed the above emergency amendments to an existing rule.
- par. 2 West Virginia Code §29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Board filed this emergency rule with supporting documents with the Secretary of State on April 27, 1990 and with the LRMRC on April 27, 1990.

par. 7 It is the determination of the Secretary of State that the Board has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §27-9-1 reads:

§27-9-1. License from director of health; regulations.

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

par. 9. WV Code states further in §27-17-3:

§27-17-3. License from director of health; application; regulations; revocation.

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

par. 10 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 13 The facts and circumstances as presented by the Board are as follows:

The behavior health center licensure rule presently requires Fire Marshal approval for licensure.

The Fire Marshal's Office issued a memorandum on February 2, 1990 to the effect that a shortage of available manpower left that Office no choice except to no longer survey any behavioral health center day program sites, day counseling centers, or other service delivery sites except residential centers of more than five (5) residents.

However, the centers must show evidence of current licensure in order to retain liability insurance coverage and in order to receive reimbursement through the Medicaid program for service delivery to clients.

The State Fire Marshal has advised the Division of Health to seek an emergency rule amendment eliminating the licensure fire safety requirement so that licensure and reimbursement may continue.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of emergency.

par. 14 This decision shall be cited as Emergency Rule Decision 8-90 or ERD 8-90 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Board of Health, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE June 4, 1990
ADMINISTRATIVE LAW DIVISION

Entered _____