

Arch A. Moore, Jr.
Governor



David K. Heydinger, M.D.
Director

State of West Virginia

DEPARTMENT OF HEALTH
CHARLESTON 25305

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FILED

1986 NOV 21 PM 3:49

OFFICE OF THE SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL

LEGISLATIVE RULE: Licensure of Behavioral Health Centers (Amendments), West Virginia Department of Health Legislative Rule, Series 11, 1986. The attached legislative rule constitutes the official rule approved by the Board of Health on the 17th day of October, 1986 and filed pursuant to law with the West Virginia Secretary of State and the Legislative Rule-Making Review Committee.

David K. Heydinger, M.D.
Director of Health

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: Licensure of Behavioral Health Centers (Amendments)

1995 NOV 21 PM 3:49

Type of Rule: Legislative Interpretive Procedural
SECRETARY OF STATE

Agency Health Department Address 1800 Washington Street,
East, Charleston, West Virginia 25305

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

2. Explanation of above estimates:

At the present time the Department proposes to absorb the cost of any public hearings held under these amendments in its current budget. There is no information available from which to estimate the number of hearings which might be required.

3. Objectives of these rules:

The proposed amendments to the present Licensure of Behavioral Health Centers Rule establish rules of procedure for the conduct of public hearings concerning the location of group residential facilities for the behaviorally and developmentally disabled in single family residential districts.

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4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

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

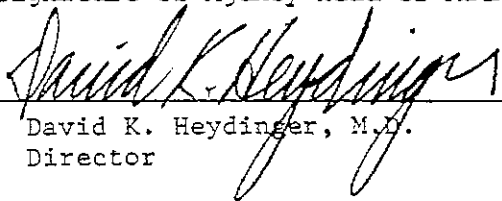
UNKNOWN

C. Economic Impact on Citizens/Public at Large.

UNKNOWN

Date: November 14, 1985

Signature of Agency Head or Authorized Representative ..



David K. Heydinger, M.P.
Director

DATE: October 27, 1986

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Department of Health

FILED

1986 NOV 21 PM 3:49

LEGISLATIVE RULE TITLE:

STATE OF WEST VIRGINIA

1. Authorizing statute(s) citation Chapter 27, Article 9,

Section 1 and Chapter 27, Article 17, Section 3.

2. a. Date filed in State Register with Notice of Hearing:

November 15, 1985

b. What other notice, including advertising, did you give of the hearing? Kanawha-Putnam Counties Association for Retarded Citizens; Mental Health Association of West Virginia; West Virginia Advocates for the Developmentally Disabled; West Virginia Municipal League; County Health Departments; Department of Human Services; Community Mental Health Centers and other interested parties received copies of the proposed rule.

c. Date of hearing (s): December 16, 1985

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

Attached X No comments received

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

f. Name and phone number of agency person to contact for additional information:

Joan Rutledge

Regulatory Services Division

348-3223

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

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

NA

b. Date of hearing: NA

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

NA

d. Attach findings and determinations and reasons:

Attached

FILED
1985 NOV 21 PM 3:49
OFFICE OF THE SECRETARY OF STATE

WEST VIRGINIA BOARD OF HEALTH
RULE ABSTRACT

FILED
1985 NOV 15 AM 12:50
REGISTRATION DIVISION

TITLE: Licensure of Behavioral Health Centers (Amendments)

TYPE: Legislative

AUTHORITY AND RELATED CODE: §27-9, §27-17, and 8-24-50(b)

NUMBER: 27-9, Series 11

ABSTRACT: The proposed rule adds a new section (§5.10) and a few other amendments to the present Licensure of Behavioral Health Center Rule in order to establish rules of procedure for the conduct of public hearings concerning the location of group residential facilities for the developmentally and behaviorally disabled in single family residential districts. The amendments add definitions of terms, language related to applicability, application procedures and the scheduling and conduct of public hearings. These amendments are proposed pursuant to changes in Chapter 8, Article 24, Section 50b and Chapter 27, Article 17 by the 1985 Legislature.

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

FILED
1986 NOV 21 PM 3:49
OFFICE OF THE CLERK
SECRETARY OF STATE

(PROPOSED)

WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Licensure of Behavioral Health Centers

Chapter 27-9
Series 11
1986

Amendments: Adding a New Section and Other
Amendments to Establish Rules of Procedure for
Public Hearings Concerning Group Residential
Facilities for the Developmentally and Behaviorally
Disabled in Single Family Residential Districts

For Submission to the
Legislative Rule-Making Review Committee

[PROPOSED]

West Virginia Board of Health
Legislative Rules

Licensure of Behavioral Health Centers

Chapter 27-9
Series 11
1986

FILED
1986 NOV 21 PM 3:49
OFFICE OF THE SECRETARY OF STATE

Title: Licensure of Behavioral Health Centers

Section 1. General

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

1.2. Authority - These legislative rules are issued under the authority Chapter 27, Article 9, Section 1 and Chapter 27, Article 17, Section 3 of the West Virginia Code. They are related to Articles 2A, 9 and 17 of Chapter 27 and Section 50b, Article 24, Chapter 8 of the West Virginia Code.

1.3. Filing Date

1.4. Effective Date

Section 2. Supersession and Repeal of Former Regulations - These rules supersede and repeal Licensure of Behavioral Health Centers, West Virginia Board of Health Legislative Rules, Chapter 27-9, Series 1, 1984.

Section 3. Application and Enforcement

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

3.23. Exceptions - These rules shall not apply to:

a) Hospitals governed by West Virginia Legislative Rule, Board of Health, Hospital Licensure, Chapter 16-5B, Series 1, (1983) as amended;

b) Twenty-four (24) hour inpatient services operated by a center located within a general or psychiatric hospital. Such services shall be licensed under West Virginia Legislative Rule, Board of Health, Hospital Licensure, Chapter 16-5B, Series 1, (1983), as amended;

- c) Nursing homes governed by West Virginia Legislative Rule, Board of Health, Nursing Home Licensure, Chapter 16-5C, Series I, (1983), as amended;
- d) Personal care homes governed by West Virginia Legislative Rule, Board of Health, Personal Care Home Licensure, Chapter 16-5C, Series II, (1983), as amended;
- e) Boarding homes;
- f) Non-supervised apartment living quarters occupied by clients of the center;
- g) Residential facilities providing mental health or substance abuse services for individuals under the age of eighteen (18) which are subject to licensure by the West Virginia department of human services;
- h) Adult family care homes under the supervision of the West Virginia department of human services;
- i) Self-help groups;
- j) Information and referral services; or
- k) Private practices in non-residential settings by licensed practitioners within the scope of their professional license or by other professions certified as follows: 1) social workers by the National Academy of Social Workers; 2) marriage counselors or family therapists certified by the American Association for Marriage and Family Therapy; or 3) addiction counselors certified by the West Virginia Association of Alcohol and Drug Abuse Counselors.

3.3. ⁴Enforcement - These rules shall be enforced by the director of the West Virginia department of health.

Section 4. Definitions

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

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

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

4.4. Behavioral Health Services - Those services intended to help individuals gain or regain the capacity to function adaptively in their environment, to care for themselves and their families, and to be accepted by society. This includes individuals with emotional or mental disorders, alcohol or drug abuse problems, and mental retardation or other developmental disabilities.

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

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

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

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

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

4.10. Department - West Virginia department of health.

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

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

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

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

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

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

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

4.18. Group Residential Facility - See Residential Services.

4.1819. Guardian - A person or agency charged with some degree of care and management of an individual under state law.

4.1820. 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.

4.1821. Institution - An organization that provides behavioral health services. See definition of center.

4.1822. License - The document issued by the department which indicates approval for the operation of a behavioral health center.

4.1823. Licensee - A center duly licensed by the department 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.

4.235. 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.

4.246. 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.

4.257. 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.

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

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

4.2830. Program - An organized system of services designed to address the treatment needs of clients.

4.2931. 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.

4.302. 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 shall include, but not be 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; (3) is licensed by the department of health or the department of human services; and (4) complies with the state fire commission for residential facilities." Under this rule (§14.3), such group residential facilities are limited to no more than 10 residents per module, house or cottage.

4.343. 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.

4.324. 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.

4.335. 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.

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

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

4.368. 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.

4.379. 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.

4.3840. 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.

4.3941. Variance - A declaration that a rule may be accomplished in a manner different from the manner set forth in the rule.

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

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

Section 5. State Administrative Procedures

5.1. General Licensing Provisions

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

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

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

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

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

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

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

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

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

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

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

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

5.2. Construction, Renovation, Alterations

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

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

5.3. Initial License

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

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

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

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

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

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

5.3.4. 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 department.

(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.

5.3.45. 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 5.3.5(a).

5.4. Renewal License

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

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

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

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

5.5. Provisional License

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

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

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

5.6. Inspections

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

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

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

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

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

5.7. Complaint Investigation

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

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

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

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

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

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

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

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

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

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

5.8. Plans of Correction

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

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

5.8.3. The plan of correction shall specify:

- (a) the deficiencies to be corrected;

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

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

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

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

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

(b) the seriousness of the violation;

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

(d) any other relevant factors.

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

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

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

5.9. Department Reports and Records

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

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

5.9.3. Reports and records related to these rules shall be treated as public information, except as specified herein regarding complaints, from the time they are received by or completed by the director, except that, before releasing a report or record deemed public information, the director shall delete any information which could reasonably be expected to permit identification of a client and any information of a personal nature such as that kept in a medical, personal or similar file, or other information required to be kept confidential by state and federal law and rules and regulations. When an inspection report is released prior to the center's submission of or the director's review of a plan of correction, such fact shall be identified with the release.

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

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. 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 department.

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 department is presented with a request for a hearing as described in Subsection 5.10.1.3, 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 5.10.2.1.

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 department 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.

The remainder of the rule is unchanged.

Proposed Rules
Public Comments Received
Discussion and Response

Title, Type and Number: Licensure of Behavioral Health Centers
(Amendments), Chapter 27-9, Series 11, 1986.

Date and Location: December 16, 1985 (1:00 p.m.), Conference Room, P & G Building, 2019 Washington Street, East, Charleston, West Virginia, 25305.

A public hearing regarding this rule was held on December 16, 1985 and was attended by one person, representing the Kanawha-Putnam Counties Association for Retarded Citizens, who delivered written comments in support of the proposed rule. Written comments were also received from three other organizations: Eastern Panhandle Training Center (EPTC); Mental Health Association in West Virginia (MHAWV); and, West Virginia Advocates for the Developmentally Disabled (WVADD).

1. Comment (EPTC): §4.32. EPTC noted that for its purposes behaviorally disabled means those persons who are mentally retarded with behavioral disorders. EPTC has proposed that there be a second definition to differentiate between mentally retarded and behavioral disorders associated with the Chronically Mentally Ill (CMI), as follows:

4.32. ... (2) Is occupied as a residence by no more than eight individuals who are developmentally disabled and not more than three supervisors, or is occupied as a residence by no more than four developmentally disabled, behavioral disordered (MR/BD) and not more than three supervisors or is occupied as a residence by not more than twelve individuals who are behaviorally disordered (CMI), and not more than three supervisors; (3)

Response: The definition used in Section 4.32 is the same as the definition for group residential facilities as defined in Chapter 27, Article 17, Section 1 of the West Virginia Code.

Proposed: No change.

2. Comment (MHAWV): §4.33. The MHAWV feels the definition of seclusion is inadequate as stated in this rule. At a minimum, the definition should include the fact that seclusion is an emergency control measure and may be used only as a last resort to curtail destructive behavior that is a threat to self or others and that has not responded to less restrictive measures. It may be used only as long as is necessary for the patient to gain control. Under no circumstances may it be used as a preventive measure or for punishment. MHAWV said that a more accurate definition would be one consistent with Section 4.38 because "time-out" is clearly a positive adaptive procedure.

Response: This proposed rule adds a new section (§5.10) and a few other amendments to the existing Licensure of Behavioral Health Centers Rule in order to establish rules of procedure for the conduct of public hearings concerning the location of group residential facilities, Section 4.33 is not part of the rule which is currently up for revision; therefore, it is the intent of the Department to leave the definition of seclusion as it appears in the existing rule.

Proposed: No change.

3. Comment (EPTC): §5.3.4. EPTC pointed out that this section of the rule says that no more than one such facility may be located on the same "block face" in any municipality; however, there is no definition of what is meant by "block face".

Response: We agree that "block face" should be defined within this section.

Proposed: §5.3.4(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 department.

4. Comment: §5.3.5(c). Department staff suggested that language in this section should be rewritten to clarify that the Director will consider the public hearing results prior to making a determination regarding the applicant's compliance with 5.3.5(a).

Proposed: §5.3.5(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 5.3.5(a).

5. Comment: §5.10.1.1. Department staff pointed out that the language in this section did not clearly specify that a hearing may be held upon receipt of an initial application but not upon receipt of renewal applications.

Proposed: 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. This section shall not apply to renewal applications.

6. Comment (MHAWV, WVADD): §5.10.2. Both commentors stated that in cases where licensure is questioned, the burden of proof should be on the municipalities given the fact that the applicant has already satisfied all regulations specified within the licensure regulations. WVADD also commented that the rules do not contain a standard of proof for the hearing as required by the amendment to West Virginia Code Section 8-24-506; they propose that the following language be added to Section 5.10.2.1 of the rule:

In any such hearing the burden of proof shall be on the local authority to show by clear and convincing evidence that location of a group residential facility at the proposed location would create substantial danger to the health, safety, and welfare of the residents of the neighborhood.

Response: Local authorities have zoning authority regarding the location of a proposed group residential facility; however, it is the responsibility of the Director of Health to determine whether a facility meets licensure requirements. In cases where licensure is questioned, the Director will make a determination in accordance with Section 5.3.5 of this rule.

Proposed: No change.

7. Comment: §5.10.2.9. Department staff suggested that this section be deleted because many of the subject areas enumerated for discussion in the public hearings are more appropriately addressed to local governmental authorities, as part of their routine oversight and approval responsibilities. The focus of the hearings should be those subjects for which the Department has responsibility; i.e., those which are part of licensing.

Response: We agree with the commentor, Section 5.10.2.9 should be deleted.

Proposed: ~~§5.10.2.9. Matters appropriate for discussion at the hearing include the following:~~

(a) ~~Statements regarding noncompliance with any applicable portion of this rule;~~

(b) ~~Violation of density and dispersal limits established in Chapter 27, Article 17, Section 2 of the West Virginia Code;~~

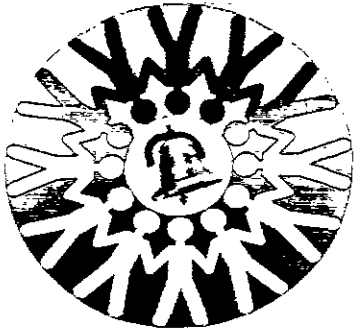
(c) ~~Adverse effects on water, sewer, sanitation or other services provided to the zone or district in which the proposed group-residential facility will be located;~~

(d) ~~The presence of physical, environmental, or other specific hazards posing a danger to the health, safety and welfare of the residents of the proposed facility;~~

(e) ~~Adverse effects on parking or traffic in the zone or district in which the proposed facility will be located;~~

(f) ~~Lack of appropriate access to transportation and behavioral health and medical services; and~~

(g) ~~Allegations that the proposed location is not consistent with the philosophy and purpose of the group-residential facility.~~



MENTAL HEALTH ASSOCIATION IN WEST VIRGINIA

702½ LEE STREET, EAST CHARLESTON, WEST VIRGINIA 25301 PHONE (304) 346-6005

December 16, 1985

TO: WV Department of Health
David K. Heydinger, M.D., Director

FROM: Mental Health Association in WV
Dorothy Whitehurst, Executive Director

SUBJECT: Licensure of Behavioral Health Centers (Amendments)

DEC 16 1985
QUALITY SERVICES
DIVISION

The Mental Health Association in West Virginia wishes to go on record as having reviewed the proposed amendments to the present Licensure of Behavioral Health Centers and submits the following comments:

No. 1 - Even though Section 4.313 Seclusion has not been amended, we wish to have it noted that the definition of seclusion in our estimation is inadequate as stated in this document. At minimal the definition should also include the fact that "seclusion is an emergency control measure only and may be used only as a last resort to curtail destructive behavior that is a threat to self or others and that has not responded to less restrictive measures. It may be used only as long as is necessary for the patient to gain control. Under no circumstances may it be used as a preventive measure or for punishment."

This more accurate definition would be consistent with section 4.368 Time Out, which very clearly says Time Out is a positive adaptive procedure.

No. 2 - It is our opinion that there is also a need for this document to contain a section that very clearly states that in cases where licensure is questioned, that the burden of proof should be on the municipalities, given the fact that the applicant has already satisfied all regulations specified within the licensure regulations.

Thanks for the opportunity afforded to the MHA in WV to review and comment on the Licensure of Behavioral Health Centers.

D.W.
12/16/85

WVADD

Advocates for the Developmentally Disabled

December 16, 1985

RECEIVED
DEC 20 1985
REGULATORY SERVICES
DIVISION

Regulatory Services Division
WVDOH

Room Seven, Second Floor, P & G Building
2019 Washington Street East
Charleston, West Virginia 25305

Dear Dr. Heydinger:

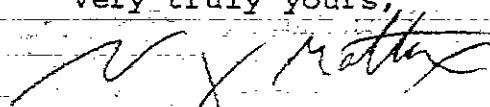
We have reviewed the proposed amendments to the rules for Licensure of Behavioral Health Centers, and relating to establishment of group residential facilities in single family districts.

These rules appear to be appropriate and consistent with the legislative intent in providing for such hearings. Our only comment is that the rules do not contain a standard of proof for the hearing as required by the amendment to W. Va. Code, Section 8-24-506. We propose the following language to be added to Section 5.10.2.1 of the regulation:

In any such hearing the burden of proof shall be on the local authority to show by clear and convincing evidence that location of a group residential facility at the proposed location would create substantial danger to the health, safety, and welfare of the residents of the neighborhood.

Please provide us with a copy of these rules when they are issued in final form.

Very truly yours,



Nancy Mattox
Executive Director

NM/djm

304-346-0847 or 1-800-642-9205 (voice and TTY)
1200 Quarrier Street, Suite 27, Charleston, West Virginia 25301



EPTC

EASTERN PANHANDLE TRAINING CENTER
Route 6 • Box 271 • Martinsburg, WV 25401
Phone (304) 754-7921
Director: Joel C. Galperin

December 9, 1985

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Kay Howard, Director
Regulatory Services Division
State of West Virginia
Department of Health
1800 Washington Street, East
Charleston, WV 25305

RECEIVED
DEC 17 1985
REGULATORY SERVICES
DIVISION

RE: Licensure of Behavioral Health Centers - Chapter 27-9
Series II 1986

Dear Ms. Howard:

I am concerned about two (2) sections of the proposed changes that directly affect the residential program at the Eastern Panhandle Training Center.

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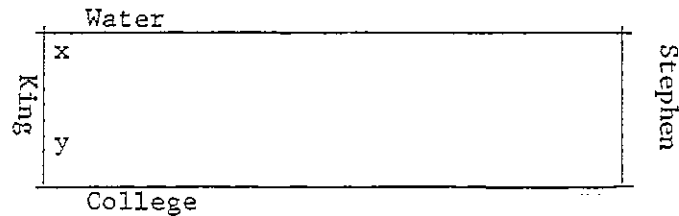
First, Section 4.32 styled Residential Services (twenty-four hour) . . . "Or is occupied as a residence by not more than twelve individuals who are behaviorally disabled and not more than three supervisors." For our purposes, behavioral disabled means those persons who are mentally retarded with behavior disorders (MR/BD). We propose that there be a second definition to differentiate between MR/BD and the behavioral disorders associated with the chronically Mentally Ill (CMI). We propose the following;

4.32 . . . (2) Is occupied as a residence by no more than eight individuals who are developmentally disabled and not more than three supervisors, or is occupied as a residence by no more than four developmentally disabled, behavioral disordered (MR/BD) and not more than three supervisors or is occupied as a residence by not more than twelve individuals who are behaviorally disordered (CMI), and not more than three supervisors; (3) . . .

My second concern is Section 5.3.4 subsection (b) . . . "Provided, that no more than one such facility may be located on the same block face in any municipality. My concern is due to my lack of knowledge as to what defines a block face and the fact

Kay Howard
Page 2
December 9, 1985

that we have a group home on King Street near College Street, marked y, and another group home has been targeted to be built on King & Water Street, marked x.



Therefore, it is essential that we know the definition so that we do not violate this section of the law.

Sincerely,

Leon T. Yancey
Assistant Director

LTY/rj

cc: Joel C. Galperin
Director



WHEN YOU GIVE HELP
YOU GIVE HOPE

Association for Retarded Citizens

in Kanawha-Putnam Counties, Inc.

Room 507, Medical Arts Building • 1021 Quarrier Street
CHARLESTON, WEST VIRGINIA 25301
Phone (304) 344-3403



A United Way Agency

Phyllis M. Potterfield, President

December 13, 1985

Robert L. Ritchie, Jr., Executive Director

Dr. David K. Heydinger, M.D.
Director of Health
West Virginia Department of Health
1800 Washington Street, East
Charleston, West Virginia 25305

DEC 16 1985
REGULATORY SERVICES
DIVISION

Dear Dr. Heydinger:

This letter is written in support of the proposed rule relating to Licensure of Behavioral Health Centers (Chapter 27-9, Series 11, 1986).

The Association for Retarded Citizens was supportive of the recent legislation (Senate Bill 162) which removed certain zoning restrictions applicable to group homes for persons with developmental disabilities. We look upon group homes in residential neighborhoods as an important part of the continuum of residential services which is being implemented to meet the needs of developmentally disabled West Virginians. Residential settings for group homes enhance the opportunity for the persons residing in such settings to enjoy a normalizing environment in the least restrictive setting. In West Virginia and in surrounding states, group homes have been located in residential neighborhoods with great success.

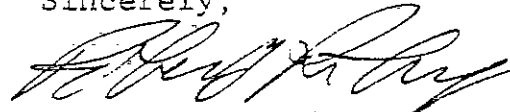
The rule now under consideration is in keeping with the legislative intent of Senate Bill 162. The rule provides for proper notification of the local authority, and for a fair and appropriate public comment procedure. Matters of legitimate concern will be addressed within licensure process, rather than as a separate, and more cumbersome compliance requirement. Attention in the rule is properly focused on existing licensure requirements; those already established by the Department of Health and applied equally to group homes in varying locations in this state. Several matters which fall within the purview of both the licensing agency and the local zoning authority are specified as being appropriate for discussion and consideration. Final responsibility for authorizing the operation of a group residential facility remains with the director of health as mandated by the legislature.

MEMBER OF THE ASSOCIATION FOR RETARDED CITIZENS, NATIONAL

Dr. David K. Heydinger, M.D.
December 13, 1985
Page 2

The proposed rule ultimately protects the right of persons with developmental disabilities to live in appropriate settings without zoning regulations based upon their handicapping condition. We are hopeful of the timely approval of the rule.

Sincerely,



Robert L. Ritchie, Jr.
Executive Director

RLR:arp