

ABSTRACT - PROPOSED RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
DIVISION OF HEALTH
LICENSURE OF BEHAVIORAL HEALTH SERVICES

64 CSR 11

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

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

7/28/96

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Licensure of Behavioral Health Services, 64 CSR 11

Type of Rule: Legislative Interpretive Procedural

Agency: Bureau for Public Health (For the Division of Health)
Department of Health and Human Resources

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

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

2. Explanation of above estimates.

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

3. Objectives of this rule:

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

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

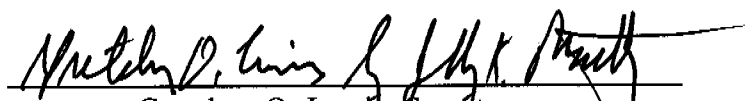
None.

C. Economic Impact on Citizens/Public at Large.

None.

Date: July 26, 1996

Signature of Agency Head or Authorized Representative

A handwritten signature in black ink, appearing to read "Gretchen O. Lewis", is written over a horizontal line.

Gretchen O. Lewis, Secretary
Department of Health and Human Resources

PROPOSED

TITLE 64

**WEST VIRGINIA ADMINISTRATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

LICENSURE OF BEHAVIORAL HEALTH SERVICES

Series 11

199_

WEST VIRGINIA ADMINISTRATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
LICENSURE OF BEHAVIORAL HEALTH SERVICES
64 CSR 11

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FILED

TITLE 64
WEST VIRGINIA ADMINISTRATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

JUL 29 3 20 PM '96

SERIES 11
LICENSURE OF BEHAVIORAL HEALTH
SERVICES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

GENERAL INTRODUCTION

REGULATIONS

§64-11-1. General

1.1. **Scope** - This rule and the regulations contained in this document establish general standards and procedures for the licensure of behavioral health services and programs to ensure the protection of the health, safety and welfare of individuals receiving behavioral health services.

1.2. **Authority** - W.Va. Code §§27-9-1 and 27-17-3.

1.3. **Filing Date** -

1.4. **Effective Date** -

1.5. **Repeal of Former Rule** - This legislative rule repeals WV 64 CSR 11, Licensure of Behavioral Health Centers, 1990.

§64-11-2. Definitions

2.1. **Admission Criteria** - Specific standards to be considered in determining appropriate client placement and resultant referral to a level of care.

2.2. **Advocate** - A person or agency which acts on behalf of the client to establish, expand, protect and enforce his or her human, legal and civil rights in the client's best interest.

2.3. **Applicant** - The organization who submits an application for a license or for renewal of a behavioral health license.

2.4. **Authority** - The office or individual of the West Virginia Department of Health and Human Resources or other employee acting on behalf of the State Department of Health and Human Resources.

2.5. **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. Aversive procedures include physical, mechanical and chemical restraint, time-out and seclusion.

2.6. **Behavior Intervention Plan** - A written plan whose outcome is the to teach adaptive, socially appropriate skills which replace negative behaviors.

2.7. **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.

2.8. **Certified Alcoholism and Drug Abuse Counselor** - A person who is certified by the West Virginia Certification Board for Addiction Professionals.

2.9. **Chemical Restraint** - A prescribed medication to alter an individual's maladaptive behavior which also has the effect of decreasing adaptive behavior to a significant extent such that it effects the individual's ability to learn or cope with the demands of daily living.

2.10. **Chief Executive or Administrator** - The staff person appointed, designated or hired by the organization to be responsible for the day-to-day operation of the facility, facilities or services operated by the licensee.

2.11. **Children's Residential Treatment Service** - Any residential treatment service which houses children ages six (6) to 18.

2.12. **Civil Rights** - The rights of personal liberty guaranteed to citizens by the Constitutions of the United States and the State of West Virginia, and by federal and state statutes.

2.13. **Client** - An individual receiving direct services from the staff of an organization.

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

2.15. **Corporal Punishment** - The application of painful stimuli to the body in an attempt to terminate behavior or as a penalty for behavior, but does not mean aversive conditioning.

2.16. **Crisis Stabilization Services** - Shall have at least one (1) physician to provide primary medical coverage and who shall be on call 24 hours a day. At least one (1) registered nurse or physician's assistant shall be on-duty and onsite 24 hours a day, seven (7) days a week.

2.17. **Critical Incident** includes the following alleged, suspected, or actual occurrence of:

2.17.1. Abuse.

2.17.2. Neglect.

2.17.3. Death, including natural death, accidental death, suicide, and homicide.

2.17.4. Attempted suicide.

2.17.5. Behavior shown by an individual that may lead to serious/adverse injury or significant property destruction.

2.17.6. Fire resulting in injury to an individual, relocation of an individual, or an interruption of services.

2.17.7. Any major involvement of an individual with law enforcement authorities.

2.17.8. Serious injury to an individual which requires hospitalization or results in permanent physical damage as a result of the injury.

2.17.9. Adverse reaction of a life threatening degree because of an administered drug or dietary food item.

2.17.10. A medication error resulting in serious consequences for an individual which is an apparent administration of an unprescribed or a prescribed drug at an incorrect frequency or dosage, or a dietary error resulting in an ingestion of a contraindicated food item.

2.17.11. Extended and unauthorized absence of an individual that exceeds the individual program plan's identification for community access.

2.17.12. Removal of an individual from either residential or program services without the consent of the individual, guardian, or appropriate authorities.

2.18. **Day Treatment Services** - An organized and structured treatment service occurring outside the residence and non-residential in nature and occurs four (4) to five (5) days per week.

2.19. **Death Notification** - The written statement of the client's death and the location of the death certificate and autopsy report, if performed, which is included in the file of clients who become deceased while receiving services. Notice is also sent to other persons and agencies in compliance with state and federal regulations.

2.20. **Department** - West Virginia Department of Health and Human Resources.

2.21. **Detoxification** - The process of eliminating the toxic effects of drugs and alcohol from the body. Supervised detoxification methods include social detoxification and medical monitoring or management and are intended to avoid withdrawal complications.

2.22. **Discharge** - The termination of the client's affiliation with an organization.

2.23. **Discharge Planning** - The organized process of identifying less restrictive alternatives which will be appropriate for a client at a later date, the approximate length of stay in the current service, and the criteria for exit from the current service. Discharge planning shall begin upon admission to an organization's services and shall include provision for appropriate follow-up services.

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

2.25. **Emergency Procedures** - Procedures necessary to control severely aggressive or destructive behaviors that place the individual or others in imminent danger of physical harm when those behaviors reasonably could not have been anticipated.

2.26. **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.

2.27. **Facility** - An institution, group residence, sheltered workshop activity center, day program, community mental health center, counseling center, clinic, or other entity by these or other names, providing mental health, mental retardation or alcohol and drug abuse services.

2.28. **Functional Analysis** - An analysis of the events (antecedents) which lead up to the individual's maladaptive behaviors and the consequences (what happens after the behavior occurs) of these behaviors to assist in predicting when and where the behaviors will occur.

2.29. **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.

2.30. **Governing Body** - The group of persons with ultimate responsibility of a licensed behavioral health center, for example, the board of directors of a corporation, the general partners of a partnership, or the trustees of a trust.

2.31. **Grievance Procedure** - A procedure for responding to an expression of a cause of distress believed by a client, or by another acting on behalf of a client, to constitute a reason for a complaint.

2.32. **Group Residential Facility** - A facility which: (1) Provides services and supervision for individuals who have chronic mental illness, a developmentally disabled disability or are 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 behavioral disabled and not more than three supervisor; (3) is licensed by the Department of Health and Human Resources; and (4) complies with the state fire commission for residential facilities.

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

2.34. **Human Rights Committee** - A specially constituted committee or committees whose primary function is to assist the facility in the promotion and protection of client's rights, and to review, approve and monitor individual programs designed to manage inappropriate behaviors and other programs that are intrusive or involve risks to the client's protection and rights.

2.35. **Independent Living Arrangement** - A minimally supervised residential alternative, providing the client with support services as needed or requested.

2.36. **Informed Consent** - The written verification that a client is capable of exercising his/her rights and making decisions, or the limitations of his/her abilities in such decision making processes; the written verification that the client, parent or guardian has been informed of the advantages and disadvantages of all aspects of the treatment being afforded the client; and that the client, parent, or guardian agrees to such treatment.

2.37. **Intensively Staffed** - A level of staffing, based on client need, which is at the ratio of one staff to one or two clients. Primary staff members or other assigned support staff shall be with the client 24 hours per day.

2.38. **Interdisciplinary Team** - A group of persons representing the professions, disciplines or service areas that are relevant to identifying client needs and designing a program to meet those needs. This team also includes the client and/or his or her legal representative.

2.39. **Legal Representative** - One of the following:

2.39.1. A committee appointed pursuant to WV Code §27-11-1 et seq.;

2.39.2. A guardian appointed pursuant to WV Code §44-10-1 et seq.; or

2.39.3. A person, power of attorney, or any other entity lawfully appointed or deemed to act on behalf of a client.

2.40. **Licensable Organization** - An organization which provides care or treatment for persons with mental illness, mental retardation, or problems with substance abuse.

2.41. **License** - The document issued by the secretary which indicates approval for the operation of a behavioral health facility. All services provided by the organization will appear on the license and meet the requirements set forth for such service.

2.42. **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.

2.43. **Medical Emergency** - An unanticipated medical crisis requiring an intervention not previously a part of a client's treatment plan.

2.44. **Mental Illness** - A manifestation in a person of significantly impaired capacity to maintain an acceptable level of functioning in the areas of intellect, emotion, and physical well being. A mental disorder or functioning classifiable under the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association that affects the well-being or behavior of an individual to such an extent that for his or her own welfare or the welfare of others, he or she requires care and treatment.

2.45. **Mental Retardation** - Substantial limitations in present functioning, it is characterized by significantly sub-average intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skills: communication; community use; self care; self direction; living; health and safety; social skills; functional academics; leisure; or work. Mental retardation manifests before age eighteen (18).

2.46. **Mental Retardation Respite Care Services** - Services provided to individuals or families who care for persons with mental retardation. These services allow families or individuals to be relieved of the responsibility of caring for an individual with mental retardation for brief periods of time not to exceed ninety-six (96) consecutive hours.

2.47. **Neglect** - Failure to provide goods and services necessary for the individual to avoid physical harm. This includes, but is not limited to, lack of or failure to implement a behavior plan and inappropriate application of behavior intervention.

2.48. **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.

2.49. **On-Duty, Onsite** - A staff person who is on the facility's premises and has the obligation to carry out any job responsibilities designated in his/her job description.

2.50. **Organization** - Any entity not operated by an agency of the federal government by whatever name or designation, which provides care or treatment for mentally ill or mentally retarded persons, or persons addicted to the intemperate use of narcotic drugs, alcohol or other stimulants. This term does not apply to:

2.50.1. Hospitals governed by Hospital Licensure, 64 CSR 12, 1994;

2.50.2. Twenty-four (24) hour in services operated by an organization located within a general or psychiatric hospital. Such services are licensed under Hospital Licensure, 64 CSR 12, 1994;

2.50.3. Nursing homes governed by Nursing Home Licensure, 64 CSR 13, 1990;

2.50.4. Personal care homes governed by Personal Care Home Licensure, 64 CSR 14, 1983;

2.50.5. Residential board and care homes governed by Residential Board and Care Homes Regulations, 64 CSR 65, 1995;

2.50.6. Non-supervised apartment living quarters occupied by clients of the organization;

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

2.50.8. Self help groups;

2.50.9. Information and referral services; or

2.50.10. A private practice in a non-residential setting by a licensed practitioner within the scope of his/her professional license or by other professions certified as follows:

2.50.10.1. Social workers holding a Master's Degree in social work and licensed through the West Virginia Board of Social Work Examiners as a Licensed Independent Clinical Social Worker or as a Licensed Certified Social Worker; or

2.50.10.2. Marriage counselors or family therapists certified by the American Association for Marriage and Family Therapy; or addiction counselors certified by the West Virginia Association of Alcohol and Drug Abuse Counselors.

2.51. **Outpatient Services** - A series of time limited, structured, face-to-face sessions, that work toward the attainment of mutually defined objectives as identified in the individual treatment plan. When the client is a child or adolescent, the face-to-face interaction may also be with family members and/or parent, legal representative and significant others when the intended outcome is improved functioning of the child or adolescent and when such interventions are part of the individual treatment plan.

2.52. **Partial Hospitalization** - Structured individual client and group activities and therapies that are planned and goal-oriented, and are specified in a comprehensive individualized treatment plan. This is an ambulatory treatment modality that offers, on a less than twenty-four hour basis, the diagnostic, therapeutic and rehabilitative services ordinarily provided in a comprehensive psychiatric inpatient hospital or unit.

2.53. **Physical Abuse** - Harmful or painful physical contact, including, but not limited to, the intentional striking, shoving, or pushing of a client by anyone, including another client. Also included is the use of excessive force when restraining a client (e.g., using methods to restrain a client which are not outlined in staff training) and acts which constitute sexual activity. Physical abuse includes, but is not necessarily limited to:

2.53.1. Unnecessary or improper use of physical restraint;

2.53.2. Placement in seclusion without proper orders or cause;

2.53.3. Use of unnecessary force in dealing with an acting-out client;

2.53.4. Slapping, kicking or hitting;

2.53.5. Inappropriate physical horseplay with the individual;

2.53.6. Inappropriate removal from a treatment program, restriction of communications, and withdrawal of privileges for punitive reasons;

2.53.7. Withholding of meals;

2.53.8. Corporal punishment of any kind; or

2.53.9. Sexual abuse, physical advances, caressing, intercourse, kissing.

2.54. **Policies and Procedures Manual** - A document that describes the philosophy, services, organization, policies, and procedures for implementing services to the clients of a facility.

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

2.56. **Private Practice Group** - One or more practitioners of the healing arts or practitioners of the behavioral science professions who are individually licensed under West Virginia State law, and their licensed employees, who have for the purpose of convenience or efficiency associated or grouped themselves through the use of shared office space or administrative support in order to provide professional services within the scope and limits of their individual and respective professional licenses.

2.57. **Procedures** - The designated methods by which policies are to be implemented and the organization's operations are to be carried out.

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

2.59. **Protective Devices** - Any device such as a brace, pad, helmet, covering, bandage, etc., used to aid in the healing of an injury. Protective devices do not restrict or limit movement of any body part or limb.

2.60. **Provider** - The organization, or distinct part thereof, operating a distinct program.

2.61. **Psychiatric Emergency** - An unanticipated psychiatric crisis requiring an intervention not previously a part of a client's treatment plan.

2.62. **Psychotropic Medication** - A drug that has an altering effect on the mind.

2.63. **Quality Assurance** - A program designed to objectively and systematically monitor and evaluate the quality and appropriateness of the client service delivery system, and identifying methods to improve and resolve service delivery problems.

2.64. **Residential Crisis Unit (CRU)** - A service or facility which treats clients in need of in psychiatric care, in the community as opposed to hospitalization.

2.65. **Residential Services (Twenty-Four Hours)** - Twenty-four (24) hour care in combination with a treatment or training program in a setting other than a hospital. Services provide a range of living arrangements, from highly structured, intensively programmed and supervised to relatively independent lifestyles requiring only a modest amount of staff support and monitoring. This definition includes, but is not limited to, group residential facilities as specifically defined in Section 1, Article 17, Chapter 27 of the West Virginia Code.

2.66. **Residential Treatment Services (Twenty-Four Hours)** - A 24 hour facility that provides treatment services to adults or children who are not in need of medically monitored detoxification.

2.67. **Restraint** - A systematic, planned intervention using manual or mechanical restraints. This type of restraint is used primarily for the purpose of reducing or eliminating inappropriate behavior and is used in conjunction with teaching the individual appropriate substitute behavior. When restraint is used, the individual should be released from restraint as quickly as possible.

2.68. **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.

2.69. **Secretary** - The secretary of the West Virginia Department of Health and Human Resources or other employee acting on behalf of the secretary.

2.70. **Self-Preservation** - The capability of removing one's physical self from situations involving imminent danger, such as fire.

2.71. **Semi-Independent Living Facility** - An individual apartment or group home which houses persons with disabilities, in which onsite staff are provided to the degree that the health and safety of clients is not at risk, but not on a 24 hour basis. Primary staff members and other assigned support staff shall be available to each client, on-call on a 24 hour per day basis.

2.72. **Service** - A functional division of a program. Also used to indicate the delivery of care.

2.73. **Staff** - Personnel paid by the organization to provide services.

2.74. **Substance Abuse** - A maladaptive pattern of psychoactive substance use indicated by at least one of the following:

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

2.74.2. Recurrent use in situations in which use is physically hazardous, such as driving while under the influence.

2.75. **Substantial Compliance** - A level of compliance with the requirements of this rule such that any identified deficiencies pose no greater risk to client health or safety than the potential for causing minimal harm.

2.76. **Time-Out** - Time-out is a 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.

2.77. **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 enable persons served to meet identified goals and objectives.

2.78. **Treatment Plan** - A written plan developed by an interdisciplinary team that identifies needs of the client and appropriately meets the identified needs of the client through specified goals, measurable objectives, activities and services determined through the 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, or individual rehabilitation plan. For Medicaid reimbursement, refer to the Medicaid manual section on treatment plans.

2.79. **Verbal Abuse** - Insulting or coarse language directed toward a client which subjects the client to humiliation or degradation, including, but not limited to, swearing at a client, name calling, taunting, and other inappropriate verbal behavior. Verbal abuse includes, but is not limited to:

2.79.1. Yelling and using derogatory, vulgar, profane or abusive and threatening language;

2.79.2. Threatening, abusive tones in speaking to clients;

2.79.3. Teasing, pestering, molesting, deriding, harassing, mimicking or any other way, humiliating a client;

2.79.4. Sexual abuse, any sexual innuendo, physical advance, or verbal suggestion, verbal threats; and

2.79.5. Derogatory remarks about a client or their family.

2.80. **Vocational Services** - The services provided to clients involving remunerative work experiences within a licensed facility and the provision of vocational activities on an industrial or productive vocational nature such as assembling, packaging, painting, stripping, wood or metal working, or manufacturing within the licensed facility.

2.81. **Volunteer** - A person who, without direct financial remuneration, provides services to the organization and who meets employment qualifications for health, safety and training.

2.82. **Waiver** - A declaration that a certain regulation or rule is inapplicable in a particular circumstance.

§64-11-3. Application and Enforcement

3.1. These regulations apply to any organization, as defined by this rule, whether for profit or not, which establishes a facility or offers services to individuals with emotional or mental disorders, alcohol or drug abuse problems, and mental retardation or other developmental disabilities as defined in §§27-9-1 and 27-17-3 of the West Virginia Code.

3.2. This rule is enforced by the secretary of the West Virginia Department of Health and Human Resources.

3.3. The secretary or his/her designee shall have the authority to conduct either announced or unannounced onsite inspections to determine compliance with these regulations.

3.4. The onsite inspections will be made accordingly with regard to minimal disruption of services. Inspections may include, but are not limited to:

3.4.1. Observation of service delivery;

3.4.2. Review of life safety and environment;

3.4.3. A review of clinical and administrative records; and

3.4.4. Interviews with clients, staff and administrators.

3.4. Each licensed organization shall have an inspection at least once every two (2) years except that in the case of 24 hour residential services, inspections shall be once a year.

3.5. Licensure inspections shall include every service and location operated by the organization.

3.6. The organization shall comply with any reasonable requests from the secretary to have access to the service, its staff, clients (with their permission), and records.

3.7. Within fifteen (15) days of completion of an inspection, the secretary will issue a report.

3.8. The organization shall submit within fifteen (15) days after receipt of the report and implement within a timely manner, a written plan of action to correct any deficiencies/noncompliance of these regulations which were identified through the inspection. The plan shall specify:

3.8.1. Action taken or proposed to correct the deficiencies and procedures to prevent its reoccurrence;

3.8.2. Date of completion for each action taken or to be taken; and

3.8.3. Signature of the person responsible for the operation of the organization.

3.9. The plan of correction shall be approved, modified or rejected by the secretary in writing.

3.10. When a plan of correction is rejected, no more than fifteen (15) days shall be allowed for submission of a revised plan.

§64-11-4. State Administrative Procedures

4.1. General Licensure Provisions

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

4.1.2. The license shall identify all locations operated by the organization and shall legally authorize the service site as a behavioral health facility or office.

4.1.3. Initial applications should be received not less than thirty (30) days and no more than sixty (60) days prior to the initiation of services.

4.1.4. Renewal applications should be received not less than sixty (60) days prior to the expiration of a current license. The secretary will notify the licensee of the information, fee or fees, and provide the documents needed to process the renewal application.

4.1.5. As a condition of licensure, an organization shall apply for an amended license under the following circumstances:

4.1.5.1. A change occurs in the geographic location of the service or facility (a move from one location to another);

4.1.5.2. A change occurs in the setting(s) where services are moved to a more intensive setting (e.g., home-based to day program);

4.1.5.3. A change in facility bed capacity;

4.1.5.4. A change in ownership; or

4.1.5.5. The initiation of any new program or service.

4.1.6. Based upon the organization's previous compliance with these regulations, an amended application may or may not require an onsite inspection prior to an amended license being issued.

4.1.7. Following the review of material submitted for application, the onsite inspection(s) and, if applicable, approval of a plan of correction, the secretary shall recommend issuance of a license in one of three categories:

4.1.8. A full six (6) month license shall be issued by the director of the secretary when the organization seeking initial licensure has not previously been licensed by the secretary. This category of licensure will be issued to those organizations establishing a program or service that does not have sufficient client participation to demonstrate reasonable compliance with these regulations. The six (6) month license permits the applicant organization to demonstrate compliance with the regulations and allows time for the secretary to evaluate the organization's compliance.

4.1.9. A provisional license shall be issued to an organization if: (a) a licensed organization seeks initial licensure for a program or service that is not in full compliance with these regulations; (b) the organization seeking relicensure does not fully comply with these regulations; or (c) in the event of an adverse action, which shall require a satisfactory compliance record of at least six (6) months following the secretary's approval of a plan of correction, and/or the implementation of an administrative or operational policy.

4.1.10. The issuance of a provisional license is contingent upon demonstrated substantial improvement in compliance with these regulations; shall expire no more than six (6) months from date of issuance; and, shall not be consecutively reissued, unless the provisional recommendation is that of the state fire marshal.

4.1.11. A full license will be issued based upon the secretary's determination that the licensee has demonstrated substantial compliance with these regulations. A full license shall be granted for two (2) years.

4.1.12. If the secretary determines that a license shall not be issued to one or more programs or services operated by the organization, the applicant will be denied in whole or in part and the organization so notified.

4.1.13. When a licensee has made timely and sufficient application for a new license (including payment of the required fee or fees), the existing license will not expire until the application process has been determined complete by the secretary.

4.2. Complaints

4.2.1. The secretary has the authority to conduct inspections of services involved in a complaint and any other investigations necessary to determine the validity of a complaint.

4.2.2. The investigative surveyor will notify the person responsible for the organization's operation or person in charge of the location involved in the complaint of the substance of the complaint only at the time of the investigation.

4.2.3. Within fifteen (15) working days of the investigation, the secretary will prepare a report of the results of the investigation and inform the organization in writing of the result along with a statement of deficiencies, if applicable. In such case, the organization will develop a plan for correction for the deficiencies within fifteen (15) days after receipt.

4.2.4. 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 requires disclosure in the particular instance.

4.2.5. 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.

4.2.6. Organizations 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.

4.2.7. Violation of the prohibitions of Subsection 3.6 of this rule shall be grounds for suspending or revoking a license.

§64-11-5. Department Reports and Records

5.1. A report of any inspection or investigation made by the secretary shall be in writing and shall be on file with the secretary.

5.2. Reports shall specify the nature of each deficiency and indicate the provision of this rule being violated.

5.3. Reports and records related to this rule shall be treated as public information, except as specified herein regarding complaints, from the time they are received by or completed by the secretary except that, before releasing a report or record deemed public information, any information which could reasonably be expected to permit identification of a client, and 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 shall be deleted. When an inspection report is released prior to the organization's submission of or the secretary's review of a plan of correction, such fact shall be identified with the release.

6.3.9. All money earned by a client shall accrue to the sole benefit of that client.

6.3.10. Clients shall be allowed to use their personal funds directly or allow the client's representative payee or other legally authorized person acting on behalf of the client to purchase incidentals and special needs items.

6.4 Organizational Responsibility

6.4.1. The organization shall assure client safety, guarantee quality of treatment and encourage positive outcomes.

6.4.2. The organization shall help clients become or be physically fit.

6.4.3. The organization shall maintain a policy and procedures pertaining to the clients' leisure time (physical fitness, recreation, etc.).

6.4.4. The organization shall report and investigate all occurrences of suspected or alleged abuse, or neglect of clients, or other critical incidents, which includes corrective actions.

6.4.5. The organization shall provide for an adequate number of qualified personnel during all hours of operation to support the functions of the organization and the provision of quality care.

6.4.6. If the organization conducts research, it shall maintain a policy and procedures concerning its purpose and conduct.

6.5. Human Rights Committee

6.5.1. The organization shall maintain a human rights committee to perform the following responsibilities:

6.5.1.1. Meet and maintain written minutes of all meetings, including the names and titles of all members and guests present and members absent;

6.5.1.2. Report at least annually to the governing body to provide a summary of activities and recommendations, if any;

6.5.1.3. Review, approve (prior to implementation) and monitor individual client behavior plans regarding the control of inappropriate behaviors that include aversive procedures, such as restraint and seclusion;

6.2.11.5. A requirement that meetings be held at least four (4) times a year, with minutes kept of each meeting;

6.2.11.6. A chief executive and shall:

6.2.11.7. State in writing the chief executive's relationship to the governance authority;

6.2.11.8. Delegate to the chief executive the authority and responsibility necessary to direct the organization in accordance with policy;

6.2.11.9. Set goals for the chief executive with his/her input; and

6.2.11.10. Provide for the presence of the chief executive or his/her designee at meetings of the governance authority and standing committees;

6.3. Financial

6.3.1. The organization shall be audited at least every year by an independent Certified Public Accountant.

6.3.2. The organization shall maintain financial viability as evidenced by an approved line of credit or fund balance sufficient to cover ninety (90) days of operating expenses.

6.3.3. The organization shall operate on an approved annual budget. The budget shall reflect a realistic estimate of expenses and revenues for each fiscal year prior to the beginning of that year.

6.3.4. All financial records shall be kept according to Generally Accepted Accounting Principles (GAAP) or other applicable standards.

6.3.5. The organization shall have indemnity coverage to include general liability, professional liability, vehicular liability and property damage.

6.3.6. Staff are prohibited from serving as guardians, conservators, and/or representative payees for persons served.

6.3.7. If the organization handles client funds, there shall be a current record, keeping separate accounts of each client's funds. Clients shall be provided a statement of their account at least monthly.

6.3.8. The client's financial rights shall be respected.

6.2.4. The governing body shall approve policies and procedures regarding ethics that address the following issues:

6.2.4.1. Communication of the organization's ethical standards to each person served;

6.2.4.2. External communications about the organization;

6.2.4.3. Information regarding the persons served; and

6.2.4.4. Issues related to service delivery.

6.2.5. The organization should have policies and procedures for investigating and acting upon allegations of violations of the organization's ethical standards.

6.2.6. The governing body shall operate effectively.

6.2.7. A chief executive qualified by education and experience shall be designated.

6.2.8. A plan of operation shall be developed which includes a statement of philosophy, purpose, program goals, and description of basic services.

6.2.9. The organization should regularly obtain and utilize documented input that provides for the infusion of new ideas from various sources including, but not limited to:

6.2.9.1. The persons served; and

6.2.9.2. A wide range of related community interests.

6.2.10. The purpose of the organization, as well as the appropriateness of its governing documents and adherence to their specifications, should be reviewed periodically.

6.2.11. When a board of directors is identified as the governance authority, policies and procedures shall provide for:

6.2.11.1. Orientation of new members to the operations of the organization;

6.2.11.2. A description of the board's committee structure;

6.2.11.3. A process to evaluate the effectiveness of the process of governance;

6.2.11.4. Prevention against the development of a conflict of interest between an individual member of the board and the organization;

§64-11-6. Governance

Discussion: An effective organization operates with a clearly defined mission, body of governance, plan of organization and process of accountability.

6.1. Operating Authority

6.1.1. The organization's administrative structure and lines of authority shall be clearly defined.

6.1.2. The current license shall be prominently displayed at all service locations operated by the organization, except in 24 hour services, where it shall be shown upon request.

6.1.3. The organization shall have evidence of its operating authority. A public organization shall have documents describing the administrative framework of the governmental department of which it is a component. A private organization shall have its charter or articles of incorporation and by-laws.

6.1.4. The organization and its employees, contract providers, students, and volunteers must comply with:

6.1.4.1. The applicable regulations for licensed facilities and services;

6.1.4.2. Terms of the license;

6.1.4.3. Other applicable federal, state or local laws and regulations;

6.1.4.4. Applicable human rights regulations; and

6.1.4.5. The organization's own policies.

6.2. Governing Body

6.2.1. The governing body shall be clearly identified and its role defined.

6.2.2. The organization shall document the role and actions of the governing body which shall be consistent with its operating authority.

6.2.3. In those organizations whose governing body consists of a board of directors, time limits for members shall not exceed four (4) years.

6.5.1.4. Review of internal and external investigations of complaints and client grievances, including alleged abuse, mistreatment or neglect; and

6.5.1.5. Review, approve (prior to implementation) and monitor every three (3) months or when changes in the project procedures are contemplated, research activities.

6.5.2. The human rights committee shall assure that the use of aversive procedures are conducted only with the written informed consent of the affected client or legal representative.

6.5.3. The organization shall demonstrate that it protects the human rights of its clients through the use of safeguards which feature consumers prominently in their activities.

6.5.4. A service with fewer than thirty (30) clients shall have a minimum of three (3) members on the human rights committee and a service with more than thirty (30) clients shall have a minimum of five (5) members.

6.5.5. At least one third of the committee members shall be consumers and no more than one third can be staff of the service. A committee may have more than the minimum number of members required. A human rights committee may serve more than one organization.

6.6. Transportation Services

6.6.1. The organization shall demonstrate that it has a performance record of safety transporting clients.

6.7. Quality Assurance

6.7.1. The organization shall monitor and evaluate service quality and effectiveness and make program improvements, when indicated.

6.8. Personnel

Discussion: The purpose of these regulations is to ensure that qualified staff are employed in compliance with applicable state and federal regulations.

6.8.1. The organization shall provide for an adequate number of qualified personnel during all hours of operation to support the functions of the agency and the provision of quality care.

6.8.2. Employment of individuals with a conviction or prior employment history of child or client abuse, neglect or mistreatment is prohibited.

6.8.3. Direct service staff members shall be competent responsible persons aged eighteen (18) years of age or older.

6.9. Job Descriptions

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

6.10. Staff Training - General

6.10.1. Staff shall be able to demonstrate that they have been orientated on treatment policies and methods, client rights and the use of emergency procedures, such as crisis intervention and restraints. Orientation training shall commence on the first day of employment.

6.10.2. All regular staff shall be trained in emergency first aid, infectious disease control 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 (2) years.

6.10.3. Employees and providers shall be trained in the proper management of clients with seizure or behavioral disorders prior to being assigned to work with individuals with such disorders.

6.10.4. Employees shall be free of communicable diseases.

6.11. Requirements for Residential Staff

6.11.1. In residential services, the organization shall provide staff with:

6.11.1.1. Immediate access to relevant information in the client records in case of a medical or other type of emergency; and

6.11.1.2. Assurance that the organization will transfer clients who pose an imminent physical danger to themselves or others to an appropriate acute care facility, or provide coverage to manage the client at the service site.

6.12. Personnel Records

6.12.1. The organization shall maintain a confidential personnel record for each employee, which shall contain:

6.12.1.1. Date of hire;

6.12.1.2. A job title;

- 6.12.1.3. A record of employment;
 - 6.12.1.4. A record of education and other training;
 - 6.12.1.5. Job application;
 - 6.12.1.6. Written references and/or a record of verbal references;
 - 6.12.1.7. Criminal Identification Bureau (CIB) screening, when applicable; and
 - 6.12.1.8. Employee performance evaluations.
- 6.12.2. Personnel records shall be kept current at all times.
- 6.12.3. An employee shall have access to his or her personnel record and shall have the right to designate others in writing to have access to the record.

§64-11-7. Health and Safety

Discussion: To ensure the safety of clients receiving behavioral health services, the identification, monitoring, evaluation, reduction or elimination of risks contributes to a safe and healthful environment.

7.1. Policy

7.1.1. The organization shall demonstrate that it identifies, monitors, reduces and eliminates health and safety risks, including infection control and emergency preparedness.

7.1.2. Accessibility to people who are handicapped shall be provided in accordance with Sections 503 and 504 of the Social Security Act, the Americans with Disabilities Act, and West Virginia Code §18-10F-1 et seq.

7.2. Safety Inspections

7.2.1. Safety inspections shall be conducted with the frequency that guaranties a safe environment. The results of these inspections shall improve the clients' safety.

7.3. Fire

7.3.1. The organization shall comply with the applicable rules of the State fire commission.

7.3.2. The organization shall demonstrate that clients and staff are trained in fire safety procedures which include at least: evacuation routes; emergency assistance phone numbers; and safe areas. New clients and staff shall be given this training within the first 24 hour period of their admission to or beginning of employment by the facility.

7.3.3. Unlicensed Residential Sites - Apartments, duplexes, etc, that house clients of the organization in accordance with their treatment plans shall comply with the following regulations of Chapter 21 of the Life Safety Code:

7.3.3.1. In any dwelling or living unit of two (2) rooms or more, every sleeping room and every living area shall have at least one (1) primary means of escape and one secondary means of escape.

7.3.3.2. No sleeping rooms or living areas shall be accessible by only a ladder, stair ladder, folding stairs, or through a trap door.

7.3.3.3. Approved single-station or multiple-station smoke detectors shall be installed.

7.4. Requirements for Physical Environment

7.4.1. Emergency telephone numbers for the fire secretary, local police, and on-call staff shall be posted by the telephone, and capable clients shall be instructed on how to activate this access.

7.4.2. A standard American Red Cross first aid kit, or the equivalent shall be readily available at all times in the facility.

7.5. Domestic Animals

7.5.1. Dogs, cats or other domestic animals, if kept as pets, shall be appropriately maintained to ensure client health and safety and kept in a clean location and be properly vaccinated.

7.6. Sanitation - All organizations providing services shall meet the following standards:

7.6.1. Water Supply

7.6.1.1. All water supply systems shall comply with the applicable rules of the West Virginia Department of Health and Human Resources.

7.6.1.2. All drinking water facilities shall be sanitary and accessible.

7.6.2. Sewage and Excreta Disposal

7.6.2.1. All facilities shall be served by an approved public sewage system or by a sewage disposal system that has been approved by the secretary according to the design standards and rules of the West Virginia Department of Health and Human Resources.

7.6.3. Buildings, Grounds, Equipment

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

7.6.3.2. The facility shall be kept in good repair and maintained in a clean, safe and sanitary condition.

7.7. Lighting, Ventilation, Heating

7.7.1. All rooms shall have adequate ventilation either by natural or mechanical means as well as adequate illumination and heating.

7.7.2. The following are prohibited:

7.7.2.1. Unvented gas and oil-fired heating devices;

7.7.2.2. Unprotected open-faced heaters; and

7.7.2.3. Portable electric heaters.

7.8. Requirements for 24 Hour Residential Services

7.8.1. The organization shall demonstrate emergency preparedness including natural disasters, fire, or other emergencies which disrupts the normal course of service delivery.

7.8.2. The organization shall have an accurate account of clients at all times.

7.9. Bedrooms

7.9.1. Bedrooms shall provide a minimum of eighty (80) square feet per person for one person occupancy and a minimum of sixty (60) square feet of floor space per person when occupied by two (2) or more persons.

7.9.2. Each occupant of a facility shall be provided a permanent separate bed and bedding, as well as other furnishings appropriate to the length of stay and needs of the occupant.

7.9.3. Each occupant shall have clean bedding and towels which are laundered weekly, or more often if needed.

7.9.4. Each occupant shall be provided with his or her own toothbrush.

7.9.5. Each bedroom window shall have covering to ensure privacy, furnishings shall be homelike and personalized.

7.10. Storage Areas

7.10.1. Approved storage areas shall be provided for, but not limited to, the following items: foodstuffs, utensils, work materials, cleaning supplies, clothing, linens, medicines and toxic materials.

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

7.11. Sanitary Facilities

7.11.1. Safe, comfortable and clean 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 which assures a safe water temperature not to exceed 110 degrees Fahrenheit.

7.11.2. Bathrooms shall be safe, private and be available in sufficient numbers to assure adequate access for clients.

7.12. Solid Waste

7.12.1. Solid waste storage shall be sufficient to store all solid waste in a safe and sanitary manner.

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

7.12.3. Solid waste disposal shall occur in accordance with the applicable provisions of the state law and regulations governing the management of solid waste.

7.13. Plumbing

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

7.14. Insect and Rodent Control

7.14.1. Grounds, buildings and structure shall be maintained free of insects and rodents of public health significance.

7.15. Laundry

7.15.1. Laundry shall be processed in a sanitary manner.

7.15.2. 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 degrees Fahrenheit or higher until dried, or a chemical sanitizer may be added to the rinse water and the laundry air-dried.

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

7.16. Food Service

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

§64-11-8. Client Services

Discussion: The organization shall provide services that meet client needs, as assessed and determined through the intake process.

8.1. Program Description

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

8.1.2. Treatment and/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.

8.2. Screening and Admission

8.2.1. The facility shall have a formal intake process in which it assesses clients against the criteria for admission and which assures that only clients whose capabilities, strengths and needs meet criteria are admitted.

8.2.2. Services for clients must be authorized by a physician/psychiatrist, by a licensed practitioner within the scope of his or her license under state law, or acceptable by other federal standards.

8.3. Client Intake and Initial Assessment

8.3.1. Intake documentation shall include sufficient information to document all relevant preliminary diagnostic, demographic, social, medical and legal information, and be signed and dated by the responsible staff person.

8.3.2. A written consent to treatment shall be signed by the client prior to treatment.

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

8.3.4. The initial assessment shall include recommendations for further evaluation and initial treatment prior to finalization of the treatment plan; and

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

8.3.5. The intake process determines the need for and assures completion of additional assessments to identify client's physical, emotional, behavioral, and social strengths, preferences and needs.

8.3.6. Psychiatric or psychological assessments shall be effectively conducted by an appropriate professional (physician, licensed psychologist or clinician under the supervision of licensed professional).

8.3.7. When diagnoses are rendered, they shall be 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 Retardation, and substantiated by valid and reliable data based upon accepted professional standards of examinations and tests indicated by factual description of the client's symptoms and problems.

8.3.8. As additional evaluations/assessments are completed, the results with recommendations for treatment/training needs are to be entered in the client's record.

8.4. Individual Treatment Plan

8.4.1. Each client shall have a written plan of treatment which shall:

8.4.1.1. Define and describe the goals, objectives and expected outcomes of the service(s);

8.4.1.2. Consider the clients needs and preferences;

8.4.1.3. Identify the treatment plan participants. These shall include the client, guardian and/or other legal representative, provider and service plan participants; and

8.4.1.4. The extent of participation by participants shall be documented. If a client is unable or unwilling to participate and the reason 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 and/or the guardian's or other legal representative's signature.

8.4.2. The initial treatment plan shall be developed and implemented within a timely manner and expanded, updated and finalized within thirty (30) days of intake. When a service is short-term, less than 30 days, the initial assessment and treatment plan shall be developed within a shorter timeframe in accordance with the client's needs. The plan shall contain at least the following:

8.4.2.1. Immediate needs;

8.4.2.2. A summary or reference to the assessments;

8.4.2.3. Client specific goals, based on assessments, for improvement or maintenance of the mental health or optimal adaptive functioning;

8.4.2.4. Specific, measurable objectives that relate to the goals. Objectives shall describe how the client shall change in order to be discharged from the service;

8.4.2.5. Expected achievement dates and outcomes from treatment shall be assigned to all objectives;

8.4.2.6. A description of the services, supports and frequency of service which are expected to help produce the desired outcomes;

8.4.2.7. The methods used in implementing the treatment plan shall be appropriate to the client's identified needs;

8.4.2.8. The role of other agencies if the plan is a shared responsibility;

8.4.2.9. Services, including outside resources provided to the client, shall be primarily directed toward achievement of the expected outcomes and verified by documentation; and

8.4.2.10. Signed and dated progress notes or other documentation shall be used to document the services provided, and the implementation and outcomes of service plans.

8.4.3. The organization shall ensure that:

8.4.3.1. Clients are continuously involved in their treatment planning and service delivery to the extent possible based on the client's capacity;

8.4.3.2. Clients are enrolled in school (if under age sixteen), attending GED classes, attending vocational training, attending college (if applicable) or employed;

8.4.3.3. If the client attends a school or day program, the organization shall ensure that staff participate with the appropriate personnel in the development of an Individual Education Plan or Individual Treatment Plan; and

8.4.3.4. The client's treatment plan shall reflect the review and reconsideration of drug dosages and types and explains the rationale for changes or continuation of psychotropic regimens.

8.5. Treatment Plan Review

8.5.1. There shall be a review of the treatment plan at least every ninety (90) days by the treatment team except that where longer intervals between client contacts with the services are part of an approved treatment plan, such reviews 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 service-based, and provide a decision either to continue the treatment plan because of an acceptable level of progress or to modify the treatment plan.

8.5.2. Such review and revision shall also occur at other significant junctures of the client's progress, including but not limited to:

8.5.2.1. Admission, transfer, and discharge;

8.5.2.2. Major changes in the client's condition;

8.5.2.3. Crisis points; and

8.5.2.4. Transfer between services or staff.

8.5.3. The appropriate staff will discuss the results of the review with the client, guardian and/or other legal representative, if any, and if appropriate, the client's parent, and will record their consent to any changes in the treatment plan.

8.6. Behavioral Intervention

8.6.1. The organization shall develop a process for implementing behavioral interventions, including, if applicable, restraints, seclusion and time-out. All behavioral intervention plans shall:

8.6.1.1. Be based on an individual functional analysis;

8.6.1.2. Include provisions to teach the individual the circumstances under which behaviors can be exhibited appropriately and replace the inappropriate behaviors with those that are adaptive and appropriate;

8.6.1.3. Ensure that clients do not discipline other clients; and

8.6.1.4. Ensure that seclusion, physical and mechanical restraints are used only as a last resort.

8.6.2. For those clients for whom a behavioral management plan is appropriate, the individual treatment plan shall specify:

8.6.2.1. The rationale for the plan;

8.6.2.2. The behavioral objective of the plan; and

8.6.2.3. The methods to be used.

8.6.3. Protective devices shall be ordered by a physician to treat a medical symptom or condition for a specified and limited period of time.

8.6.4. No client may be placed in seclusion or mechanical restraint until he or she is examined by an attending physician or other licensed professional, and a discussion held with available interdisciplinary team members. In the event that an attending physician is not immediately available, a member of the professional staff shall discuss the situation with the interdisciplinary team members and obtain a telephone order from the physician, if the physician concurs that seclusion is required.

8.6.5. No seclusion or restraint order is valid for more than three (3) hours. Requirements for more than three (3) hours shall have the individual's status reviewed by the treatment team and a written plan developed for responding to the client's needs.

8.6.6. PRN orders for seclusion are not permissible.

8.6.7. Each client in seclusion shall be observed no less frequently than every five (5) minutes and assessed for continued need.

8.6.8. The client shall have access to fluids and to the toilet hourly.

8.6.9. Seclusion shall not be used for the treatment of mentally retarded/developmentally disabled clients.

8.6.10. The application of mechanical and physical restraints shall assure that no physical pain or damage is received by the client.

8.6.11. When emergency control measures are used, a report shall be made describing in detail the incident and the rationale for the emergency measures.

8.7. Client Grouping

8.7.1. Within program components, homogeneous and heterogeneous groupings shall occur according to individual functioning levels and common treatment issues.

8.8. Client Discharge

8.8.1. Discharge planning shall be consistent with the client's treatment plan.

8.8.2. A written discharge summary shall be entered within the client's record within thirty (30) days of discharge and include:

8.8.2.1. The reasons for discharge;

8.8.2.2. The client's status and condition at discharge;

8.8.2.3. A written final evaluation summary of the client's progress toward the goals set forth in the treatment plan;

8.8.2.4. A plan developed, in conjunction with the client for care after discharge and for follow-up; and

8.8.2.5. The signature of the staff completing the summary.

8.9. Client Records

8.9.1. The organization shall establish a process for maintaining client records.

8.9.2. There shall be an easily retrievable record for every client which includes identification data, appropriate social and medical information, a summary of the assessment process, a record of any evaluations of the client, treatment plans and updates, and a record of any signed and dated physician's orders.

8.10. Records Management

8.10.1. The organization shall assure rapid access to client records at all times.

8.10.2. Client records shall be retained for a minimum of five (5) years following discharge. In the case of minors, records shall be retained until five (5) years after the client's eighteenth (18th) birthday.

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

8.10.3.1. In a proceeding under West Virginia Code §27-5-4 to disclose the results of an involuntary examination made pursuant to West Virginia Codes §§27-5-2, 27-5-3 and 27-5-4;

8.10.3.2. In a proceeding under West Virginia Code §27-6A-1 et seq. to disclose the results of an involuntary examination made pursuant thereto;

8.10.3.3. 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;

8.10.3.4. To protect against a clear and substantial danger of imminent injury by a client or client to himself/herself or another; and

8.10.3.5. For treatment or internal review purposes to staff of the service. Appropriate records shall be maintained in a service setting, and the direct care staff involved with the client shall have access to those portions of the client's record relevant to treatment.

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

8.10.4.1. The client;

8.10.4.2. The client's attorney;

8.10.4.3. Professionals involved in caring for or rehabilitating the client, with the provision that such information remains confidential;

8.10.4.4. Agencies requiring information necessary to make payments to or on behalf of the client, provided that only information required to certify that the covered services have been provided shall be released; and

8.10.4.5. Others obtaining such consent.

8.10.5. All records relating to the treatment of an individual for alcoholism or drug abuse are subject to the federal regulations on confidentiality of alcohol and drug abuse 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.

8.10.6. Nothing in this rule shall be construed to interfere with the right of the secretary to examine client records in the course of executing his or her responsibilities to administer this rule or other appropriate state and federal laws or regulations.

8.11. Emergency Services

8.11.1. The facility shall maintain a system for emergency service provisions which assures:

8.11.1.1. Communication with the nearest emergency medical service, hospital and police;

8.11.1.2. A 24 hour telephone response system without requiring a toll charge for the client; and

8.11.1.3. Adequate recording of the emergency and follow-up.

8.12. Critical Incidents and Crisis Management

8.12.1. The facility shall maintain a system for critical incident reporting and shall demonstrate that it uses information from this system to continuously improve treatment planning and service provision.

8.12.2. Staff shall immediately notify the appropriate supervisor of any critical incident and clear other clients from the immediate area.

8.12.3. Unless the client is immediately dangerous to himself/herself or others, staff shall try the least restrictive methods of crisis management. If less restrictive methods do not work, staff increasingly intervene until the crisis is resolved or other alternatives are established.

8.13. Emergency Services in Residential Facilities

8.13.1. The facility shall have the capacity to respond to clients' needs 24 hours a day, seven (7) days a week. This response shall include appropriate triage for clients who pose a danger to themselves or others.

8.13.2. In planning for an emergency, the organization shall provide the staff with immediate access to relevant information in the client records.

8.14. Medication Services

8.14.1. The organization shall develop a process for the administration of prescription and over-the-counter medication, storage and accountability.

8.14.2. Drug orders are effective only for a stated period of time after which they shall be reordered by the physician.

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

8.14.4. The process for prescribing medications shall assure that:

8.14.4.1. The process shall detail the responsibility of staff (or others) relative to medication;

8.14.4.2. Psychotropic medications are ordered only as part of the treatment plan with documentation of the diagnosis, specific behaviors that indicate a need for the medication, and the rationale for the choice of a particular medication; and

8.14.4.3. Medication errors and adverse drug reactions are reported immediately in accordance with written procedures. This requirement includes notification of the physician who ordered the drug. An entry of the medication administered and drug reaction is properly recorded in the client's record.

8.14.5. All medications are administered in compliance with the physicians' order and state law.

8.15. Medication Management

8.15.1. Clients shall be given the least amount of medication possible to assure that they are not unnecessarily or excessively medicated.

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

8.15.3. Clients who are able to self-medicate shall do so.

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

8.16. Supportive Services for Clients in Semi-Independent Living Facilities

8.16.1. The organization shall demonstrate supportive services are provided, based on individualized treatment plans, in order to facilitate the attainment of goals, objectives and outcomes.

8.17. Residential Services

8.17.1. The facility shall have rules of conduct which address the activities listed in these regulations and include provisions for personal possessions. These rules shall be available to the residents, staff, resident's family, legal representative and/or advocate.

8.17.2. The residents shall be provided foods for which they are encouraged to select those which promote healthful living.

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

8.17.4. Residents shall never be left unattended during normal sleeping hours.

8.18. Residential Services for Children and Adolescents

Discussion: Programs and services for this population shall be child-centered and family-focused with integrated therapeutic and educational interventions that respect the child's developmental process.

8.18.1. Programs/services for children and adolescents shall recognize the central importance of the child's family relationships in the treatment process and shall include, to the extent possible, the parent(s) or caretaker(s) in the intake and treatment planning processes and in treatment plan implementation and evaluation.

8.18.2. Services shall have policy and procedures that describes the provision of:

8.18.2.1. type of service or program;

8.18.2.2. treatment modalities available; and

8.18.2.3. family component - the level of family involvement expected in the contact between the family and program.

8.18.3. The discharge process shall include: 1) child and family involvement in the discharge; 2) personnel responsible for discharge decision; 3) procedures that maintain continuity for the child; and 4) aftercare.

8.19. Group Homes for the Mentally Ill

8.19.1. In group homes for mentally ill individuals, the facility shall, in consultation with the client, refer each client for ongoing mental health service and assist the client in keeping appointments and participation in treatment programs. Documentation of such referrals shall be kept in the client's record.

8.20. Partial Hospitalization Programs

8.20.1. Each adult partial hospitalization program will encourage the involvement of family members or significant others in the treatment of the client when appropriate. The program will provide general information related to mental illness, treatment, diagnosis and prognosis.

8.20.2. Each children or adolescent partial hospitalization program will involve family members or significant others unless it is documented in the client record that it is clinically inappropriate. The program will provide general information related to mental illness, treatment, diagnosis and prognosis.

8.20.3. The clinical supervisor of a partial hospitalization program for children and adolescents shall be onsite at least twice weekly and shall monitor the program sufficiently to ensure familiarity with the clients served and their needs and capabilities, the roles and abilities of the staff, and the characteristics of the specific programs.

8.20.4. The organization shall ensure on-call availability of a supervisor during periods when the supervisor is not onsite.

8.20.5. The goal of treatment in children and adolescent programs shall be to return to school and which shall be supported by transitional activities; including the client's visits to the local school for activities and classroom experience which encourage the client's gradually increasing integration.

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

8.21. Staffing for Partial Hospitalization Facilities and/or Programs

8.21.1. The partial hospitalization program shall comply with the following staff to client ratios:

8.21.1.1. Children and Adolescents - One (1) staff for every five (5) children and at least one mental health staff person assigned to the program who shall be qualified to provide counseling and psychotherapy services and shall not have a caseload larger than twelve (12) clients;

8.21.1.2. For School-Based Children and Youth - The treatment staff shall not include teachers and teacher's aides. School-based programs are those programs in which the treatment and educational needs of the children are met together in a school room setting, with both teacher and treatment staff involved.

8.21.1.3. Adults - One (1) staff for every six (6) adults.

8.22. Educational Programs

8.22.1. If the organization provides an educational component to its programs onsite, it shall ensure that the following elements are provided:

8.22.1.1. An education director and staff who meet state requirements of the Department of Education;

8.22.1.2. Educational service designed to maintain the educational and intellectual development of all clients;

8.22.1.3. Clinicians confer periodically with teachers or principals on the progress of each client;

8.22.1.4. There is documentation in each client record of periodic evaluations of educational achievement in relation to medications and psychotherapeutic needs;

8.22.1.5. An appropriate ratio of teacher to clients is provided so that teachers can give special attention to clients or to groups of clients who are at different stages of treatment and education; and

8.22.1.6. The educational facility has space and materials commensurate with the scope of its activities, including an adequate number of classrooms.

§64-11-9. Client 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. Special attention and efforts are essential to assure an individual's human and civil rights are promoted, exercised and protected.

9.1. Basic Rights - Each client shall have:

9.1.1. The right to treatment and services that support client liberty and result in positive outcomes to the maximum extent possible;

9.1.2. The right to access to treatment and services in the least restrictive, most appropriate and potentially most effective, setting;

9.1.3. The right to an individualized treatment plan as defined under this rule;

9.1.4. The right to ongoing informed participation in the treatment plan process;

9.1.5. The right to refuse treatment at any time;

9.1.6. The right to a legal representative when unable to act on his/her own behalf;

9.1.7. The right to be free from involuntary experimentation;

9.1.8. The right to freedom from restraint or seclusion;

9.1.9. The right to a humane treatment environment in which personal dignity and self-esteem are promoted;

9.1.10. The right to confidentiality of records;

9.1.11. The right to access his or her own client records in accordance with state law;

9.1.12. The right to assert grievances, orally or in writing, with respect to the infringement of all rights, including the right to have all such grievances considered in a fair, timely, and impartial procedure;

9.1.13. The right of access to a available advocate in order to understand, exercise, and protect his or her rights;

9.1.14. The right to be informed, in advance, of charges for services, if any;

9.1.15. The right to all available services without discrimination because of race, creed, color, sex, sexual orientation, disability, age, handicap, national origin, or marital status;

9.1.16. The right to exercise his or her civil rights;

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

9.1.18. The right to be free from physical, verbal, sexual or psychological abuse or punishment;

9.1.19. The right to be free from unnecessary or excessive medication;

9.1.20. The right to be free from uncompensated labor, except that clients in residential facilities may perform housekeeping tasks;

9.1.21. The right to be housed with individuals of the same approximate ages, developmental levels and/or social needs;

9.1.22. The right to unimpeded access to his/her attorney or religious advisor;

9.1.23. The right to constant access to his or her personal possessions unless contraindicated by treatment needs;

9.1.24. The right to private communication with others by mail, in person and telephone; and

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

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

9.2. Violation of a Client Rights

9.2.1. A report shall be made within 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.

9.2.2. The executive director shall initiate a thorough investigation within 24 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/her findings and actions taken to preclude a repetition of such violations, or suspected violations, relative to the specific client involved, or any other clients. The client and/or clients shall be identified by case number only.

9.2.3. Organizations are 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. Organizations are 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.

9.2.4. 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.

9.2.5. 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/her representative may appeal to the governing body of the organization.

9.3. Serious Injury or Death Reports

9.3.1. Any incident which results in serious injury or death shall be investigated by the organization, reported to appropriate authorities, and reported to the secretary. A written report shall be kept.

§64-11-10. Substance Abuse Services

10.1. Public Inebriate Shelter Services

10.1.1. There shall be screening by trained personnel for the need for medically monitored detoxification and a procedure to refer the person to acute medical care, if needed.

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10.1.2. There shall be provision for regular monitoring at not less than fifteen (15) minute intervals for the first four (4) hours following admission, and each hour thereafter, which shall include:

10.1.2.1. A documented reevaluation of the person's physical condition and mental status;

10.1.2.2. Documentation of vital signs every four (4) hours; and

10.1.2.3. Documentation of any changes in withdrawal symptoms.

10.1.3. Discharge to a responsible adult shall not occur until after an evaluation is complete, unless there are unusual circumstances (e.g., transfer for medical or security reasons).

10.1.4. No person shall be discharged unless the committing authority has approved the release until his/her blood alcohol count (BAC) is below .05 and there is no observable indication of intoxication.

10.1.5. In the event the person leaves the service prior to discharge, the referring court and the sheriff's office shall be notified.

10.1.6. The shelter shall arrange for follow-up counseling and other services for each person.

10.1.7. Recommendations for the disposition of publicly inebriated individuals shall be submitted to the court as required.

10.2. Detoxification Services

10.2.1. There shall be an intake physical examination and screening services of all admissions to determine the need for medical services.

10.2.2. A physician shall be available for medical consultation 24 hours per day, seven (7) days per week.

10.2.3. There shall be daily contact by qualified personnel with each client specific to the individual detoxification protocol used during the withdrawal process.

10.2.4. The client served shall receive counseling designed to motivate him/her in the treatment process and to provide emotional support during withdrawal from substances.

10.2.5. Referral to a more intensive level of medical care shall be made if screening and medical examination indicate that more intensive medical monitoring/management is required for the withdrawal process and/or medical complications.

10.3. Substance Abuse Residential Services

10.3.1. The service shall assure the availability of a physician for medical consultation 24 hours per day, seven (7) days per week.

10.3.2. The service shall assure the availability of onsite nursing coverage sufficient to assure that the assessed medical needs of clients are appropriately addressed.

10.3.3. The service shall maintain policies and procedures to handle contraband substances brought into the residential setting by clients served or by visitors.

§64-11-11. Penalties

11.1. The director has the right by order to deny an application for licensure or licensure renewal, revoke, invoke an admission ban or reduce client census, suspend a full or provisional license, or reduce the bed capacity of a residential program for one or more of the following reasons:

11.1.1. A determination is made by the Secretary that a fraud or other illegal action has been made;

11.1.2. Violation of federal, state and local laws, ordinances, rules, regulations and codes relating to building, health, fire protection, safety, sanitation and zoning;

11.1.3. Conducts practices which jeopardize the health, safety, welfare and clinical treatment of clients;

11.1.4. Failure or refusal to submit reports or make records available as requested to the secretary; or

11.1.5. Refusal to provide access by a representative of the secretary to the site or records.

11.2. The organization will be notified in writing of the secretary's intent to deny, revoke, or suspend a license and their right to appeal such notification.

§64-11-12. Administrative Due Process

12.1. An applicant, provider or any other person aggrieved by such order or other action by the secretary based on these regulations or to West Virginia Code §27-2A-1 et seq. or by §27-9-1, shall have the opportunity for a hearing by the secretary, upon written request in a manner prescribed in and by the **Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.**

12.2. The hearing will be conducted in accordance with West Virginia Code §29A-5-1 et seq. and §29A-4-1 et seq. and **Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.** Procedures associated with the informal hearing may be obtained by writing to:

Office of Health Facility Licensure and Certification
Department of Health and Human Resources
1900 Kanawha Boulevard, East
Charleston, West Virginia 25301

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

12.4. 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-license operator's written notice pursuant to the aforementioned **Rules of Procedure for Contested Case Hearings and Declaratory Rulings.**

12.5. When taking a case under advisement, the secretary shall:

12.5.1. Enter an order stating the decision to hold the case under advisement;

12.5.2. Notify the licensee and attorney of record, if any, of the action, by certified mail, return receipt requested;

12.5.3. Enter an order showing satisfactory compliance, dismissing the complaint, if the licensee meets the requirements of the order; and

12.5.4. Upon entering the second order, under this section, the secretary shall notify the licensee and attorney of record, if any, by certified mail, return receipt requested.

§64-11-13. Severability

13.1. The provisions of this rule are declared to be severable. If any provisions of this rule shall be held invalid, the remaining provisions shall remain in effect.

Table 64-14.1. Licensure Standards Applicability Matrix

9.0 Client Rights	9.1 Basic Rights	9.2 Violation of a Client Rights	9.3 Serious Injury or Death Reports	10.0 Substance Abuse Services	10.1 Public Inebriate Shelter Services	10.2 Detoxification Services	10.3 Substance Abuse Residential Services	11.0 Penalties	12.0 Administrative Due Process	13.0 Severability	
											This matrix identifies standards that are applicable to organizations that provide mental health services, substance abuse services, and services to mentally retarded/developmentally disabled persons, in a variety of settings. Organizations should carefully study this matrix to determine which standards are applicable to the organization's services.
X	X	X	X					X	X	X	Case Management Services
X	X	X	X					X	X	X	Crisis Residential Services
X	X	X	X					X	X	X	Day Care Services/ Children-Adolescent
X	X	X	X					X	X	X	Day Care Services/MI
X	X	X	X					X	X	X	Day Care Services/MR/DD
X	X	X	X					X	X	X	Early Intervention Services
X	X	X	X					X	X	X	ICFs/MR Group Homes
X	X	X	X					X	X	X	In-Home Services
X	X	X	X	X	X			X	X	X	Inpatient Substance Abuse Services/Adult
X	X	X	X					X	X	X	Outpatient Services
X	X	X	X					X	X	X	Partial Hospitalization
X	X	X	X		X			X	X	X	Public Inebriate Shelters
X	X	X	X					X	X	X	24-Hour Residential Services/ MR/DD
X	X	X	X					X	X	X	24-Hour Residential Services/ MI
X	X	X	X					X	X	X	24-Hour Residential Services/ Children
X	X	X	X					X	X	X	24-Hour Residential Substance Abuse/Children
X	X	X	X					X	X	X	Supported Living/Licensed Sites
X	X	X	X					X	X	X	Supported Living/Unlicensed Sites