

George E. Pickett, M.D., M.P.H.  
Director



John D. Rockefeller IV  
Governor

**State of West Virginia**  
DEPARTMENT OF HEALTH  
CHARLESTON 25305

January 25, 1980

The Honorable A. James Manchin  
Secretary of State  
State of West Virginia  
State Capitol  
Charleston, West Virginia 25305


Dear Mr. Secretary:

The attached regulations have been promulgated to provide procedures for the extension of commitments at Colin Anderson Center in accordance with the provisions of §27-5-4-(k) (4) of the Code of West Virginia as amended.

These regulations are presented to be filed as Emergency Regulations as required by Section 7, Article 3, Chapter 29A of the Code. It is necessary that they be filed as Emergency Regulations because there are a large number of Colin Anderson Center residents whose commitment orders will expire in May, 1980, unless procedures for extension are implemented prior to that time. The short time remaining will not allow for the process required for permanent regulations.

Thank you for your cooperation in this matter.

Sincerely,

  
George E. Pickett, M. D.  
Director

GEP/mbg

FILED IN THE OFFICE OF  
SECRETARY OF STATE OF  
WEST VIRGINIA

THIS DATE 1-28-80



STATE OF WEST VIRGINIA  
 OFFICE OF THE SECRETARY OF STATE  
 CHARLESTON 25305

A. JAMES MANCHIN  
 SECRETARY OF STATE

STATE REGISTER FILING

I, George E. Pickett, Director,  
 Title or Position

West Virginia Department of Health, hereby submit to record in  
 Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- rules and regulations; or
- other - specify ( ).

This filing pertains to

Chapter 27  
 Article 5  
 Series \_\_\_\_\_  
 Section 4  
 Page No. \_\_\_\_\_

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

1/28/80  
 Date Submitted

George E. Pickett  
 Signature of Person Authorizing  
 this Filing

WEST VIRGINIA ADMINISTRATIVE RULES  
Department of Health

FILED IN THE OFFICE OF  
SECRETARY OF STATE OF  
WEST VIRGINIA  
THIS DATE 1-28-80

Subject: Regulations for the Review of Indeterminate Commitments  
of the Mentally Retarded

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Section 1. General

1.01. Purpose - These regulations are intended to provide a procedure to carry out the intent of paragraph (4), subsection (K), section 4, article 5, chapter 27, of the Code of West Virginia of 1931, as amended. The primary purpose of these rules is to provide for, and insure the fairness of, a method of extending, upon findings stemming from examination by a physician or psychologist, commitments to Colin Anderson Center which would otherwise expire two years from the date of the last order of commitment. These regulations are intended to insure that any staff recommendation for extension of commitment is based upon careful, detailed documentation that continued stay within the facility is in the best interest of the resident and that all available less restrictive alternatives have been examined and found to be not appropriate.

1.02. Authority - These regulations are issued under the authority of Chapter 27, article 2, section 3, of the West Virginia Code of 1931, as amended.

1.03. Applicability and Scope - These regulations shall be applied in connection with commitments arising under the provisions of Chapter 27, article 5, section 4, of the West Virginia Code of 1931, as amended.

1.04. Effective Date - These rules shall be effective 30 days after filing in the state register.

1.05. Filing Date - These rules were filed in the state register on \_\_\_\_\_, 1980.

Section 2. Definitions

2.01. Board of Review - An impartial panel of persons appointed by the director of the West Virginia Department of Health to review all applications filed with the director for extension of commitments of residents of Colin Anderson Center.

2.02. Director - Shall mean the director of the West Virginia Department of Health.

Section 3. Board of Review

3.01. Appointment of Members - On or before February 1, 1980, the director shall appoint two boards of review; each such board shall consist of five members, not more than two of which may be employees of the West Virginia Department of Health and none of whom shall have any direct responsibility for any part of the operations of the Colin Anderson Center. Members of each Board of Review shall elect a chairperson by majority vote.

3.02. Term of the Board Members - Board members shall be appointed to one-year terms and may be reappointed at the will and pleasure of the director. Once appointed, a board member shall not be removed from office during the term for which such member was appointed except for failure to carry out the responsibilities of the office.

3.03. Remuneration of Board Members - Board members shall be reimbursed for actual expenses incurred in carrying out their responsibilities in accordance with state regulations governing such reimbursements. Board members not otherwise employed by an agency of state government may also be paid an honoraria for each day during which they perform services as board members. Such honoraria shall be in amounts determined by the director but shall not exceed the sum of \$50 per diem.

3.04 Responsibilities of the Board - The board of review shall have responsibility to review all applications filed with the director for extension of commitments of residents of the Colin Anderson Center and indicate either concurrence with, or objection to, the recommendations of the center staff.

3.05. Frequency of Meetings - Meetings of the board shall take place at the Colin Anderson Center at such intervals as the Board, with the concurrence of the director, shall deem necessary to carry out the boards responsibilities, but not less frequently than once each month.

3.06. Quorum - Any three members of each board shall constitute a quorum at any meeting of such board, except that a majority of the members present shall not be state employees. All board decisions shall be by majority vote of the board members present.

3.07. Scope of Review by the Board - The board may conduct such investigations as it may deem proper in reaching its determinations. Such investigations may include, but are not limited to, inspection of reports, records, and other documents, staff interviews, and meetings with residents. Within 10 days of the date set for review of the resident's case the board shall render a decision either concurring with or objecting to the conclusions of the staff personnel who referred the case to the Board. Such decision shall include a concise statement of the facts and reasoning leading to such conclusion.

3.08. Confidentiality - All data accumulated by the board of review during the course of its investigations and the transcript of proceedings before it shall become a part of the resident's clinical record and as such shall be subject to the same standards of confidentiality as the rest of that record.

3.10. Review Board Coordinator - The director shall designate a department of health staff person to coordinate functions of the board of review. The coordinator shall be responsible for reviewing all applications for completeness, and for transmitting applications to the board of review in advance of board meetings. The coordinator shall also assure that the board meetings are scheduled at appropriate intervals, that adequate secretarial and clerical support is provided, and that meeting rooms, paper supplies, and other necessary considerations are made available to the board.

#### Section 4. Referral to the Board of Review

4.01. Review of Resident's Progress - At least one hundred and twenty days prior to the scheduled expiration of any order of commitment, the staff of the Colin Anderson Center shall carefully review the progress of the resident while in the Center, the requirements of the resident's current treatment, habilitation, and education plans and whether these requirements could be met in a setting other than within the center.

Upon initiation of this review procedure Colin Anderson Center shall inform in writing the regional mental health/mental retardation program serving the county of origin of the resident of the review and request a recommendation to the review board regarding a less restrictive placement of the resident.

This provision shall in no way effect the patient's right to a thorough review of his or her individual treatment, habilitation, and education plan at least every ninety days as required by Chapter 27, Article 5, Section 9, of the West Virginia Code of 1931, as amended. If it is determined that there is a less restrictive alternative available which is appropriate to the needs of the resident, planning shall be initiated for the appropriate placement and no recommendation for extending the commitment shall be made.

4.02. Application for Review by Board - If the review described in section 4.01 above, results in the conclusion that the resident's needs cannot be adequately met in another setting, the facts upon which that conclusion is based shall be set forth upon an application for extension of commitment directed to the director or his designee. Such application shall be in such form and manner as prescribed by the director and shall contain, at a minimum, the following:

- A. Name, birthdate, and county from which the resident was originally committed, and the name and address of parent or parents, guardian, committee, or adult next of kin.
- B. A listing of all major elements of the care, treatment, habilitation, and education plan currently in effect with respect to the resident, together with a statement as to whether each element can or could be provided in some other setting and the reasons for the stated conclusions.
- C. Documentation that the resident (if over the age of 12) has agreed to pursue the review committee procedure for recommitment rather than initially seeking a judicial hearing on his/her continuing commitment, or that such agreement was made on his behalf by the responsible parent or parents, guardian, committee or adult next of kin.

4.03. Scheduling a Board of Review - Reviews by the Board of Review shall be scheduled at the earliest convenient date available, in no event to take place less than ninety (90) days prior to the date of expiration of the last order of commitment or extension of commitment.

## Section 5. Special Considerations

5.01. Appeal from Decisions of the Board of Review - These regulations do not in any way restrict the resident's right to a hearing before the circuit court or its mental hygiene commissioner for review of the hospitalization of the patient. The administrative procedures available by virtue of these regulations do not in any way limit or precondition the right of the resident to seek release by habeas corpus.

5.02. Residents Whose Commitments Expire Prior to July 1, 1980 - All residents whose commitments are scheduled to expire prior to July 1, 1980, shall be reviewed in the manner described in these regulations. After applications have been prepared with respect to those residents recommended for extended commitment, these applications shall be ranked according to severity of disability, in descending order from least to most disabled, prior to submitting such applications to the Director. Applications will be reviewed by the board of review in accordance with this priority ranking so that those most likely to be released to other placements are afforded early consideration. Any residents whose cases have not been reviewed prior to the expiration of the last order of commitment shall be extended for a temporary period not exceeding ninety days pending review and recommendation by the board of review. Staff recommendations for such temporary extensions shall be based upon findings resulting from the examination of the resident by a physician or psychologist. After July 1, 1980, all committed residents shall be assigned a new review date such that the number of those whose commitments expire each month shall be equalized. Thereafter, reviews by the board of review shall be scheduled to take place not less than ninety (90) days prior to the date of expiration of the last order of commitment or extension of commitment.