WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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JUL 29 3 19 PM '96

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Division of Health TITLE NUMBER: 64

RULE TYPE: Legislative ; CITE AUTHORITY W. Va. Code § 27-5-9(g)

ADMENDMENT TO AN EXISTING RULE: YES____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

_____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 49

TITLE OF RULE BEING PROPOSED: Behavioral Health Consumer Rights in the Community

_____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 29, 1996 AT 4:30 p.m. . ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Regulatory Development

Department of Health & Human Resources

Capitol Complex - Building 3, Room 265

Charleston, WV 25305

ATTN: Kay Howard

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

Gretchen O. Lewis for J.K. Hatfield

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

7.60

ABSTRACT - PROPOSED RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
DIVISION OF HEALTH
BEHAVIORAL HEALTH CONSUMER RIGHTS IN THE COMMUNITY
64 CSR 49

Summary: This proposed new legislative rule establishes a general set of rights of individuals receiving behavioral health services. The Department has agreed to file this rule in order to bring the department in to compliance with part of an order filed May 2, 1994 under E.H. v. Matin, Civil Action No. 81-MISC - 585, Circuit Court of Kanawha County.

The rule contains provisions related to consumers' rights generally; advance directives; consumers' right to treatment; informed consent; right to refuse treatment; research and experimental treatment; seclusion and restraints; confidentiality; right to unrestricted communication; consumers' labor, earnings and funds; legal representatives; employee responsibilities; juveniles' additional rights; and a consumer advocacy and grievance procedure. There is a section of definitions. The rule also adopts by reference the relevant portions of Conditions of Participation for Hospitals, 42 CFR Part 482, Subparts A through E; Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded, 42 CFR Part 483, Subpart I; the Accreditation Manual for Hospitals of the Joint Commission on the Accreditation of Health Care Facilities; and the Outcome Based Performance Measures of the Accreditation Council on Services for People with Disabilities.

For further information contact: Ted J. Johnson, Director, Division of Mental Halth and Community Rehabilitation Services, Office of Behavioral Health Services, Bureau for Children and Families, Department of Health and Human Resources, State Capitol Complex, Building 6, Room 717, Charleston, West Virginia, 25305, telephone (304) 558-0627; or the Office of Regulatory Development, Bureau of Operations, Department of Health and Human Resources, State Capitol Complex, Building 3, Room 265, Charleston, West Virginia, 25305, telephone (304) 558-3223.

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.

7/26/96

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Behavioral Health Consumer Rights in the Community, 64 CSR 49

Type of Rule: _X_ **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 proposed rule is not anticipated to impact on the cost of State government.

3. Objectives of this rule:

The purpose of this rule is to establish a general set of rights of individuals receiving behavioral health services. The department has agreed to file this rule in order to bring the department into compliance with part of an order filed May 2, 1994 under E.H. v. Matin, Civil Action No. 81-MISC - 585, Circuit Court of Kanawha County.

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.

To the extent that consumers are not being afforded the basic rights established by this rule, there may be an increase in costs for behavioral health service providers.

C. Economic Impact on Citizens/Public at Large.

None.

Date: July 26, 1996

Signature of Agency Head or Authorized Representative

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

PROPOSED - TITLE 64

WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 49

BEHAVIORAL HEALTH CONSUMER RIGHTS IN THE COMMUNITY

199_

PROPOSED - TITLE 64
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
SERIES xx
BEHAVIORAL HEALTH CONSUMER RIGHTS IN THE COMMUNITY

TABLE OF CONTENTS

PROPOSED - TITLE 64
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
SERIES 49
BEHAVIORAL HEALTH CONSUMER RIGHTS

§ 64-49-1. General.

1.1. Scope. -- This legislative rule establishes the rights of consumers of State-licensed behavioral health services.

1.2. Authority. -- W. Va. Code § 27-5-9(g).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Construction. -- This rule shall be liberally construed to effectuate the rehabilitative goals of Chapter 27 of the West Virginia Code, consistent with the protection of consumer rights and dignity.

1.6. Applicability - This rule applies to behavioral health services licensed by the division of health, department of health and human resources.

§ 64-49-2. Definitions.

2.1. Administrator. -- The chief executive officer of a behavioral health service.

2.2. Advance Directive. -- Any directive written and signed by a consumer, describing preferences in health care, behavioral health care, or the conduct of business.

2.3. Aggrieved. -- An individual or family who believes rights accorded by this rule have been violated by a service or employee of the service.

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

2.5. Behavioral Health Service. -- Mental health, developmental disability, or substance abuse service.

2.6. Consumer. -- Any individual receiving treatment or services in or from a behavioral health service licensed by the department of health and human resources.

2.7. Clinical Director or Chief Medical Officer. -- The person who has the responsibility for decisions involving clinical and medical treatment of consumers in a behavioral health service.

2.8. Designated Grievance Representative. -- An individual employed by the service who has been appointed by the chief executive officer of the service to assist any consumer wishing to file a grievance.

2.9. Mediation. -- Private, informal dispute resolution process in which a neutral third person, the mediator, helps disputing parties to reach an agreement.

2.10. Service. -- A behavioral health service.

2.11.. Individualized Program Plan (IPP). -- A master plan which is a written, individualized plan specifically tailored to individual needs, including a complete, thorough review of the consumer's needs, strengths, weaknesses, response to initial interventions and prognosis for resolution of acute symptoms, and other components as indicated in this rule.

2.12. Legal Representative.

2.12.a. A conservator, temporary conservator or limited conservator appointed pursuant to the West Virginia Guardianship and Conservatorship Act, W. Va. Code, § 44-1-1-et seq., within the limits set by the order;

2.12.b. A guardian, temporary guardian or limited guardian appointed pursuant to the West Virginia Guardianship and Conservatorship Act, W. Va. Code, § 44-1-1-et seq., within the limits set by the order;

2.12.c. An individual appointed as committee or guardian prior to June 9, 1994, within the limits set by the appointing order and W. Va. Code 44A-1-2(d);

2.12.d. A person having a medical power of attorney pursuant to the West Virginia Medical Power of Attorney Act, W. Va. Code §16-30A-1 et seq., within the limits set by the law and the appointment;

2.12.e. A representative payee under the U.S. Social Security Act, Title 42 US Code § 301 et seq., within the limits of the payee's legal authority;

2.12.f. A surrogate decision-maker appointed pursuant to the West Virginia Health Care Surrogate Act, W. Va. Code §16-30B-1 et seq., or the West Virginia Do Not Resuscitate Act, §16-30C-1 et seq., within the limits set by the appointment;

2.12.g. An individual having a durable power of attorney pursuant to W. Va. Code § 39-4-1, or a power of attorney under common law, within the limits of the appointment; or

2.12.h. An individual lawfully appointed in a similar or like relationship of responsibility for a consumer under the laws of this State, or another State or legal jurisdiction, within the limits of the applicable statute and appointing authority;

2.12.i. If a legal representative has been appointed for or designated by any consumer as having the authority to exercise on behalf of the consumer one or more of the consumer's

rights under this rule, the service shall permit the individual's legal representative to act on behalf of the individual and to exercise the authority to the extent granted to the legal representative in the order or other document naming the legal representative or pursuant to the statute authorizing the legal representative and to the extent that the legal representative's acts are not hostile or adverse to the best interests of the consumer. This provision does not relieve the service of the responsibility of informing the individual consumer as required by this rule, to the extent that the individual is capable of understanding the matter, nor does it in any way deprive the consumer of his or her legal rights granted under this rule or state or federal law or rules and regulations. If the consumer has a legal representative, the name, address and telephone number of the legal representative shall be recorded in the consumer's financial and clinical records, as applicable, along with the nature and scope of the authority granted to the legal representative by order, appointment or law. The service shall also maintain a copy of the document documenting or designating the legal representative. The service administrator and staff should note that the various types of legal representatives do not necessarily have the lawful authority to act on behalf of the resident in all matters which may require action by a legal representative. For example, a conservator may have responsibility for financial affairs, but not personal affairs, such as medical care.

2.13. Behavioral Health Service. -- Any inpatient, residential or outpatient service for the care and treatment of the mentally ill, developmentally disabled or addicted which is licensed by the department of health and human resources.

2.14. Chemical Restraint. -- The use of drugs or medication as a behavior control mechanism to substitute for seclusion or mechanical restraint.

2.15. Mechanical Restraints. -- Handcuffs, straight-jackets or "sleeves", or other restraining devices or variations of these devices which are designed and applied for the purpose of preventing an individual from engaging in assaultive or self-abusive behavior.

2.16. Neglect. -- A negligent act or omission by an individual responsible for providing services in a behavioral health service rendering care or treatment which caused or may have caused injury or death to an individual or which placed an individual at risk of injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for an individual, the failure to provide adequate nutrition, clothing, or health care to an individual, or the failure to provide a safe environment for an individual, including failure to maintain adequate numbers of appropriately trained staff.

2.17. Physical Abuse. -- Any act or failure to act by an employee of a behavioral health service which was performed, or which was failed to be performed, knowlingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual, and includes such acts as

2.17.a. The rape or sexual assault of an individual;

2.17.b. The striking of an individual;

2.17.c. The use of excessive force when placing an individual in bodily restraints; and

2.17.d. The use of bodily or chemical restraints on an individual which is not in compliance with federal and State laws and regulations.

2.18. Seclusion. -- The placement of any consumer alone in a room or enclosed space with closed doors which the consumer cannot open from inside.

2.19. Secretary. -- The Secretary of the West Virginia Department of Health and Human Resources.

2.20. Sexual Harassment. -- Physical advances or nonverbal conduct that is sexual in nature and is either: (1) unwelcome, offensive, or creates a hostile environment, when the staff member is aware or has been informed that his or her conduct falls into one of these categories; or (2) is sufficiently severe or intense to be abusive to a reasonable person in the particular context.

2.21. Verbal Abuse. -- The use of language, tone or inflection of voice that would likely be construed by an impartial observer as a threat to or, harassment, derogation or humiliation of a consumer. Verbal abuse includes, but is not limited to: the use of a threatening or abusive tone or manner in speaking to a consumer; the use of derogatory, vulgar, profane, abusive or threatening language; verbal threats; teasing, pestering, deriding, harassing, mimicking or humiliating a consumer; derogatory remarks about the consumer, his or her family or associates; or sexual innuendo, sexually provocative language or verbal suggestion.

§ 64-49-3. Adoption of Other Standards. In addition to the standards set forth in this rule, the relevant portions of **Conditions of Participation for Hospitals 42 CFR Part 482, Subparts A through E**, and **Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded, 42 CFR Part 483, Subpart I**, pertaining to certification for participation in Medicare and Medicaid; the Licensing Requirements fo Group Residential Facilities for Children, issued under the provisions of §49 of the Code of West Virginia; the standards set forth in the most recent edition of the **Accreditation Manual for Hospitals** of the Joint Commission on the Accreditation of Health Care Facilities; and the standards set forth in the most recent edition of **Outcome Based Performance Measures** of the Accreditation Council on Services for People with Disabilities are hereby adopted by reference: Provided, That to the extent there is a conflict between the federal regulations or the accreditation standards and the standards specified in this rule, the more stringent standard applies, except that, if there is a conflict between a standard set forth in this rule and a federal standard required for purposes of certification for participation in Medicare or Medicaid, the relevant federal standard prevails.

§ 64-49-4. Consumers' Rights Generally.

4.1. Persons with behavioral health problems are more likely to have their human and civil rights denied because of their condition. Consequently, special attention and effort are required to assure that these human and civil rights are exercised and protected in all behavioral health services.

4.2. No Discrimination. All behavioral health services licensed by the Department of Health and Human Resources shall make available all offered services to persons in need without discrimination because of race, creed, color, gender, age, national origin, marital status, sexual

preference, physical or mental disability, or duration of residence. Crisis services, if offered, cannot be denied on the basis of inability to pay.

4.3. Civil Rights of Consumers. Every consumer served by any behavioral health service licensed by the Department shall be permitted to exercise all of his or her civil rights, including but not limited to: civil service status and appointment; the right to register and vote at elections; the right to acquire and dispose of property; the right to execute instruments or rights relating to the granting, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law; the right to enter into contractual relationships, to marry or to obtain a divorce; or the right to hold a professional, occupational or vehicle operator's licenses, unless he or she has had a legal representative appointed and the court has made a specific finding that the consumer is incompetent to exercise the specific right or category of rights.

4.4. Responsibility of Administrator. It is the responsibility of the service's administrator to assure that each consumer is informed of his or her rights and to make all necessary arrangements to allow the consumer to exercise his or her rights.

4.5. Consumers' Rights in a Group Setting Generally. Consumers shall be housed with other consumers of similar age and need, unless specific reasons such as the need to protect a consumer with a low level of adaptive skills and ability for self defense are noted in the treatment plan.

4.6. Right to Least Restrictive Residential Setting. The consumer has the right to access to treatment in the least restrictive setting. The goal of treatment for a consumer shall be to address needs so as to permit the consumer to be in the least restrictive setting.

4.7. Right of Privacy. A consumer has a right to privacy and the right to move about freely unless his or her safety is threatened.

4.8. No Deprivation of Rights As Punishment. No consumer can be deprived of a right provided by law or regulation as punishment. No consumer may be deprived of a right for clinical reasons except for an incident related to the exercise of that right and then only for so long as is necessary to permit correction of the situation or behavior.

4.9. Every consumer, upon his or her admission to a behavioral health service, and at any later time upon request, shall be given a summary of the rights afforded by this rule. A copy of this rule shall be available upon request.

4.10. The service shall establish simple and understandable rules for consumers and staff of the service which set the limits of behavior required of a group and individual consumers within the group.

§ 64-49-5. Advance Directives.

5.1. A consumer may enter a behavioral health service with an advance directive or may write and sign an advance directive during the time he or she is receiving service from the behavioral health service. Advance directives may address preferences in health care, behavioral

health care, or conduct of business. Advance directives may be withdrawn verbally or in writing by the consumer at any time. The existence of an advance directive does not indicate a lack of competency or other inability to care for oneself.

5.2. The behavioral health service shall ascertain if a consumer has a written advance directive at admission into the behavioral health service. If there is a written advance directive, it shall be copied into the consumer's record at the behavioral health service, with the consumer's permission. All members of the team shall be informed of the advance directive. The consumer should be informed of his or her rights concerning advance directives including:

5.2.a. All advance directives concerning preferences in health care will be honored until withdrawn verbally or in writing;

5.2.b. All advance directives concerning preferences in the conduct of business will be honored until withdrawn verbally or in writing; and

5.2.c. Advance directives concerning preferences in behavioral health services will be honored to the extent resources are available, until withdrawn verbally or in writing, unless honoring the advance directive would cause serious harm to the consumer, endanger the consumer's life, or be dangerous to others. The behavioral health service will consider initiating commitment proceedings whenever it is believed following an advance behavioral health service directive would pose a danger to the consumer or others.

5.3. If a consumer does not have an advance directive at the time of admission, the behavioral health service shall provide information and education concerning advance directives. Such information shall cover advance directives for health care, behavioral health services, and conduct of business. Information presented shall be easily understood and shall be presented verbally and in writing.

5.3.a. Consumers may not be coerced into writing or signing an advance directive, nor shall the provision of service be conditioned on the existence of an advance directive.

§ 64-49-6. Consumers' Right to Treatment.

6.1. General. All consumers of behavioral health services have a right to treatment in the least restrictive setting, which may inlcude care and treatment including habilitation, rehabilitation, medical care, education and training, when available and appropriate, and to behavioral health and support services suited to their individual needs. Treatment shall be provided humanely in an environment that affords civil, legal and regulatory rights, and provides freedom from verbal or physical abuse or neglect.

6.2. Trained and Competent Personnel. Every consumer of a behavioral health service has a right to treatment by trained and competent personnel in numbers sufficient to administer adequate treatment and individualized treatment plans.

6.3. Appropriate Treatment Based on Examination and Diagnosis. Every consumer of a behavioral health service has a right to treatment based on diagnosis and assessment of needs by

a staff member operating within the scope of his or her professional license.

6.4. Program Plan. Every consumer of a behavioral health service has a right to program or treatment plan. The plan shall identify immediate needs and interventions, determine data or assessment needs, and establish responsibility for implementing the plan. The plan shall be updated on a regular basis, as the consumer's needs change. The consumer has the right to participate in the development of the program or treatment plan and any revisions.

6.5. Minimum Requirements of the Individualized Program Plan (IPP). Every consumer's program plan shall at a minimum:

6.5.a. Be based on a comprehensive assessment of the consumer's presenting problems, physical health, mental health, emotional status, behavioral status, and environmental status and needs;

6.5.b. Contain written, functional objectives, methods for achieving them, expected achievement dates, and anticipated or desired outcomes;

6.5.c. Describe treatment, services, activities, therapies, and programs to be accessed and provided;

6.5.d. Identify who is responsible for implementing the specific treatment services, activities, therapies, and programs;

6.5.e. Indicate the frequency and duration of treatment, services, activities, therapies and programs;

6.5.f. Delineate the specific criteria, including outcomes, to be met for termination of treatment or programming;

6.5.g. Document the extent of consumer and family participation in planning; and

6.5.h. Document by name and role all participants in developing the plan.

6.6. Evidence of Treatment. Evidence that recognized procedures applicable to meeting behavioral health needs have been administered to the consumer in accordance with his or her treatment plan, including but not limited to individual psychotherapy, group therapy, family therapy, physical therapy, appropriate physical fitness routines, chemotherapy, planned occupational therapy, and recreational therapy shall be documented in the consumer's record by the appropriate member of the interdisciplinary team.

6.7. Accepted Service Standards. Every consumer using a behavioral health service is entitled to care and treatment in accordance with accepted behavioral health and medical practice standards. If any of the rights set forth in this rule related to treatment are not afforded to the consumer, then the reasons for the restriction of the specific right shall be specified in the consumer's treatment plan in the consumer's clinical record.

§ 64-49-7. Informed Consent.

7.1. No treatment can be given to any individual who has not been committed pursuant to WV Code § 27-5-3, § 27-5-4, § 27-6A-2(b) or § 27-6A-3 without his or her written consent. If no informed consent is documented in the chart, the physician or person prescribing treatment must provide information on his/her right to refuse treatment before treatment is begun.

7.2. Informed Consent. Consent is not valid unless it is informed consent. To assure informed consent, an appropriate behavioral health professional shall explain and discuss the following with each consumer:

7.2.a. The nature of the consumer's mental condition;

7.2.b. The reasons for taking any proposed medication, including the likelihood of the consumer's condition improving or not improving without the proposed medication;

7.2.c. That consent, once given, may be withdrawn at any time by stating the intention to any member of the treating staff;

7.2.d. The reasonable alternative treatments available, if any;

7.2.e. The type, range of frequency and amount, including the use of PRN (as needed) orders, the method (oral or injection) of administration, and the duration of taking the proposed medication;

7.2.f. The probable side effects to the proposed medication known to occur commonly, and any particular side effects likely to occur with the particular consumer;

7.2.g. Possible additional side effects of the proposed medications which may occur to consumers taking the medication beyond three (3) months; and

7.2.h. His or her rights under this rule.

7.2.i. This explanation and discussion shall be documented and signed by an appropriate behavioral health professional and consumer.

7.3. Requirement for Consent. Antipsychotic medication may be administered to an adult consumer only after the consumer has given informed, voluntary consent in writing, except as provided in the procedures set forth in this subsection.

7.3.a. Consent shall be considered to be informed only after the consumer has been provided with the information specified in subsection 8.2. of this rule by the physician prescribing the medication.

7.3.b. The consumer shall be asked to sign the consent form utilized in obtaining informed consent from voluntary consumers, and this signed consent form shall be included in his or her chart. In the event that the consumer has been shown the form and communicates

consent but does not wish to sign the written consent form, it is sufficient for an appropriate behavioral health professional to place the unsigned form in the consumer's record together with the notation that while the consumer understands the nature and effect of antipsychotic medication and consents to the administration of the medication, the consumer does not want to sign a written consent form.

7.3.c. Consent is effective for 90 days or until the consumer consents to a new/revised treatment plan, unless it is revoked by the consumer, whichever comes first.

7.4. Revocation of Consent. A consumer who has consented to treatment may refuse a specific treatment at any time, by stating or writing that he or she does not wish to continue that treatment. That treatment may not then be provided to the consumer, except as authorized in a psychiatric emergency. A revocation of consent shall be documented on the consent form and renders the previously given consent void.

7.5. Consent to Treatment. Except with respect to psychiatric emergencies, an individual has a right to refuse treatment. In some cases conditions exist which, if not treated, reasonably can be expected to cause permanent damage or severe pain. When considering whether to proceed with treatment in these instances, a decision shall be made in accordance with clear and objective criteria.

7.5.a. There is no statutory authority to provide treatment prior to actual commitment in the absence of informed consent. The procedures outlined in this rule are provide for use only when: (1) treatment is not refused; (2) no informed consent is forthcoming; (3) the risk of harm from failure to treat is demonstrably greater than the risks from treatment; and (4) the individual is unable to make any judgement to consent or refuse treatment.

7.5.b. When an individual is admitted to a behavioral health service, he or she shall be evaluated. The staff performing the evaluation shall employ the following procedures:

7.5.b.1. Determine whether the individual is clinically competent to understand the nature and purpose of the proposed treatment, as well as its prospective benefits and possible side effects. The examining physician and other behavioral health service staff shall utilize, and document the utilization of, accepted professional procedures for determining competency to understand the proposed treatment.

7.5.b.2. If the individual is determined to be able to make an informed decision relative to treatment, the proposed treatment shall be explained in detail and written consent to treatment shall be requested. No individual shall be asked to sign consent to treatment until the individual's competence to give consent has been determined. Treatment may be initiated if the individual gives consent, but a refusal to consent shall be honored and no treatment shall thereafter be forced upon the individual prior to receiving a written commitment order from the Circuit Court pursuant to a commitment hearing.

7.5.b.3. If it is determined that the individual is not capable of giving informed consent to treatment, and there is no legal representative or other advance directive to provide such consent, the examining physician shall determine whether there is a significant likelihood

that the symptoms for which the treatment is proposed are likely to become either more severe or long-lasting or both if treatment is withheld, and whether the proposed treatment is likely to produce side effects which may be harmful to the individual. Proposed treatments shall be those which are commonly accepted and recognized as appropriate for the condition being treated. In every instance, the more conservative of the available treatment options shall be chosen.

7.5.b.4. If the examining physician determines that there is little risk of serious deterioration in the absence of treatment and that the proposed treatment carries relatively little risk to the consumer, the physician shall present to another physician the facts upon which these conclusions were based.

7.5.b.5. If the other physician agrees with the recommendations, treatment may commence without consent for treatment.

7.5.b.6. All steps in this procedure, as well as all of the facts on which treatment decisions are based, shall be carefully documented in the medical record and signed by the attending physician.

7.5.c. The procedures outlined in this section are not intended to apply to those individuals who are in need of life-saving medication for chronic medical conditions such as diabetes or heart disease, who have been taking medications prior to admission and who are not actively refusing to continue the medication, notwithstanding that they may not currently be able to give consent.

§ 64-49-8. Right to Refuse Treatment.

8.1. General. As a participant in the program planning process, the consumer has the right to exercise a voice in his or her program plan and to object to or refuse aspects of the plan.

8.2. Use of Internal Discussion, Negotiation and Grievance Procedure. The consumer's right to object to or refuse treatment is recognized as legitimate, and shall be responded to in accordance with the provisions of the consumer grievance procedure if informal discussion and negotiation do not resolve differences.

8.3. Alternatives Offered and Provided. The treatment team for any consumer who has refused psychotropic medications or other recommended therapy shall meet and work toward an agreed-upon effective alternative treatment is offered and provided if the consumer consents.

8.4. Oral Refusal Overrides Prior Written Consent. An individual consumer's oral refusal to accept medication or other treatment always overrides prior written consent except in emergency situations as defined in this rule.

§ 64-49-9. Research and Experimental Treatment. The federal regulations **Protection of Human Subjects, 45 CFR Part 46**, are hereby adopted by reference, and all research, studies, or investigations conducted in behavioral health services shall comply with this rule.

§ 64-49-10. Seclusion and Restraints.

10.1. General. Consumers have the right to freedom from seclusion or mechanical or chemical restraints. Seclusion and restraint shall be used only where there is imminent danger that the consumer will injure himself or herself or others and only when all other less restrictive measures have been exhausted.

10.2. Seclusion Prohibited for People with Developmental Disabilities. Seclusion for developmentally disabled consumers is strictly prohibited. Only the "time-out" procedure developed specifically for each consumer in his or her program plan in accordance with standards of the Accreditation Council on Services for People with Disabilities may be used for the developmentally disabled consumer.

10.3. Emergency Measure Only. Seclusion is an emergency control measure only and may be used only as a last resort to control imminent destructive behavior that is a threat to the consumer or others. It may be used only when the consumer has not responded to less restrictive measures and only as long as is necessary for the consumer to regain self-control. Under no circumstances may it be used as a preventive measure or for punishment.

10.4. Seclusion is a severely restrictive form of intervention. Each behavioral health service shall provide to appropriate staff annual training in commonly accepted and recognized procedures to be used as an alternative to seclusion. Training in these procedures shall be documented in personnel records. Whenever seclusion is ordered and/or provided, all steps taken prior to seclusion shall be documented, with reference to procedures used, which are relevant to training provided. The steps and procedures outlined below shall be followed prior to its use.

10.4.a. Examination by Physician. No consumer may be placed in seclusion until he or she is examined by the attending physician, and a discussion is held with available team members. In the event an attending physician is not immediately available, the person in charge shall discuss the situation with the team members and obtain a telephone order from the physician if the physician concurs that seclusion is required.

10.4.b. Telephone Orders. A telephone order for seclusion is valid for a maximum of eight (8) hours, notwithstanding time limitations noted below (e.g., 11.7.). Regardless of the length of seclusion and whether or not the consumer is still in seclusion, the attending physician must examine a consumer within eight (8) hours of a telephone order for seclusion. The attending physician must determine and document the appropriateness of seclusion, whether staff have complied with this rule regarding seclusion, and whether staff have followed and utilized training in alternative measures prior to requesting and/or instituting seclusion.

10.5. Time. The time spent in seclusion shall be the shortest time required for the consumer to regain his or her self-control.

10.6. Seclusion Inappropriate for Suicidal Consumers. Seclusion shall not be used for a consumer who is actively suicidal or for a consumer for whom constant observation has been ordered. If the physician determines that seclusion is necessary, special documentation and one-on-one observation are required.

10.7. Seclusion Orders Valid Only for Three (3) Hours. No seclusion order is valid for

more than three (3) hours. Any consumer requiring seclusion beyond three (3) hours shall have his or her status reviewed by his or her treatment team and a written plan developed for responding to the consumer's crisis. Continued seclusion requires an examination and written order by a physician after every three (3) hour period. In the event an attending physician is not immediately available, the person in charge shall discuss the situation with the team members and obtain a telephone order from the physician if the physician concurs that seclusion is required. If a telephone order is obtained pursuant to Section 11.4.2. above, a person may be placed in seclusion for up to three (3) hours. If the treatment team believes the seclusion should be continued beyond the three (3) hour period, another telephone order is required if a physician is not immediately available. Within eight (8) hours of each of the two (or more) telephone orders (each lasting three hours), a physician must document the appropriateness of the seclusion as required by Section 11.4.2. above.

10.8. PRN (as needed) orders for seclusion are not permissible.

10.9. Items Entitled During Seclusion. A consumer who is placed in seclusion is entitled to clothing, a bed, a mattress, and bedding.

10.10. Supervision of Individuals in Seclusion. Any room used for seclusion shall permit constant supervision of the consumer by staff.

10.11. Seclusion Room Supervision. The person in charge of care or of the area containing the seclusion room is responsible for assuring that the following seclusion room checks and procedures are carried out:

10.11.a. Each consumer in seclusion shall be checked no less frequently than every five (5) minutes, and the seclusion room "check sheet" shall be updated and initialed to assure the presence and safety of the consumer in the seclusion room;

10.11.b. The consumer shall have access to fluids and to the toilet hourly, or more frequently if needed. Meals shall be delivered at regular meal times. Compliance with these requirements shall be documented on the check sheet; and

10.11.c. A member of the team or the person in charge of the area containing the seclusion room shall talk directly with the consumer and assess the need for continued seclusion at least every fifteen (15) minutes. The attending physician shall review and approve the documentation of such assessments within eight (8) hours.

10.12. Mechanical Restraints As Emergency Measure. The use of mechanical restraints is an emergency control measure only, and may be used only as a last resort to control imminent destructive behavior that is a threat to the consumer or others and that has not responded to medications or other less restrictive measures.

10.12.a. All forms of physical restraint require constant monitoring and consideration of a consumer's physical needs and status.

10.12.b. Adequate numbers of staff are essential both for consumer monitoring and for

safe placement of consumers in restraints.

10.13. Restraint Procedures for Consumers with Developmental Disabilities. Only procedures developed in accordance with standards of the Accreditation Council on Services for People with Disabilities may be used for consumers with developmental disabilities.

10.14. Examination by Physician. No consumer may be placed in mechanical restraints until he or she is examined by the attending physician and a discussion with available treatment team members is held. Mechanical restraints may be initiated only on written order of a physician.

10.15. Mechanical Restraint Order Valid Only for Three (3) Hours. No mechanical restraint order is valid for more than three (3) hours. Any consumer requiring restraint beyond three (3) hours shall have his or her status reviewed by his or her treatment team, and the treatment team shall confer and develop a written plan which responds to the consumer's crisis. Continued use of mechanical restraints requires an examination and written order by the attending physician after every three (3) hour period in addition to the treatment team conference and plan.

10.16. PRN (as needed) orders for mechanical restraint are not permissible.

10.17. Supervision of Mechanical Restraints. If the physician determines that mechanical restraints are necessary, special documentation and one-on-one observation are necessary. The procedure for the application of mechanical restraints shall be followed to assure that no restraint is applied in a manner as to produce physical pain or damage to the consumer. Opportunity for motion and exercise shall be provided for a period of not less than ten (10) minutes during each two (2) hours in which restraint is employed.

10.18. Metal Handcuffs Unacceptable. Metal handcuffs are not considered an acceptable form of restraint for consumers and shall not be used for that purpose.

10.19. Continued Assessment. A team member or person in charge of the unit or shift shall talk directly with the consumer and assess the need for continued restraint at least once every fifteen (15) minutes.

10.20. Punishment or Convenience. Mechanical Restraints shall not be used as punishment or for the convenience of staff.

10.21. Limitation on Use of Chemical Restraint. Drugs or medications shall not be used as punishment, for the convenience of staff, as a substitute for adequate staffing, or as a substitute for a treatment plan. Drugs and medication may only be administered pursuant to informed consent.

10.22. Documentation. In every instance in which emergency control measures are used for any length of time and each time the consumer is reexamined and a new order written [every three (3) hours], a full report shall be made by the attending physician, describing in detail the rationale for the decision of the treatment team and the failure of less restrictive measures to resolve the crisis.

10.23. Copies. Copies of the attending physician's report shall be sent to the clinical director and shall be attached to the consumer's medical record.

10.24. Minimum Required Documentation. The following minimum required documentation is necessary for seclusion or restraint:

10.24.a. The attending physician's written order for seclusion or restraint shall be placed on the doctor's order sheet in the consumer's record. Staff securing a verbal order for seclusion shall document the date and time the attending physician was called and the reason for the order;

10.24.b. Nursing notes stating the time that the consumer was placed in seclusion or restraint, the time the physician examined the consumer, and the time the consumer was released;

10.24.c. A full report by the staff using emergency control measures of each and every incident in which the emergency control measures are used, describing the situation, other measures taken, the failure of less restrictive measures and the rationale for seclusion. The staff person responsible for the unit or shift shall see that this report is completed and sent to appropriate parties, including the clinical director, and attached to the consumer's medical record;

10.24.d. A reflection of the decision of the treatment team for handling the crisis in the consumer's program plan;

10.24.e. A note on the twenty-four (24) hour report;

10.24.f. The five (5) minute check sheet for use of seclusion;

10.24.g. Progress notes from other disciplines if applicable; and

10.24.h. Hourly assessment of the continued need for seclusion or restraints by a team member or supervisor of the unit or shift.

10.25. Trial Release Procedure for Seclusion and Restraint. Seclusion and restraint are intended to provide external controls for the protection of the consumer or to prevent the consumer from injuring others. Continued use of the controls beyond the time when they are needed is inappropriate, regardless of the maximum period of three (3) hours allowed. It is the responsibility of the staff person in charge to assure that the seclusion or restraint measures are stopped when the behavior of the consumer makes their continued use unnecessary.

10.25.a. When it is clear that the consumer has regained self-control, the person in charge of the area in which restraints have been applied shall authorize, in writing, release for a trial period prior to the expiration of the three (3) hour period allowed. Under these circumstances, staff should continue close observation of the consumer. Restraints must be removed in a graduated, stepwise manner, negotiated with the consumer as part of an ongoing assessment of the consumer's clinical state. An inconsistent, impulsive, non-graduated, or non-negotiated "on-again, off-again" approach shall be avoided.

§ 64-49-11. Confidentiality.

11.1. Confidential Information

11.1.a. Communications and information obtained in the course of treatment or evaluation of any consumer is considered to be confidential information, including: the fact that a person is or has been a consumer; information transmitted by a consumer or his or her family for purposes relating to diagnosis or treatment; information transmitted by persons participating in the accomplishment of the objectives of diagnosis or treatment; all diagnoses or opinions formed regarding a consumer's physical, mental or emotional condition; any advice, instructions or prescriptions issued in the course of diagnosis or treatment; and any record or characterization of these matters. Confidential information does not include information which does not identify a consumer, information from which a person acquainted with a consumer would not recognize the consumer, and encoded information from which there is no possible means to identify a consumer.

11.1.b. In order to protect the consumer from demeaning remarks about his or her condition, medical and behavioral health care professionals, staff and other employees shall not discuss a consumer's assessment, diagnosis, treatment, or any other aspects of his or her condition among themselves unless this discussion directly relates to the consumer's treatment.

11.2. Disclosure of Confidential Information.

11.2.a. Confidential information may be disclosed:

11.2.a.1. In a proceeding under W. Va. Code § 27-5-4 to disclose the results of an involuntary examination made pursuant to W. Va. Code § 27-5-2 or § 27-5-3;

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

11.2.a.3. Pursuant to an order of any court based upon a finding that the information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section. Once a subpoena is received it is the duty of the custodian of the records to request a determination from the court having jurisdiction to make this finding before the records are provided;

11.2.a.4. To protect against a clear and substantial danger of imminent injury by a consumer to himself or herself or to another; and

11.2.a.5. For treatment or internal review purposes, to staff of the behavioral health service where the consumer is being cared for or to other health professionals involved in treatment of the consumer.

11.2.b. Consumers shall be informed upon the commencement of any contact with medical or behavioral health professional that their rights to confidentiality are limited in the ways set forth in this rule.

11.3. Authorization for Disclosure.

11.3.a. All consents for the transmission or disclosure of confidential information, regardless of the mode of transmission, shall be in writing and signed by the consumer or by his or her legal representative. Every person signing an authorization shall be given a copy.

11.3.b. Every person requesting an authorization shall inform the consumer or authorized representative that refusal to give an authorization will in no way jeopardize his or her right to obtain present or future treatment except where and to the extent disclosure is necessary for treatment of the consumer or for the substantiation of a claim for payment from a person other than the consumer.

§ 64-49-12. Right to Unrestricted Communication.

12.1. Generally. Every consumer has the right to unimpeded and private communication with whomever the consumer chooses by mail, telephone, visits, or otherwise, except as specified in this rule.

12.2. Restrictions. Any deviation from the rights afforded by subsections 13.1of this rule can only be authorized by the interdisciplinary team or the attending physician for a time specified by the team. A complete report relative to the restriction of telephone or mail rights and the reasons therefore shall be made a part of the consumer's medical record, signed and dated by the consumer's attending physician, and reflected in the consumer's treatment plan. Restrictions of mail and telephone rights shall expire in thirty (30) days.

§ 64-49-13. Consumers' Labor, Earnings and Funds.

13.1. Consumer Labor Generally.

13.1.a. No consumer may be required to perform uncompensated labor which involves the operation and maintenance of the behavioral health service. Privileges or discharge from the service shall not be conditional upon the performance of labor.

13.1.b. Consumers may be voluntarily employed in labor which involves the operation and maintenance of the behavioral health service, if the labor is compensated in accordance with the requirements of relevant State and federal law and regulations.

13.1.b.1. Consumers who are employed to perform work of economic benefit to the service shall be paid wages which are commensurate with those paid other workers for essentially the same type, quality and quantity of work.

13.2. Vocational Training/Employment. Consumers may perform vocational training tasks which do not involve the operation and maintenance of the service, so long as an assignment:

13.2.a. Is an integrated part of the consumer's interdisciplinary program plan;

13.2.b. Has been approved as a program activity by the professional responsible for the

vocational training program;

13.2.c. Is supervised by a staff member.

13.2.d. Sheltered Workshops. Approval for a sheltered workshop may be obtained for a specific workshop program. Sheltered workshops operated by a service are required to be in compliance with applicable State and federal laws, rules and regulations.

13.2.e. Training and Evaluation Program. A certificate can be obtained for programs which provide competent instruction and supervision and are designed to determine a working consumer's potential and to teach adjustment to a work environment or the skills related to one (1) or more types of work. The duration of the evaluation and training shall depend upon the total facts of the situation, but in no case shall exceed twelve (12) months. Time spent in an employment relationship in the service, prior to the effective date of participation in the training program, shall be counted in determining the duration of the work evaluation and training. It is not permissible to place a consumer who has been involved in any work situation within the service for more than twelve (12) months in a work and training evaluation program without pay.

13.3. Personal Housekeeping. Consumers may be required to perform personal housekeeping tasks, such as making their bed, tidying their room, doing their laundry, etc.

13.4. Access to Personal Funds. Consumers shall have unlimited access to their funds except as provided by this rule or by West Virginia law.

13.4.a. Any service which establishes a system to be payee for consumers' Supplemental Security Income and/or consumers' Disability Insurance (SSDI) shall have written policies and procedures to ensure reasonable personal access to funds. Such policies and procedures shall comply, at a minimum, with requirements imposed by federal rules promulgated by the Social Security Administration.

13.4.b. If a service is a payee for SSI or SSDI, there shall be information in the treatment record describing reasons for the service serving as a payee. The record shall indicate why the consumer needs a payee and why no other source was available or was chosen to be the payee. The necessity of a payee shall be documented quarterly. If there is no justification for a payee, the service shall assist the consumer in applying to be his or her own payee.

13.4.c. If a service is a payee, the service shall maintain records of income and expenses. Each consumer for whom the service is a payee shall receive a statement of income and expenses monthly.

13.4.d. Consumers who have been adjudicated incompetent and have had a conservator or other individual with financial authority appointed shall have the same access to their funds as set forth in subdivision 14.4. of this rule, subject to reasonable limitations by his or her conservator.

13.4.e. The treatment record of a consumer who has an appointed conservator or other individual with financial authority shall document this appointment and the reasons for the

appointment. The need for a conservator shall be evaluated quarterly. If the service believes the consumer no longer requires an appointed conservator or other financial authority, the service shall assist the consumer in applying for release.

13.4.f. If a consumer who has an appointed conservator or other individual with financial authority believes he or she does not have sufficient access to his or funds, the service shall evaluate the grievance and assist the consumer in filing to seek redress.

13.4.g. A consumer, conservator, or other court appointed financial authority may be required to pay for care and treatment provided by a service.

13.4.h. Any consumer who has a payee for SSI or SSDI, or has a court appointed conservator or other financial authority shall receive training in money management, unless the treatment record indicates the consumer has refused such training or will not benefit from such training.

13.4.i. The service shall cease to be payee for SSI or SSDI or will assist the consumer in applying for release from having a payee, conservator, or other court appointed financial authority, if the consumer demonstrates ability at money management.

13.5. Notification. All consumers assigned to a work situation shall be informed of the rights provided by this rule. The information shall be provided as follows:

13.5.a. The consumer workers and their responsible relative or legal representative may be notified in writing of these rights; and

13.5.b. Written notification of rights under this rule shall be posted in every living unit.

§ 64-49-14. Legal Representative.

14.1. Generally. On admission to a behavioral health service, it shall be determined if the consumer has a legal representative. If the consumer has a legal representative, identifying information shall be entered in the consumer's record. The responsibilities and limitations of the legal representative shall be listed.

14.2. Protection of rights. The behavioral health service shall not honor requests or demands of a consumer's legal representative which are in excess of the detailed responsibilities and limitations of the legal representative.

14.3. Reporting violations. The behavioral health service shall, with written permission of the consumer, report any violations of the legal representative's responsibilities and limitations. Reports shall be provided to the consumer's choice of advocate and/or attorney.

§ 64-49-15. Employee Responsibilities.

15.1. Duty of All Employees. Every employee has the responsibility to assure that all rights afforded to consumers by applicable State and federal laws, rules and regulations, including this

rule, are protected and afforded to consumers.

15.2. Abuse and Neglect. No employee shall verbally or physically abuse, or neglect any consumer.

15.3. Sexual Harassment. Employees shall not engage in sexual harassment of consumers.

15.4. Mandatory reporting. Every employee has a duty to report any incident of actual or suspected abuse or neglect to the administrator and to adult protective services workers.

15.5. Training of Employees. The administrator has the duty to train and educate all new employees and all current employees on a periodic and consistent basis on the content of this rule so that all employees are thoroughly familiar with it.

§ 64-49-16. Juveniles' Additional Rights.

16.1. Separation. No consumer under eighteen (18) years of age shall be housed in any area also occupied by any consumer over eighteen (18) years of age.

16.2. Education. Any behavioral health service serving consumers under twentyone (21) years of age shall advocate for, and assure the provision of, education for such consumers in conformity with applicable portions of relevant State or federal law.

16.3. Family Contact. The behavioral health service shall make every effort to assure family contact and communication between consumers under the age of eighteen (18) and their family members. These efforts, and the results of the efforts, shall be documented.

16.4. Inclusion. All rights under this rule apply equally to consumers under the age of eighteen (18).

16.5. The service shall establish simple and understandable rules which set the limits of behavior required for the protection of a group and individual consumers within the group. The rules shall be written for consumers under the age of eighteen (18) and staff serving these consumers.

16.5.a. No consumer under the age of eighteen (18) shall be withdrawn from any therapy program as a disciplinary measure.

§ 64-49-17. Consumer Advocacy and Grievance Procedure.

17.1. Each service must offer clear and timely review of any alleged violation or infringement of the rights afforded by this rule.

17.2. During the admission process, consumers and their families must be advised of their right(s) to initiate a grievance concerning the quality of care or violation of their rights during time they receive service(s).

17.2.a. Consumers already being provided service(s) must be advised of the grievance policy and procedure at their next treatment planning meeting.

17.2.b. Each service affected by this rule shall conduct regular inservice training sessions for staff covering the grievance procedure.

17.2.c. Consumers shall be advised that if they believe their rights are being violated, they should talk to an advocate such as their doctor, social worker, therapist, nurse, other external advocate, or individual with whom they feel comfortable. Staff of any service affected by this rule shall assist a consumer in the initiation of the grievance process.

17.2.d. Each consumer shall be provided a brief, easily understood, statement of consumer rights, the service's grievance policy, and the name and telephone number of an external advocate.

17.3. Any complaint which does not contain allegations of abuse or neglect should be resolved through an attempt at informal problem resolution, including mediation.

17.4. Initiating the Grievance Process. The grievance may be initiated verbally or in writing. Grievance forms shall be made available to a consumer on request, by any person employed by the service.

17.4.a. Individuals with a grievance must not be prevented from using the grievance procedure.

17.4.b. Individuals always have the right to withdraw their grievance at any step in the process.

17.4.c. The designated grievance representative employed by the service will offer any consumer unable to write the complaint and will assure that the grievance report is fair and accurately represents the individual's concern.

17.4.d. Once finalized, the grievance shall be delivered to the human rights committee by the designated grievance representative employed by the service.

17.5. Allegations of Abuse, Neglect, or other Serious Breach of Consumer Rights. The designated grievance representative employed by the service shall interview the grievant upon receipt of a grievance. A report of all violations or suspected violations of a consumer's rights accorded by this rule shall be made within twenty-four (24) hours to the human rights committee of the service and the chief executive officer of the service. In the event of abuse and/or gross neglect or suspicion of abuse and/or gross neglect, the human rights committee and chief executive officer shall be immediately notified following the interview.

17.5.a. Any incidents of abuse and/or neglect shall be reported to civil and criminal authorities in accordance with the West Virginia Adult Protective Services Act and/or the West Virginia Child Protective Services Act, in addition to reporting the human rights committee and the chief executive officer.

17.5.b. Reporting incidents of abuse and/or neglect in accordance with the Adult Protective Services Act and/or the Child Protective Services Act does not relieve the service of the obligation to respond to the grievance filed, monitor staff, and/or to enforce this rule. The duty of the service to conduct an investigation under this rule is independent of any investigation conducted by law enforcement officers or the prosecuting attorney.

17.6. Complaints of violations of rights, once filed, require a written administrative response. The service may delay or defer its investigation until law enforcement authorities have completed their investigation only if the chief executive officer of the service concludes that a delay will not adversely affect the health and safety of the grievant and/or other consumers.

17.7. Formal Complaints and Resolution. The human rights committee of the service must convene within five (5) working days of receiving a report of a grievance, to investigate the allegations contained in the written grievance.

17.7.a. The human rights committee will attempt to ascertain the facts by communicating with all parties involved in the complaint. The aggrieved, with his/her representatives must have the opportunity to appear in person before the Committee.

17.7.b. The human rights committee will render a decision on the grievance and report to the chief executive officer of the service within ten (10) working days following the initial meeting convened for the purpose of hearing the grievance.

17.7.c. Within three (3) working days of receiving a report and recommendation from the human rights committee concerning a grievance, the chief executive officer shall either approve or disapprove the recommendations of the human rights committee.

17.7.d. If the recommendations of the human rights committee are approved, the chief executive officer shall: (1) Notify all interested parties of the recommendations; (2) Enforce the decision; (3) Recommend policy change(s), if necessary.

17.7.e. If the recommendations of the human rights committee are disapproved, the chief executive officer shall notify all interested parties: (1) Of the disapproval, and the reasons for the decision; (2) The right to appeal the decision; and (3) The process for appeal.

17.8. Within five (5) working days of the receipt of a denial of a grievance, a grievant may notify the chief executive officer that he or she wishes to continue his or her grievance to the governing board of the service.

17.8.a. The chief executive officer shall immediately notify the governing board of the grievant's decision.

17.8.b. The governing board, or an entity of the board that can responsibly render a decision on behalf of the board, shall convene within ten (10) working days after notification of an appeal to a grievance decision, to review all evidence gathered, request additional information from the parties involved, and to render a decision concerning the grievance. The aggrieved individual, with his or her representative(s) must have the opportunity to appear before the

governing board, if he or she so chooses.

17.8.c. If the governing board approves of the grievance or recommendations of the human rights committee, it shall (1) Notify all interested parties and (2) ensure enforcement of decisions.

17.8.d. If the governing board disapproves of the grievance or recommendations of the human rights committee, it shall (1) Notify all interested parties of the right to appeal; (2) Provide information on the process for appeal; and (3) provide the reason for disapproval.

17.8.e. If the governing board denies the grievance, the governing board must notify the aggrieved that he or she has now exhausted the appeals process and advise him or her of the right to engage legal representation to pursue the complaint through the court system.

§ 64-49-18. Severability. The provisions of this rule are severable. If any portion of this rule is held invalid, the remaining provisions remain in effect.